AN INTEGRATED THEORY OF THE FIRM

WITH CONTRIBUTIONS FROM THE SOCIAL CONTRACT CORPORATE ETHICS AND CORPORATE GOVERNANCE

A Thesis submitted by

Cecil William Edward Maddox MBSR B Bus

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ABSTRACT

The preliminary research behind this thesis identified twenty one theories of the firm that could be used to help understand the creation and life of business enterprises. There are more than 2.1 million business enterprises in Australia and approximately 800 000 of these are companies based on one of several possible legal forms. However, as at 30 June 2016, only some 2 200 of these companies were listed on the Australian Securities Exchange (ASX) and were required to publish annual reports that described their structure and activities. The data from such reports (for the financial years ending June 2007 to June 2016 inclusive) is used to determine the utility of the existing theories of the firm in understanding the creation, existence and operation of the 100 larger companies listed on the ASX (as at 30 June 2016).

Several researchers have suggested the need for an integrated theory of the firm that more comprehensively and succinctly describes the life of business entities and the research reported in this thesis highlights the need for such a comprehensive approach. A new Integrated Theory of the Firm that meets the needs identified by others is proposed and tested against the 100 larger companies listed on the ASX (as at 30 June 2016). An important finding of the thesis is the need for further research to confirm the utility of the new theory in helping understand the creation, existence and operation of other forms of business enterprise in Australia. Such research could also be extended to companies in other legal jurisdictions.

CERTIFICATION OF THESIS

This Thesis is entirely the work of Cecil William Edward Maddox except where otherwise acknowledged. The work is original and has not previously been submitted for any award except where acknowledged.

Principal Supervisor: Marie Kavanagh

Associate Supervisor: Geoff Slaughter

Student and supervisors' signatures of endorsement are held at USQ.

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As with my Master's thesis, the perseverance and guidance of my supervisors (Professor Marie Kavanagh and Associate Professor Geoff Slaughter) have been invaluable. We have had many discussions regarding the contents of Chapters 1 and 2 and on the methodology described in Chapter 6. Any remaining shortcomings are due solely to my failure to understand their reasoning.

The path from an undergraduate degree to a Master's in Business Research and then to a PhD has been a long one and could not have been undertaken without the support (often justifiably critical) of my wife Carolyn. Carolyn's support and encouragement in times of doubt and dalliance have helped me to achieve a life long dream.

Thank you all. I hope that the final output also gives you joy and satisfaction – as it does me.

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LIST OF ABBREVIATIONS

ABA	Australian Bankers' Association
ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
AG	Aktriengesellschaft (a German public limited liability company)
AICD	Australian Institute of Company Directors
APPEA	Australian Petroleum Producers and Exploration Association
APRA	Australian Prudential Regulation Authority
AS	Australian Standard
ASA	Australian Shareholders Association
ASIC	Australian Securities and Investments Commission
ASX	Australian Securities Exchange
ATO	Australian Taxation Office
AUSTRAC	Australian Transaction and Reports Analysis Centre
CSR	Corporate Social Responsibility
DGCL	Delaware General Corporation Law (USA)
DPS	Dividend per share (A$)
EEC	European Economic Community
ESD	Ecologically Sustainable Development
EU	European Union
EURL	Enterprise Unipersonnelle à responsibilitié Limitée (a French private limited liability company – effectively owned by one person and operated through a separate limited company)
FTSE	Financial Times Stock Exchange (United Kingdom)
GICS	Global Industry Classification System
GmbH	Gesellschaft mit beschränkter Haftunk (a German private company)
IRRC	Investor Responsibility Research Centre
LLC	Limited Liability Corporation (an American concept that is a cross between a partnership and a company)
LSE	London Stock Exchange
Ltd	Limited (liability) (an Australian public company)

MBCA	Model Business Corporation Act (USA)
NPAT	Net Profit After Tax
NA	Not available
OECD	Organisation for Economic Co-operation and Development
PLC	A British public limited liability company
Pty Ltd	An Australian private limited liability company
SA	Société Anonyme (a French public limited liability company)
SARL	Societé a Responsibilité Limitée (a French private limited liability company with two or more shareholders)
SAS	Société par Actions Simplifée (a French private limited liability company in which the decision making powers of the board are limited)
SE	Societas Eutopaea (a European Union public company)
TFEU	Treaty on the Functioning of the European Union
TOTF	Theory/ies of the Firm
UG	Unternehmergesellschaft (a German private company that may, ultimately, become a GmbH company)
UK	United Kingdom of England, Northern Ireland, Scotland and Wales
US/USA	United States of America

DEFINITIONS

ASX 100	The larger 100 companies (by capitalisation) listed on the ASX. They are also the first 100 companies in the ASX 200 index and in the ASX All Ordinaries index.

Business

The Cambridge English Dictionary (n.d.) defines a 'business' as being:

- the activity of buying and selling goods and services;
- the work that you do to make money; and
- a particular company that buys and sells goods and services.

The Australian Taxation Office (n.d.) extends this definition to include that:

- you have made a decision to start a business and have done something about it (such as obtaining a registered business name) to operate in a businesslike manner;
- you intend to make a profit – or genuinely believe that you will make a profit from the activity – even if not in the short term;
- you repeat similar types of activities;
- the scale of your activity is consistent with other businesses in your industry; and that
- your activity is planned, organised and carried out in a businesslike manner.

The Australian Commonwealth Government considers that the main forms of business activity in Australia are: (i) a sole trader; (ii) a partnership; (iii) a trust; and (iv) a company (business.gov.au 17 November 2016).

Company

The Cambridge English Dictionary (n.d.) defines a company as being;

- the person or people that you are with; or
- an organisation that sells goods or services in order to make money.

However, the Australian *Corporations Act 2001* (Parliament of Australia 2001) more sharply defines a company as being:

- a company registered under this *Act*;

and a company limited by shares as being:

- a company formed on the principle of having the liability of its members limited to the respective amounts that the members undertake to contribute to the property of the company if it is wound up.

Corporation

The Cambridge English Dictionary (n.d.) defines a corporation as being a large company or group of companies that is controlled together as a single organisation.

The Australian *Corporations Act 2001* section 57A (Parliament of Australia 2001) defines a corporation as being:

Subject to this section, in this Act, corporation includes:

(a) a company;

(b) any body corporate (whether incorporated in this jurisdiction or elsewhere); and

(c) an unincorporated body that under the law of its place of origin, may sue or be sued, or may hold property in the name of its secretary or of an office holder duly appointed for that purpose.

Firm

The Cambridge English Dictionary (n.d.) defines a firm as being a company or business.

The meaning of the concepts defined above does vary according to jurisdiction. One example of such variation can be found in the meanings of ‘corporation’ and ‘company’. In the USA, the term ‘corporation’ is often used to describe large businesses and the term ‘company’ can be used to describe entities, such as partnerships, that would not be described as ‘companies’ in Australia - as they are not a legal entity separated from their owners or principals. In the UK (and in most Commonwealth countries), the term ‘company’ is used to describe the same type of business entity whereas the term ‘corporation’ encompasses all incorporated entities (Collins English Dictionary n.d.;).

For the purposes of this thesis, the following meanings are adopted:

- business or business entity/entities — used as a collective term for all forms of business;
- company — used as the general term for all forms of incorporated business entities;
- corporation — as used in the phrase Australian/Commonwealth *Corporations Act 2001* or in a quote from another source; and
- firm — used in the phrase theory of the firm or in a quote from another source.

CHAPTER 1 INTRODUCTION

1.1 Introduction to this chapter

This thesis presents the findings of research into the utility of twenty one existing theories of the firm (TOTF) in describing the creation, existence and operation of large Australian companies. The validity and reliability of the theories are not questioned, but their utility in explaining the creation, existence and operation of companies is explored in a study based on the 100 larger companies (by capitalisation) listed on the Australian Securities Exchange (ASX) as at 30 June 2016. These companies are identified in Appendix 1. Using the findings from this research, a new Integrated TOTF is proposed. The descriptive capacities of this new theory are assessed in Chapter 8 and are then used to outline the characteristics of a company that would meet the theory in full.

The time frame for the research behind this thesis is June 2007 to June 2016 inclusive. The reason for this choice is that TOTF must apply equally to both the growth and contraction of companies. The chosen period (ten years) includes both the year before and the eight years following the Global Financial Crisis of 2008. Most of the ASX 100 firms (as at 30 June 2016) exhibited both growth and a sustained contraction in turnover and profit during this period. At the time of the research for and the writing of this thesis, there was no other similar event (in Australia) on which the same range of impacts on company activities could be based.

The objectives of this chapter are:

- to present the research problem;
- to identify the Research Question that arises from the problem and its objectives;
- to outline the structure of the thesis;
- to identify the theoretical base behind the research undertaken;
- to present an outline description of the research philosophy and of the methodology adopted;
- to summarise the principal findings of the research;
- to identify the contribution that the thesis makes to both theory and practice; and

- to propose further research that will demonstrate the wider applicability of the theory developed.

Figure 1.1 outlines the structure of this chapter and relates it to both the introductory material and to Chapter 2.

Introductory Material	Content:	• Title page • Abstract • Certification • Table of Contents • Definitions • Abbreviations
Chapter 1 Introduction	Content:	• Section 1.1 introduces the chapter; • Section 1.2 presents the Research Problem; • Section 1.3 develops the Research Question; • Section 1.4 states the objectives of the research program; • Section 1.5 presents the structure of the thesis; • Section 1.6 outlines the methodology behind the research; • Section 1.7 presents a summary of the findings of the research; • Section 1.8 presents the contributions to theory and to practice that the thesis makes; • Section 1.9 suggests areas for future research; and • Section 1.10 provides a summary of the chapter.
Chapter 2 The evolving concept of the company	Content:	• What is a business in Australia? • Outline of company law development • Forms of companies in Australia and in other legal jurisdictions • Into the future

Figure 1.1: The structure of Chapter 1 and its connection to Chapter 2

1.2 Background to the research problem

Theories that: (i) examine the reasons that business entities come into being and then continue to exist; (ii) attempt to identify why the boundaries between one business and another, its competitors and the market are where they are; and (iii) that attempt to identify why business entities behave the way that they do, are not new. The research behind this thesis has identified twenty one such TOTF. For ease of examination and comparison within this thesis, these theories are grouped as follows:

- **Corporate entity theories –** (1) artificial entity theory; (2) aggregate entity theory; and (3) real entity theory;
- **The Neo-classical theory of the firm** – (4) the neo-classical theory of the firm;
- **Other economics based theories of the firm** – (5) transaction cost theory; (6) team production theory; (7) contract theory; (8) resource based theory; and (9) natural resource based theory;
- **Behavioural based theories of the firm** – (10) principal/agent theory; (11) revenue maximisation theory; (12) managerial discretion theory; (13) managerial capitalism; and (14) stewardship theory;
- **Stakeholder theories** – (15) stakeholder theory; and (16) shareholder theory;
- **Theories relating to the growth of the firm** – (17) the theory of the growth of the firm; and (18) the theory of the multinational firm;
- **Institutional theories of the firm** – (19) new institutional theory; and
- **Contemporary theories of the firm** – (20) the theory of the evolutionary firm; and (21) sustainability oriented theory.

Corporate entity theories (Numbers 1 to 3 above) have grown from the concept of the company as an extension of the state to the present understanding of the company as a separate legal entity. The economics based theories (Numbers 4 to 9 above) mostly draw their base from the work of Marshall (1890), Friedman (1962) and Kantarelis (2007). The behavioural theories (Numbers 10 to 14 above) have many bases (such as Crossan (2004); Lozano, Carpenter & Huisingh (2015); and Williamson (1964)) and the evolutionary theories are based on the work of Frederick (2004). Some theories, such as the Theory of the Growth of the Firm proposed by Penrose (1995), are based on other theories (such as the Transaction Cost theory based on the work of Coase (1937) and the Managerial Discretion theory proposed by Williamson (1964)). Of recent years, new theories that attempt to build a wider understanding of the existence and operation of business enterprises have been proposed. One such theory is the (Corporate) Sustainability Oriented theory (Number 21 above) proposed by Lozano, Carpenter and Huisingh (2015).

Very few of the existing theories of the firm offer a comprehensive understanding of the complex nature of business enterprises and only two (the Neo-classical TOTF and Stakeholder theory (Numbers 4 and 15)) readily suggest a base from which the theory itself might be supported or falsified. The shortcomings in many of these theories were recognised by Hart (1989, p. 1757) when he wrote:

> Most formal models of the firm are extremely rudimentary, capable only of portraying hypothetical firms that bear little relationship to the complex organisations we see in the world. Furthermore, theories that attempt to incorporate real world features of corporations, partnerships and the like often lack precision and rigor, and have therefore failed, by and large, to be accepted by the theoretical mainstream.

Foss, Lando and Thomsen (2004, p. 632) also queried the utility of existing TOTF. They suggested that there is a need for a theory that would address: (i) the reasons for the existence of a firm; (ii) the boundaries of a firm relative to markets; and (iii) the internal organisation of the firm. The need for such a theory was not immediately addressed and Radin (2004, p. 291) shortly thereafter suggested that there was a need for a TOTF that identified: (i) what drives business strategy; (ii) what generates business productivity; (iii) what shapes the business organisation; (iv) what motivates firm behaviour; and (v) what determines the firm’s moral posture. Miner (2003) had earlier suggested that such theories may need to consider the motivational base of both individuals and companies.

The business entities to which such theories might apply are not uniform in many aspects. In Australia, the legal form of such organisations is commonly divided into unincorporated bodies (such as sole traders, partnerships and trusts) and incorporated ones (such as companies). Until 2011, the unincorporated entities were mostly created under state and territory legislation but they must now be registered under a Commonwealth business names system (Schweizer Kobras 2010, p. 1). Since 2001, all incorporated business entities have been created under (and governed in accord with) the Commonwealth’s *Corporations Act 2001* (Schweizer Kobras 2010, p. 2).

There were more than two million business entities registered in Australia as at 30 June 2016. (ABS 30 June 2017, p. 1). However, only about 804 000 of these entities were companies incorporated under the *Corporations Act 2001* (ABS 30 June 2017, p. 2) and only about 2 200 of these were limited liability companies listed on the Australian Securities Exchange (ASX) (psi.com.au n.d.). As only those companies listed on the ASX are required to lodge annual reports with information that might guide an assessment of their performance against the TOTF, the business entities explored in the data analysed in Chapter 7 of this thesis have been drawn from this group. However, the data generally contained in their annual reports is insufficient to support a detailed comparison against many of the recognised TOTF. This is because several of the theories require 'insider' information that is not contained in publicly available company documents. A similar lack of publicly available data exists in the four other countries identified in Section 2.1 of this thesis.

The analysis behind this thesis is based on company annual reports and only briefly touches on other published material such as environmental/sustainability reports and articles in business related papers and magazines. The annual reports alone provided almost 20 000 pages of material (100 companies by approximately 200 pages for each report) that needed to be examined for each year of the chosen period.

1.3 The Research Question

The Research Problem outlined in Section 1.2 gives rise to the following questions:

(1) What is a business?
This question is answered in Section 2.2 on p. 15.

(2) What legal forms can a business assume in Australia?
This question is answered in Section 2.2 on p. 15.

(3) What is the most common legal form adopted by businesses in Australia?
This question is answered in Section 2.2 on p.17.

(4) Why would a business entity incorporate as a company?
This question is answered in Section 2.3.1 on p.21.

(5) What theories describe the formation, operation and boundaries of a company?
This question is answered in Chapter 3 pp. 44-85.

(6) How useful are these theories in describing business forms and activities?
This question is answered in Chapter 7, particularly Table 7.17.
(7) If the existing theories are not useful, what might be a more useful approach?
This question is answered in Section 8.2.2.
(8) If a more useful theory can be developed, how well does it overcome any lack of utility attributed to existing theories?
This question is answered in Section 8.3, particularly in Table 8.2.
(9) How can others test the utility of the proposed theory?
This question is answered in Section 8.6.

The Research Question that drives the work behind this thesis is derived from the problem described in Section 1.2 and summarises the background questions outlined above. It is:

> What is the content of a theory of the firm that: (i) addresses the shortcomings in existing TOTF recognised by Hart (1989), Miner (2003), Foss et al. (2004) and Radin (2004); and that (ii) provides a base for a continued understanding of a company as it evolves from one form to another?

Once established, the utility of such a theory could be demonstrated by using it to answer the question:

> How could a company be structured and governed so that, in the long term, it prospers and both benefits and protects the communities in which it operates?

The Research Question and the utility of the subsequently developed TOTF in helping understand the creation, existence and operation of the 100 larger companies listed on the ASX (as at 30 June 2016) are explored in Chapters 7 and 8.

1.4 The objectives of the research program

The objectives of the investigation that explores the Research Question are:

(1) to identify gaps in the literature that explains the twenty one theories of the firm identified in Section 1.2;

(2) to identify gaps in the literature relating to the social contract between business, government and society, corporate ethics and corporate governance that might suggest research that could lead to the development of a comprehensive and integrated theory of the firm;

(3) to propose a new, integrated, theory of the firm;

(4) to develop a research program that uses Australian company data to explore the utility of both existing and new theories of the firm;

(5) to develop a model of a company that would meet the requirements of the Integrated TOTF; and

(6) to suggest tests and additional research that could further illustrate the utility of the new theory.

1.5 The structure of this thesis

To enable a reader to follow the argument being developed, the remainder of this thesis is presented as follows:

- Chapter 2 develops an outline of the structure and governance requirements of limited liability companies in Australia, the UK, France, Germany and the USA;
- Chapters 3, 4 and 5 present the literature review that summarises existing publications relevant to the topic being researched and that identifies gaps in that literature that the research methodology and program later address;
- Chapter 6 identifies the research philosophy that drives this thesis and constructs a methodology that guides the research and analyses on which the thesis is based;
- Chapter 7 develops the analysis that assesses the utility of existing TOTF;
- Chapter 8 presents (and assesses the utility of) a new Integrated TOTF;
- Chapter 9 discusses the findings of the literature review, the gaps revealed by the analysis and the implications of the new theory. The chapter also suggests areas where continuing research would be of value; and
- Chapter 10 concludes the thesis with a summary of its approach and value.

There are seven appendices to this thesis. Appendix 1 identifies the companies used in the analysis reported in Chapter 7. As there are 100 companies explored in this research, a detailed presentation of the data required to support the analyses undertaken would require several hundred pages of tables. Accordingly, Appendices 2 to 7 present only examples of the data collected, rather than the full volume of such data. The data contained in these appendices will, however, guide those who wish to replicate the research and test its findings towards accessing similar data sources. Each of the appendices is referred to frequently throughout Chapters 7 and 8.

1.6 Methodology

There are several different ways of describing philosophical paradigms. Healy and Perry (2000, pp. 118-126) suggest one that uses positivism, critical theory, constructivism and realism as suitable bases for a research philosophy. Their description of the ontology of realism – 'realism is "real" but only imperfectly and probabilistically apprehensible' – fits the research project behind this thesis well. Limited liability companies are real and the reasonably closed environment in which they operate is certainly 'imperfectly and probabilistically apprehensible' to most outsiders. As such, these companies are an acceptable base for research undertaken within the realism paradigm. A constructivist approach is used to help build the new, integrated, TOTF suggested in Section 1.4. The research and subsequent theory formulation also draw on content analysis to identify the key characteristics of existing TOTF that are then explored against material taken from the annual reports of Australian companies listed in the ASX 100 index (as at 30 June 2016).

The 'world view' that underlies the research and analysis behind this thesis is based on the following understandings:

- companies are real (even if only legal) entities and exist regardless of the perception and understandings of a researcher;
- companies are not created and exist (nor are they operated) according to any mathematical rules or models and any exploration of these aspects of company life falls into the realm of social research;
- there are many existing TOTF that can be tested in order to explore their utility in describing the creation, existence and operation of companies;
- other researchers have already suggested what the contents of an ideal TOTF might be; and

- if required, both the findings of research into the utility of existing TOTF and the contents suggested by others could be used to construct a more useful TOTF.

This ‘world view’ is explained more fully in Chapter 6: Methodology.

The strategy and techniques used in the research that underlies this thesis are detailed in Chapter 6. They are as follows:

- the Literature Review (Chapters 3, 4 and 5) is based on a manual search of academic papers, newspapers and periodicals held in University of Southern Queensland (USQ) and other university and public libraries;
- the analysis (Chapter 7) is based on archival research into ASX company listings, Australian Securities and Investments Commission (ASIC) databases and individual company reports. Appendices 1 and 2 are based on this material; and
- Appendices 2 to 7 are also based on individual company annual reports and are (except for Appendices 6 and 7) presented as multivariate time series tables.

1.7 A summary of the findings

The principal findings of the research behind this thesis are:

(1) In Australia, only companies listed on the ASX are required to publish data that supports analysis against the recognised TOTF.

(2) It is not possible to easily replicate much of the published research relating to the Neo-classical, Transaction Cost, Team Production and Contract TOTF as they require data on company activities that is not publicly available.

(3) There is no other contemporary research that uses Australian company data to explore the utility of existing TOTF.

(4) The existing TOTF have a limited utility in describing the reasons for the existence of a business enterprise as a company, for determining why the boundaries between a company, its suppliers and competitors and the market are where they are and why the company behaves the way that it does. This lack of descriptive power mostly arises because the data required to compare company performance against the theories is not available from readily accessible company publications (such as annual reports) and is often only available to corporate ‘insiders’ (such as senior managers).

(5) The existing TOTF seldom contain (or suggest) a means by which their utility in describing company existence and operations can be tested.

Based on the above findings, a new Integrated Theory of the Firm is proposed. It is:

> The company is a legal, profit oriented, ethical entity that is formed and managed in accord with legislation that reflects the evolving social contract between business, government and society. The owners of the company elect members of a board of directors, as their representatives, and hold these directors responsible for the governance of the company in accord with the legal and civil requirements of the society in which the company operates. This board of directors may seek advice from stakeholders other than shareholders.
>
> The directors of the company appoint managers as stewards responsible for using company assets, in a sustainable and cost effective manner, to achieve agreed goals. The directors then monitor the performance of their stewards against those goals and reward them according to their individual contribution to the long term satisfaction of all stakeholders.

The test proposed for the Integrated TOTF relates directly to its utility in helping to understand the creation, existence and operation of companies. It is:

> How could a company be structured and governed so that, in the long term, it prospers and both benefits and protects the communities in which it operates?

An evaluation of this theory is given in Chapter 8 - which also describes how other researchers could obtain relevant data and further test the utility of the theory.

1.8 Contributions to theory and to practice

This thesis makes the following contributions to theory and to practice.

1.8.1 Contributions to theory

The contributions made to the literature relating to TOTF are:

(1) The limited utility of existing TOTF in explaining: (i) the reasons that companies come into existence and then continue to exist; (ii) why the

boundaries between one company and another, its competitors and the market are where they are; and (iii) why companies behave the way that they do, is demonstrated.

(2) A new, more useful, TOTF is developed.

(3) Sources from which other researchers could obtain data that would enable them to explore and further test the new theory are suggested.

1.8.2. Contributions to practice

This thesis makes the following contributions to the literature relating to the creation, ownership and control of public companies in Australia:

(1) The analysis in Chapter 7 is the only contemporary study of the creation, existence and performance of companies listed on the ASX against existing theories of the firm. It, therefore, makes a significant contribution as to how management theories can be used to understand and (possibly) improve the performance of public companies.

(2) The analysis in Chapter 7 is the only contemporary study of ownership and control in the 100 larger companies listed on the ASX as at 30 June 2016. The study, therefore, makes a significant contribution to understanding how shareholders (the owners of companies) can guide the decisions of their appointed stewards.

(3) The new Integrated TOTF provides a single approach to understanding the life and activities of public, limited liability, companies. It may, therefore, simplify the teaching of theories that underlie management practice.

1.9 Future research

The research behind this thesis concentrates on public companies formed under the Australian *Corporations Act 2001* (Parliament of Australia 2001) and only a limited comparison with similar companies in other legal jurisdictions is made. Further research into similar business entities in other legal jurisdictions could more widely demonstrate the utility of the new Integrated TOTF. Additional research into the impact of both existing TOTF and the new Integrated Theory on the company forms suggested in Section 2.7 could also be beneficial for the continued development of the theory.

1.10 Summary of the chapter

This chapter introduces the thesis and the Research Problem as well as the associated Research Question and its objectives. It lays out the structure of the thesis and summarises the findings and the contributions that they make to literature and to practice. The chapter concludes with suggestions as to future research that could also contribute to theory and to practice.

Preliminary research establishes public, limited liability, companies, in Australia, as the form of business entity on which the research behind the thesis and the findings are based. Chapter 2 now outlines the types of company that exist in both Australia and other common and civil law jurisdictions.

CHAPTER 2 THE EVOLVING CONCEPT OF THE COMPANY

2.1 Introduction to this chapter

The preliminary research behind the Research Question outlined in Section 1.3 identifies public, limited liability, companies in Australia as the base for the research underlying this thesis. This chapter briefly outlines the development of similar companies in common law (Australia, the UK and the USA) and civil law (France and Germany) jurisdictions. It also provides a summary of the scale and nature of business enterprises in Australia. This data has proven to be valuable – for, as Seth and Dastidar (2009, p. 4) suggest, an understanding of the scale and scope of business entities has measurable consequences that correspond to different theories of the firm. This particularly applies to Shareholder Theory, Principal/Agent Theory, Resource Based Theories and to Theories of the Multinational Firm.

The legal 'families' on which to base comparisons with company law and practice in Australia are derived from the work of Pistor, Keinan, Kleinheisterkamp and West (2002, pp. 794, 799, 801). They suggest that there are four countries of origin from which most corporate legislation has been developed. These countries are the UK, the USA, France and Germany. The USA is regarded as a country of origin as, although its original legislation was transplanted from the UK, it has now developed as a source in its own right. Several jurisdictions (including China and Russia) where companies are often government owned enterprises are not considered in this thesis but they could be a base for future research.

The objectives of this chapter of the thesis are:

- to summarise the present law (as at 2019) relating to incorporated business entities in Australia, the UK, the USA, France and Germany;
- to develop an understanding of the present structure of businesses in the countries identified in the objective above; and
- to provide a summary of the views of other researchers as to the future of incorporated business forms.

Figure 2.1 outlines the structure of this chapter and its relationship to material in both Chapters 1 and 3.

Chapter 1 Introduction	Content:	• Outline of this thesis • Background to the Research Problem • The Research Question • Summary of findings • The new theory • Future research
Chapter 2 The evolving concept of the company	Content:	• Section 2.1 introduces the chapter; • Section 2.2 describes what is a business in Australia; • Section 2.3 describes a company in Australia; • Section 2.4 outlines similar companies in other legal jurisdictions; • Section 2.5 recognises other forms of company in the European Union; • Section 2.6 considers what a global company might look like; • Section 2.7 considers what companies might look like in the future; and • Section 2.8 provides a summary of the chapter.
Chapter 3 Literature review – The theory of the firm	Content:	• Theories of the firm • Gaps in the literature • Future research

Figure 2.1: The structure of Chapter 2 and its connection with Chapters 1 and 3

2.2 What is a business in Australia?

Although the objective of the research behind this thesis is to develop an integrated TOTF that is applicable to companies worldwide, the majority of the businesses examined in Chapter 7 are based in Australia. Consequently, the definition of a business used in the thesis is that developed by the Australian Taxation Office (ATO) and given in the Definitions section of this thesis. The ATO (n.d.) goes to great lengths to differentiate between a hobby and a business. The characteristics that it ascribes to a business are:

- the taxpayer's description of the activity;
- the length of time that the activities have been undertaken;
- the existence of a business plan;
- the availability of profit/loss statements;
- projected profit/loss;
- equipment used in the activity (and the availability of depreciation schedules);
- the records kept regarding the activity;
- the qualifications that the taxpayer possesses regarding the business activity;
- access to professional advice;
- the possession of relevant licences, government approvals and planning permits;
- the main clientele group;
- how the activity is advertised and promoted;
- the amount of time spent on the activity each week; and
- whether or not the taxpayer is engaged in other employment/business activities.

This data answers the first background question in Section 1.3: What is a business?

Businesses in Australia generally use one of the following forms (Schweizer Kobras 2010, pp. 1-6):

- a sole trader;
- a partnership (including a limited partnership – in which only one partner trades);
- a trust;
- a private company (either a small private company or a large private company);
- a public company;
- a company limited by guarantee;
- a no liability company (used only for mining purposes);
- an unlimited company (mostly used by investment companies); and
- a foreign company (usually incorporated outside Australia).

This data answers the second background question in Section 1.3: What legal forms can business in Australia take?

A summary of the frequency of occurrence of each business form in Australia and of business size (in terms of annual revenue) is given in Tables 2.1 and 2. 2.

Table 2.1: The composition of Australian business entities by legal form

Sector of the Australian economy	Number of business entities at 30 June 2016	Percent of all business entities
Private Sector	2 171 128	99.5
Sole proprietor	561 033	25.7
Partnership	276 303	12.7
Trust	529 606	24.3
Company	804 186	36.9
Public sector	416	0.02
Government Owned Corporations	416	0.02
Overseas corporations operating in Australia (2015)	9 946	0.5
TOTAL	2 181 490	100.0

Adapted from: ABS Catalogue 8165.0 Counts of Australian Businesses including Entries and Exits June 2012 to June 2016, ABS Canberra, 21 February 2017, Table 10.

Data regarding the number of overseas corporations operating in Australia (and the form of their incorporation) is not regularly collected by the ABS. The data here, for 2015, is extracted from a special collection prepared for the Australian Department of Foreign Affairs and Trade and released in November 2018.

Table 2.2: Segmentation of Australian business entities by A$ annual turnover

Annual turnover in A$	Number of business enterprises at 30 June 2016	Percent of all business enterprises
$0 to less than $50 000	527 871	24.3
$50 000 to less than $200 000	759 494	35.0
$200 000 to less than $2 000 000	736 935	33.9
$2 000 000 plus	147 244	6.8
TOTAL	2 171 544	100

Adapted from: ABS Catalogue 8165.0 Counts of Australian Businesses including Entries and Exits June 2012 to June 2016, ABS Canberra, 21 February 2017, Table 17. The data in this table only refers to business entities incorporated in Australia. Similar data for overseas corporations operating in Australia is not available.

The more important points to be gleaned from Tables 2.1 and 2.2 are:

- the most common form of business entity in Australia is the company;
- 37 percent of all Australian business entities are incorporated companies (Table 2.1); and
- only 6.8 percent of all Australian business entities report an annual turnover of \$2 000 000 or more (Table 2.2).

This data answers background question three in Section 1.3 of this thesis – What is the most common form of business in Australia?

This understanding of the structure of business entities within the Australian community can be extended by considering employment within different sized business organisations. This data is given in Table 2.3.

Table 2.3: Number of businesses in Australia by employment size range 2015-16

Item		**Business entities incorporated in Australia as at 30 June 2016**	**Overseas corporations operating in Australia**	**Percentage of all businesses**
Employment size range		**Number of businesses**	**Number of businesses**	
Non-employing		1 318 579	NA	60.4
Employing	1 – 4	599 408	) 577	) 36.6
	5 – 19	198 721	)	)
	20 – 199	51 024	1 880	2.4
	200+	3 812	7 489	0.5
TOTALS		2 171 544	9 946	100.0

Adapted from: (i) Productivity Commission 2015; (ii) Department of Foreign Affairs and Trade 2018

The data in Table 2.3 may be useful in understanding the continuing evolution of the social contract between society, government and business in Australia. It is, therefore, considered in the discussion on this topic in Chapter 4.

This sub-section of the thesis addresses the first three background questions identified in Section 1.3.

Cahn and Donald (2012, p. 14) suggest that the five characteristics of a corporation that should be recognisable under any legislation are: (i) legal personality; (ii) investor ownership; (iii) limited liability of owners; (iv) transferable shares; and (v) central management. The prominence of these characteristics in Australia, the UK, the USA, France and Germany are examined in Sections 2.3 and 2.4.

2.3 The company in Australia

2.3.1 The legislative framework

The original settlement at Port Jackson was created under (and was governed according to) British law as it existed in 1787 (the year that the First Fleet sailed for Botany Bay) (Clark 1962, pp. 80-1). Although the individual Australian colonies developed pursuant to local conditions, British law remained supreme until the Commonwealth of Australia was created in 1901 (Attorney-General's Department 1995, p. vii). British company law therefore prevailed in the Australian colonies until 1901 and this 'common law' base was frequently reflected in the separate company legislation developed by the individual states after that. These separate jurisdictions continued until the states referred their legislative powers over companies to the Commonwealth and a single *Corporations Act* was legislated in 2001 (Parliament of Australia 2001).

This is not to say that the early governors saw no role for business in the colony. In 1810, Governor Lachlan Macquarie petitioned the (British) Secretary of State for the formation of a 'colonial government bank' (Clark 1962, p. 317). The petition was refused and the matter rested for several years. However, in 1816, Macquarie assembled a group of interested persons and that meeting agreed to seven resolutions relating to the formation of a bank (Clark 1962, p. 317). On 7 February 1817, a meeting of all subscribers to the proposed bank was held, a board of directors was appointed, rules and regulations for the 'Bank of New South Wales' were established and Macquarie was approached to approve the gazettal of the bank. The establishment of the bank was notified in the *Sydney Gazette* of 8 February 1817 (Clark 1962, p. 318; Bathurst 2013, p. 14 Paragraph 40). Macquarie later advised Lord Bathurst that he expected that the formation of the bank would 'relieve the expenses of the mother country by releasing the relatively depressed energies of the colony' (Clark 1962, p. 319). This bank still exists as the Westpac Banking Corporation and is Number 2 in the ASX 100 index (for 30 June 2016) given in Appendix 1.

The foundation of company law in Australia is the (UK) *Companies Act 1862*. Some of the steps in the development of contemporary Australian company law prior to and subsequent to this foundation are:

- 1842 New South Wales introduced *An Act for Facilitating Proceedings by and against All Banking and Other Companies in the Colony Entitled to Sue and Be Sued in the Name of Their Chairman Secretary or Other Officer* (Bathurst 2013, p. 14 Paragraph 42);
- 1863 Queensland introduced a *Companies Act* (followed by South Australia (1864) and New South Wales (1874)) (Bathurst 2013, Note 55);
- 1871 Victoria legislated for the incorporation of 'no liability' mining companies (*Mining Companies Act 1871* (Vic)) (McQueen 1991, p. 33);
- 1896 Victoria introduced compulsory annual audit and financial data presentation standards for public companies (*Limited Liability Companies Act 1896* (Vic)). The *Act* also provided for the registration of 'proprietary' companies (McQueen 1991, p. 33);
- 1901 Sec 51 (xx) of the *Constitution of Australia* (Commonwealth of Australia 1995) gave the Commonwealth Government specified powers over corporations;
- 1961-2 The individual states introduced a uniform Companies Bill as the base for their corporate legislation (Bathurst 2013, p. 17 Paragraph 52);
- 1993 The Queensland Government introduced its *Government Owned Corporations Act* (Parliament of Queensland 1993); and
- 2001 The *Corporations Act 2001* became the base legislation governing companies in Australia (Parliament of Australia 2001).

The transition from State power over corporations to that of the Commonwealth was not smooth. In 1909, the High Court of Australia ruled that, under s51 (xx) of the

Constitution of Australia, the Commonwealth did not have the power to create companies or to regulate companies engaged in trade within a State (Bathurst 2013, p. 17 Paragraph 51). This limit to a uniform approach to company legislation was partially set aside in 1961-2 when all States passed a Uniform Companies Bill as the base for their individual company acts (Bathurst 2013, p. 17 Paragraph 52).

It is recognised that legislation is subject to interpretation by the courts (case law) and that changes to such legislation may be heralded by extensive parliamentary enquiries and debates. However, enacted legislation is the most certain form of company law and is used as the base for discussion in this thesis.

Some of the more important provisions of the *Constitution of Australia* (Attorney-General's Department 1995) in regard to corporations are contained in s51 – which gives the (Commonwealth) Parliament the power to make laws … with respect to:

(i) trade and commerce with other countries;

(iii) bounties on the production or export of goods … ;

(v) postal, telegraphic, telephonic and other like services;

(ix) quarantine;

(x) fisheries in Australian waters beyond territorial waters;

(xiii) banking, other than state banking … the incorporation of banks and the issue of paper money;

(xiv) insurance other than state insurance … ;

(xv) weights and measures;

(xvii) bankruptcy and insolvency;

(xviii) copyrights, patents and …. trade marks … ;

(xx) foreign corporations and trading and financial corporations formed within the limits of the Commonwealth;

(xxxv) conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one state;

(xxxvii) matters referred to the parliament of the Commonwealth by the parliament or parliaments of any State or States … (For example: It was a reference by the parliaments of all of the states of Australia that enabled the enactment of the *Corporations Act (2001)).*

The *Corporations Act 2001* (Parliament of Australia 2001) is an extensive document. Some of the powers over companies that it establishes are:

s5B			ASIC has general administration of the *Act*
Div 6 Part 1.5 s5			Company directors and company secretaries
	s5.1		Duties and liabilities of directors
	s6		Shares and shareholders
Part 2A.1	s122		Types of companies
Part 2A.2	s120		Members, directors and company secretary of a company
Part 2B.4	s134		Internal management of companies
	s136		Constitution of a company
Part 2D.1	Div 4 s198A		Powers of directors
	s198C		Powers of managing director
	s198D		Delegation
Part 2D.3	Div 1 s201B		Who can be a director
	s201J		Appointment of managing directors
	Div 2 s202A		Remuneration of directors
	Div 3 s203D		Removal of directors
Part 2D.6	Disqualification from managing corporations		
	s206F		ASIC's powers of disqualification
Part 2G.2	s249F		Meetings of members of a company
	Div 8 s250N		Public companies must hold AGM
Part 2H.5	s254T		Dividends to be paid out of profits.

When summarised, these sections of the *Act* provide an answer to background question four in Section 1.3: Why incorporate as a company? The answer is that these sections of the *Act* outline the protections available to investors when they join together to achieve their common business objectives without being involved in the daily management of those interests. These provisions of the *Corporations Act 2001* (Parliament of Australia 2001) are particularly relevant to Real Entity Theory, Principal/Agent Theory and Stakeholder and Shareholder Theories. They are used in the analyses reported in Chapter 7.

2.3.2. The rate of business creation and failure in Australia

ABS data suggests that there were about 2.171 million businesses in Australia at the end of June 2016 (ABS 30 June 2016). Rather than concentrate on the absolute number of businesses, it may be important to understand the rate of growth in the number of such entities. The net growth will be a combination of the number of entrants into the business arena and the number of exits and there is data available on these changes. The two major sources of such data used in this thesis are the Productivity Commission and ASIC. The Productivity Commission (2017) report contains a wealth of data on entrants and exits in general and the ASIC (2017) report provides data on the exits (due to insolvency) of companies.

In November 2014, the (Australian) Productivity Commission was given the task of investigating barriers to business entries and exits in Australia and to determine where it might be possible to reduce such barriers as an efficiency enhancing measure (Productivity Commission 2015, p. iv). The Commission's report, presented in September 2015, concentrated on businesses that employed people in Australia (see Table 2.3). It concluded that, during the years 2007 to 2011 the rate of new entries to the business world was reasonably steady at approximately 12 percent per annum but that that rate fell to less than 10 percent during 2012. The Commission also determined that this rate of entry of new businesses was consistently higher than was the rate of new business entries in Canada, Israel, New Zealand and the USA (Productivity Commission 2015, p. 4, Figure 1). The Commission then determined that approximately 85 percent of new entrants survived their first twelve months and that approximately 60 percent survived for three years. These survival rates were approximately the same as for Canadian and USA businesses (Productivity Commission 2015, p. 4, Figure 1). The Commission found that most businesses closed (or were transferred to other owners) without financial failure and that there was no need for a 'wholesale change' towards the USA's 'chapter 11' framework for administration and liquidation (Productivity Commission 2015, p. 2) (Note: this 'chapter 11' framework is applicable to financial failure of corporations).

More important, for the analyses in this thesis, is the rate of failure of companies. Table 2.4 gives the failure rate (due to insolvency) of Australian companies for the years 2013-14, 2014-15 and 2015-16 (ASIC April 2017). Given that there are approximately 804 000 companies registered in Australia, the insolvency rate is about 1.2 two percent annually. For the purposes of this thesis, it is worth noting that 84.9 percent of reported company failures in 2015-16 were alleged to be due to misconduct by directors and/or senior officers (ASIC Report 512, Table 9, p. 18). This finding has implications for several of the existing TOTF including Principal/Agent and Shareholder theories. The data contained in Table 2.4 is later used in drafting the Integrated TOTF in Chapter 8.

Table 2.4: Australian company insolvency statistics (by Industry Group) for 2013-14 to 2015-16

Ranking	Industry Group	2013-14	2014-15	2015-16
1.	Business and personal services	3 125	2 351	2889
2.	Construction	1 802	1 771	1964
3.	Accommodation & food services	819	870	928
4.	Retail trade	765	739	768
5.	Transport, postal and warehousing	478	458	546
6.	Manufacturing	472	432	387
7.	Information, media, telecommunications	222	182	225
8.	Agriculture, forestry and fishing	218	146	165
9.	Utilities	189	144	184
10.	Mining	146	166	193
Other	NA	1 586	1 095	1 216
Totals		9 822	8354	9465

Sources: 2013-14 ASIC Report 412; 2014-15 ASIC Report 456 and 2015-16 ASIC Report 507

The three major reasons for company failure in 2015-16 (ASIC Report 512 December 2016) were:

1. Inadequate cash flow (45.6 percent of reported failures).
2. Poor strategic management of the business (45.6 percent of reported failures).

3. Poor financial control (33.6 percent of failures).

These figures add to more than 100 percent and it must be assumed that some companies failed for more than one reason.

It should not be assumed that these weaknesses in company performance are limited to small companies and that the larger companies used in the study reported in Chapter 7 are exempt from such weaknesses. A report on the ABC News website (17 May 2018) outlines a failure in the risk (and hence strategic) management of Telstra Limited (Number 6 in the ASX 100 index as at 30 June 2016). The report suggests that a failure, by the board of Telstra, to predict either the ending of a very large cash flow created by the sale of its major asset and a dramatic expansion in the range of competitors for mobile telephone services within Australia, led to a decrease in company capitalisation of A$40 million since May 2015 and to a falling of its share price to the lowest level since 2011 (Robertson 2018). Such a failure in risk/strategic management and its implication for corporate governance are considered in the analysis reported in Chapter 7.

In June 2018, PricewaterhouseCoopers Consulting Australia Pty Ltd (PwC) released a report into business failures in Australia that it had undertaken on behalf of the Australian Taxation Office, the Fair Work Ombudsman and ASIC. Of particular importance to this thesis is the section of the report in which PwC distinguish between 'honest and commercial failures' and deliberate failures (PwC 2018, p. ii). PwC labelled the deliberate failures as 'illegal phoenix activity' and described them as businesses that had been deliberately 'failed' to avoid legal and/or financial obligations but which then immediately recommenced trading as another legal entity. PwC estimated that this 'illegal phoenix activity' imposed a direct cost on the Australian community of: (i) $1 162 to $1 171 million in unpaid trade creditors; (ii) $31 to $298 million in unpaid employee entitlements; and (iii) $1 660 million in unpaid taxes and compliance costs during 2015-16 alone (PwC 2018, p. iii).

These costs of 'illegal phoenix activities' by Australian companies, their owners and directors are very large and it would be no wonder if the Australian community held the company form of business in a lower regard than it had previously. It would appear that not all companies operate on an ethical base and the ethics of companies on the ASX 100 index (as at 30 June 2016) are examined in the analysis reported in Chapter 7.

2.3.3 Summary of Section 2.3

The data reported in Section 2.3 provides an important base for the discussion that takes place in Chapter 7 in that:

1. It identifies the legislative base for the formation and operation of companies in Australia (the *Corporations Act 2001*).
2. It identifies the legal forms used by businesses in Australia (Table 2.1) and the ranges of annual turnover for such businesses (Table 2.2).
3. It identifies the employment size range of businesses that employ people in Australia (Table 2.3).
4. It identifies the potential annual growth in the number of businesses registered in Australia (10 to 12 percent).
5. It recognises the number of company failures (due to insolvency) that can be expected to occur, in Australia, each year and the industry grouping of those failures (Table 2.4). It also recognises the high cost of 'illegal phoenix activity' to the Australian community.

2.4 A similar company in other legal jurisdictions

As identified in Section 2.1, there are four source countries that are the base for law in all common law and civil law countries. These are the UK, the USA, France and Germany (Pistor et al. 2002, pp. 794, 799, 801). Accordingly, the analysis of company law and forms undertaken in this section of the thesis is limited to these countries.

2.4.1 The company structure in the United Kingdom

Although many of the early business entities in the UK were companies formed by Royal Charter in the seventeenth and later centuries, the legislation that is of prime importance to this thesis is that promulgated in the late twentieth and early twenty-first centuries. This legislation has evolved over almost two hundred years and can be easily traced from the repeal of the *Bubble Act (1720)* in 1825 to the passage of the 2006 *Companies Act.* Two of the more important steps in this evolving legislation are the 1844 *Joint Stock Companies Act* and the 1855 *Limited Liability Act*. These *Acts* were combined in the 1862 *Companies Act* and this *Act* became the foundation for company legislation in the Australian colonies (see Section 2.3.1).

In 2006, as part of a revision of the (British) *Companies Act 1985,* the *Companies Act 2006* provided for: (i) a single company law regime across the UK; (ii) the codification of directors' duties; (iii) standard provisions for private and public companies; and (iv) it implemented the European Union's Takeover and Transparency Obligations Directives (Parliament of the United Kingdom 2006). Section 18 of this *Act* provides that a company must have articles of association prescribing regulations for the company unless the company is one to which model articles applied by virtue of Section 20 of the *Act.* Under the provisions of the *Act*, several different types of companies can be formed in the UK: The relevant provisions are:

- Section 3 provides that a company is a limited company if the liability of its members is limited by its constitution. If there is no limit on the liability of its members, the company is an unlimited company;
- Section 4 establishes that a private limited liability company is a company that is not a public company;
- Section 4 establishes that a public limited liability company (PLC) is a company limited by shares or guarantee and having a share capital and whose certificate of incorporation states that it is a public company;
- Section 5 provides that a company cannot be formed or become a company limited by guarantee and have a share capital base; and
- Section 6 provides that a company limited by shares (or a company limited by guarantee and not having a share capital) may become a public interest company.

The sections of the *Act* that are of most interest to the research behind this thesis are Sections 3 and 4 – where the provisions relate to public, limited liability, companies

(PLC). The public interest company (created under Sections 3 and 4) has no counterpart in Australian legislation (as at June 2016).

The duties of the directors of British companies prescribed by the *Act* include:

- Section 171 requires directors to act within their powers;
- Section 172 requires directors to promote the success of the company;
- Section 173 requires directors to exercise independent judgement;
- Section 174 requires directors to exercise reasonable care, skill and diligence;
- Section 175 requires directors to avoid conflicts of interest;
- Section 176 requires directors not to accept benefits from third parties; and
- Section 177 requires directors to declare any interest in a proposed transaction within the company (Parliament of the United Kingdom 2006).

The *Act* (Parliament of the United Kingdom 2006) requires companies listed on the main board of the London Stock Exchange (LSE) to include in their annual report a review that:

- identifies the main trends likely to affect future development, performance and the position of the business;
- includes information on environmental matters, employee and social issues; and
- that provides information on contractual and other arrangements essential to the company's business.

Just as shares in public companies in Australia can be traded on the ASX, shares in UK public companies can be traded on the London Stock Exchange (LSE). The Financial Times Stock Exchange (FTSE) 100 index identifies the larger one hundred companies (by market capitalisation) listed on the LSE. This list represents approximately 81 percent of the market capitalisation of the LSE. Outline details of the ten larger companies (by market capitalisation) on the LSE (as at March 2017) are given in Table 2.5.

Table 2.5: The market capitalisation and number of employees of the ten larger companies listed on the LSE as at March 2017

Company	LSE code	Industry sector	Market capitalisation UK pounds (billions)	Number of employees
1. Royal Dutch Shell	RDSA	Oil and Gas	160.12	90 000
2. Unilever	ULVR	Consumer Goods	90.42	171 000
3. HSBC	HSBA	Banking	88.11	267 000
4. British American Tobacco	BATS	Tobacco	71.4	87 813
5. Glaxco Smith Kline	GSK	Pharmaceuticals	67.38	97 890
6. SAB Miller	SAB	Beverages	67.32	70 000
7. BP	BP	Oil and Gas	63.13	97 700
8. Vodafone Group	VOD	Telecommunications	56.55	86 373
9. Astra Zeneca	AZN	Pharmaceuticals	51.23	57 200
10. Reckitt Benckiser	RB	Consumer Goods	46.32	32 000
TOTALS			761.98	1 056 475

Source: FTSE 20 March 2017

The data in this table can be compared with similar data on Australian companies in the ASX 100 index (as at 30 June 2016) detailed in Appendix 1. The major difference between these companies and similar companies in Australia is that the UK companies are much larger. However, the data does provide a base for the expectation that the TOTF that apply to Australian companies may also apply to public companies in the UK.

2.4.2 Forms of business in the USA

The incorporation of companies in the USA is carried out under a legislative regime that is quite different from the centralised approach adopted in the UK and in Australia. Every state in the USA has its own corporate code and federal law creates minimum standards for trade in company shares and governance requirements. The US constitution has been interpreted as allowing companies to incorporate in the state of their choice, regardless of where their headquarters are located. However, to do this, the corporation may need to obtain a ‘foreign qualification’ (meaning that their headquarters are in a different state to where they are operating) (State of Delaware n.d. (a); smallbiztrends 2014). In 1950, the Committee on Corporate Laws within the Business Law section of the American Bar Association proposed a Model Business Corporation Act (MBCA) that could be voluntarily adopted by individual states. The MBCA Act was revised in 2006 and, to that date, had been adopted by twenty four states. This number increased to thirty two states in 2016 (Scholarship@GEORGETOWNLAW n.d.).

Despite this attempt to create a uniform code for business registration, the states of the USA continue to maintain different business incorporation procedures. The most important state process is that maintained by Delaware. Under the *Delaware General Corporation Law* (DGCL), there are more than 1 000 000 business entities registered in the state. These entities include more than 66 percent of all publicly traded companies in the USA and more than 60 percent of the companies listed on the Fortune 500 index (State of Delaware n.d. (a)). The DGCL also covers partnerships, limited partnerships, limited liability companies and corporate non-profit associations (State of Delaware n.d. (b)). The attractions of the DGCL regime include: (i) lower corporate taxes; (ii) fewer shareholder rights against directors; and (iii) a developed and specialised court and legal profession.

A form of incorporation that is common in the USA (but which has no direct, or indirect, counterpart in Australia) is the Limited Liability Corporation (LLC). LLCs are hybrid entities that combine the characteristics of a corporation and a partnership or sole proprietorship (Kenton n.d.). They have the following characteristics (Kenton n.d.):

- the assets of the business are separated from the personal assets of the owners;
- the owners are insulated from the LLC’s debts and liabilities;
- the profits of an LLC pass through to the owner’s tax return;
- in some circumstances, losses from the LLC can be offset against other income;
- creditors may be able to pierce the corporate veil of the LLC in cases of fraud or when legal and reporting requirements have not been met; and

- the LLC does not have an existence in perpetuity and has to be dissolved upon the death or bankruptcy of a member.

As in Australia, public opinion about the value and operation of companies in the USA is changing and these changes in community views of the social contract between society, government and business are being reflected in proposed changes to corporate legislation. In August 2018 a bill for the creation of an *Accountable Capitalism Act* was introduced into the Senate of the American Congress. The *Bill* (https://www.warren.senate.gov August 2018) sought to:

- establish an Office of American Corporations within the US Department of Commerce;
- require all American corporations with a taxable revenue greater than US$ 1 billion to seek and obtain a Federal charter;
- impose large fines on all eligible corporations that did not obtain such a charter within a specified time;
- require all chartered corporations to have the purpose of creating a general public benefit;
- require all directors to consider the interests of shareholders, employees, customers, the community, the environment in the long term;
- require that 40 percent of the directors of such chartered companies be elected by employees; and
- to require that 75 percent of shareholders approve of political donations before such donations are made.

The Bill was offered by its proponent (Senator Elizabeth Warren) as ‘a bold new plan to reshape American capitalism’. Although the Bill was well received by many, there has, as at December 2019, been no debate on it in either of the houses of the USA Congress.

There is nothing in the above data to suggest that the limited liability form of enterprise common in the USA is significantly different from that in Australia. It can therefore, be expected that TOTF relevant to companies in Australia will apply to similar companies in the USA.

2.4.3 Forms of business in France

The forms of company currently used in France are:

- EURL The Enterprise Unipersonelle à Responsibilité Limitée - a private, limited liability company that is owned by one person and is managed through a separate limited company. The EURL can be established with a capital of one euro – after which the owner's liability is limited to the value of their investment - unless a personal guarantee is given. The company must appoint a managing director who has legal responsibility for its operation.
- SARL If the company has more than one owner, it is known as a Société a Responsibilité Limitée (SARL) – which is similar to the EURL in that it is a private, limited liability, company. Any transfer of shares in the company requires prior approval by the shareholders. There are approximately 1 500 000 SARLs registered in France and the Government has created a set of model articles that can be used by people wishing to create an SARL. The articles impose limits on the activities of the company - for instance, a SARL cannot: (i) be a savings institution; (ii) issue insurance; or (iii) act as an investment company (Kipling Avocats n.d.).
- SAS The *Société Par Actions Simplifiée* is the company form of most interest to foreign investors and many joint ventures in France are in this form. Although it requires the appointment of a statutory auditor, it offers flexibility to its shareholders. One advantage is that there is no fixed capital requirement for an SAS company and a major disadvantage is that its shares cannot be traded publicly. The charter for the company can authorise the appointment of a body similar to a board of directors but restricts the making of decisions regarding: (i) changes in capital structure; (ii) mergers; (iii) appointment of auditors; (iv) approval of financial statements; and (v) the dissolution of the company to the shareholders (Government of France 2019). In many ways, the SAS company is similar to a joint stock company in other jurisdictions.

- SA The Société Anomyme is reasonably similar to a public, limited liability, company in common law jurisdictions. However, shareholders are not anonymous unless their shares are held by holding companies. The SA must have a minimum of seven shareholders and three directors. There are no constraints on shareholders or directors from countries within the EU, but there remain several obstacles that shareholders and officers from non EU companies must overcome. There is no standard form of articles for a SA company, but the legislation contains several obligatory headings.

In 2017, the French Government promulgated a law that required the largest French companies to assess and address the adverse impacts of their activities on people and the planet. These companies are also required to publish annual vigilance reports that must include the names of suppliers and subcontractors with whom they have an established commercial relationship. Where companies fail to comply with this requirement, a court can apply fines up to 30 000 000 Euros if the failure results in damages that would otherwise have been preventable (European Coalition for Corporate Justice 21 February 2017). Apart from the requirement for SA companies to disclose specified information, there is nothing to suggest that these companies differ significantly from similar companies in Australia. TOTF that are relevant to Australian public companies should, therefore, apply to SA companies in France.

2.4.4 Forms of business entities in Germany

The typical form of business entity used in Germany during the 19th century was the *Kommanditgesellschaft* (KG). This form of partnership required at least one member with unlimited liability - and the liability of all other members was defined by their investment. The principal forms of company now in use are the *Gesellschaft mit beschränkter Haftung* (GmbH) and the *Aktriengesellschaft* (AG). The GmbH is a private company: the ownership of which is limited by shares that cannot be sold to the general public. The AG is a public, limited liability, company that can trade on the stock exchange and offer its shares to the public. The *Unternehmergesellschaft* (UG) is a variant of the GmbH that is thought to be more attractive to entrepreneurs as it has a much lower initial capital requirement. However, each year, the UG company is required to set aside a quarter of its net profit until it builds up sufficient capital to be registered as a GmbH company (Wilde Beuger Solmecke n.d., pp. 1-2).

One or more shareholders are required to form either a GmbH or an AG company. The minimum capital required for an AG company is 50 000 Euros. Whilst shares in an AG company can be transferred by written agreement (or by computerised trading), the transfer of shares in a GmbH company must be documented by a notary and submitted for registration. The company's liability is limited to the value of its assets and each shareholder's liability is limited to the extent of their investment. One of the major characteristics of a GmbH company is that it can only be run by the managing director - who is an unrestricted proxy for the company (Wilde Beuger Solmecke n.d. pp.1-2).

The AG form of company has a two tier governance system. The shareholders elect a supervisory board that then elects and supervises an executive board. However, the employees of a company (above a certain size) may also have a right to elect directors. It is worthy of note that the shareholders in an AG company cannot instruct the Executive Board and can only decide on management matters if the Executive Board asks them to do so. There are no prescribed rules about the nationality, or residence, of AG company directors, but they should be able to carry out their duties when in Germany (Wilde Beuger Solmecke n.d., pp. 1-2).

This two tier board structure is quite different from that which applies in Australia. However, there is nothing else in German legislation to suggest that TOTF that apply to public, limited liability, companies in Australia might not apply to AG companies.

2.4.5 Summary of Section 2.4

Section 2.4 provides an outline of incorporated business forms in the UK, France, Germany and the USA. The importance of the section lies in that it provides a base for comparing company forms in each jurisdiction and in that it provides a base for considering that existing TOTF could equally apply in each jurisdiction.

2.5 Other forms of company in the European Union

As at 30 June 2016, the UK, France and Germany were all members of the European Union (EU) and it is worthwhile examining whether or not this membership raised additional considerations for the regulation of companies operating in those countries. On 1 December 2009, the Treaty of Lisbon replaced the framework that created the European Economic Community. This document contains two separate agreements: (i) the Treaty on European Union and (ii) the Treaty on the Functioning of the European Union (TFEU) (Cahn & Donald 2012, p. 67). In Articles 49 to 54 of the TFEU, the EU is given the 'express duty to guarantee the freedom of a … company from one member state to establish … itself in any other member state' but the promulgation of company law beyond a certain level of safeguarding harmonization is not an express EU function (Cahn & Donald 2012, p. 67). Article 50(2) (g) of the TFEU expressly instructs the European Council to adopt directives to coordinate 'only to the extent necessary the safeguards … required by Member States of companies … with a view to making safeguards equivalent throughout the Community' (Cahn & Donald 2012, p. 67).

Ten of the EU company law directives implemented since 1968 have harmonised company law on many aspects of forming and operating public companies. Company Law Directive One established a system for the disclosure of facts regarding incorporation, legal capital and financial results. Company Law Directive Two concerned the incorporation of public companies, the maintenance of their legal capital and introduced restrictions on dividend distribution and share repurchase (Cahn & Donald 2012, pp. 68-9). The EU has now adopted other proposals regarding: (i) the regulation of takeovers; and (ii) the formation of a 'European company' – the *Societas Europaea* (or SE) (Cahn & Donald 2012, p. 69). Although no directive has tried to harmonise company directors' duties of care and loyalty, the many rules contained in the directives (such as those restricting distributions to shareholders and prescribing conduct during mergers) do 'place significant restrictions on managerial behaviour' (Cahn & Donald 2012, p. 70). There are no SE companies contained in the ASX 100 index (as at 30 June 2016) and the directives of the European Council have no implications for the research behind this thesis.

2.6 The global company

Sections 2.4 and 2.5 outline the forms of companies that exist in Australia, the UK, the USA, France and Germany. They also recognise some of the larger businesses in each country and outline several of their characteristics (such as market capitalisation and employee numbers). However, the company is no longer limited by country borders and any enhanced TOTF will need to explain how the transnational (and/or multinational) company works as well as being able to explain the context and operation of companies that limit themselves to activities within one country. This section of the thesis presents data on the companies that extend far beyond the boundaries of the country from which they grew and which are sometimes larger (in revenue) than many of the countries in which they operate. Table 2.6 recognises those countries that are home to most of the companies listed in the Fortune Global 500 index for 2016 (Fortune Magazine 2016).

Table 2.6: The countries that host most of the Fortune Global 500 companies (as at June 2016)

Ranking	Country	Number of companies
1.	USA	134
2.	China (PRC)	103
3.	Japan	52
4.	France	29
5.	Germany	28
6.	UK	26
7.	South Korea	15
8.	Switzerland	15
9.	Netherlands	12
10.	Canada	11
NA	Australia	9
Other	NA	66
TOTAL		**500**

Source: Fortune Magazine 2016

Although many of the names of the Fortune Global 500 companies would be familiar to Australian investors and consumers, none of the ASX 100 companies (as at 30 June 2016) feature in the larger 100 companies on that list for 2016. The following Australian companies are however included in the Global 500 list for that year: BHP (Number 168), WES (Number 171), WOW (Number 176), CBA (Number 269), RIO (Number 296), NAB (Number 304), WBC (Number 336), ANZ (Number 362) and TLS (Number 482) (Hatch 2016). The analysis that underlies this thesis is based on companies located in Australia and that are listed on the ASX and Table 2.6 shows that most of the Fortune Global 500 companies are not based in Australia. However, the proposed integrated TOTF should apply to all companies and Table 2.7 contains details of the ten larger companies listed on the Fortune Global 500. The data in this table is useful in that it provides a base for considering that those aspects of TOTF that apply to ASX 100 listed companies should also apply to companies in the Fortune Global 500 index.

Table 2.7: Outline details of the ten larger companies in the Fortune Global 500 index for 2016

Ranking	Company	Industry sector	Revenue 2016 in US$bn	Number of employees	Country of origin
1.	Walmart	Retail	485	2 300 000	USA
2.	State Grid	Electricity distribution	330	927 839	China
3.	Samsung	Conglomerate	305	319 000	South Korea
4.	China National Petroleum	Oil and Gas	299	1 589 508	China
5.	Sinopec Group	Oil and Gas	294	810 538	China
6.	Royal Dutch Shell	Oil and Gas	272	90 000	UK
7.	Exxon Mobil	Oil and Gas	246	75 600	USA
8.	Volkswagen	Automotive	237	610 076	Germany
9.	Toyota	Automotive	237	348 877	Japan
10.	Apple	Consumer electronics	234	110 000	USA

Source: Table downloaded from en.wikipedia but the data was originally sourced from the 2016 annual report for each company.

Blumberg (2005, p. 606) describes these corporate groups as being:

> … enterprises organised in the form of a dominant parent corporation with scores or hundreds of subservient sub-holding, subsidiary and affiliated companies. These typically conduct a single, integrated enterprise under common control and often under a common persona.

Some of the countries of origin identified in Table 2.7 are not free market economies that ensure public access to a wide array of company data. It would be difficult, therefore, to obtain data that could be used to compare all of the companies identified against the TOTF. Apart from this reservation, the data contained in Table 2.7 contains nothing to suggest that the companies identified are not similar (apart from size) to companies in the ASX 100 index. Consequently, it could be expected that TOTF that apply to Australian public, limited liability, companies would apply to the larger companies in other jurisdictions.

2.7 Into the future

The expectation that companies should act in the interests of more than just their shareholders is not new and Theodore Roosevelt (President of the USA from 1901 to 1909) (Micklethwait and Wooldridge 2005, p. 182) is credited with the following statement:

> I believe in corporations. They are indispensable instruments of our modern civilisation; but I believe that they should be so supervised and so regulated that they shall act for the interests of the community as a whole.

Indispensable companies may be, but their form, into the future, is not certain. Micklethwait and Wooldridge (2005, pp. 182-4) suggest that they may take one of the three following forms:

- a handful of giant companies may be involved in a 'silent takeover of the world'. (However, they also suggest that this is unlikely to happen as very large companies appear to be losing ground as national markets are 'squabbled over' by companies from all over the world.);
- companies will become less substantial and revert to being a 'network of contracts'. (However, Micklethwait and Wooldridge (2005, p. 184) also

recognise that this form is unlikely as 'there are still market failures that persuade firms to do things internally, rather that externally'); and

- the discrete company will be replaced by a network based on interlocking businesses such as Japan's *keiretsu* or South Korea's *chaebol* (Micklethwait & Wooldridge 2005, p. 184). (However, Micklethwait and Wooldridge (2005, p. 184) also recognise that such networks lack the legal personality and systems of internal accountability of joint stock companies.).

It is also likely that companies will need (or be forced) to consider aspects of their external environment that they have been able to ignore until now. The Australian Prudential Regulation Authority (APRA) has warned that 'climate change poses a material risk to the entire financial system' and has urged companies to start preparing for the threat posed by such change (Hutchens 17 February 2017). The APRA has suggested that although governmental climate change policies might be delayed, or fail to eventuate, is no reason for companies not to prepare and that:

> … It may be that (this) scenario could make risk greater and more abrupt. This is because there could be either sharper, more significant policy changes and market adjustments down the track, or the physical impacts of climate change could become more severe, more likely and more unpredictable.

The APRA has also suggested that climate risks are financial in nature and that companies should start incorporating scenario based analyses of climate risks into their business outlooks (Hutchens 17 February 2017). This theme was picked up by shareholders in the Commonwealth Bank of Australia – two of whom (represented by Environmental Justice Australia) lodged a claim for damages against the Bank on 8 August 2017 (Foerster & Peel 16 August 2017). The claim made was that climate change created material risks for the Bank, its business and its customers and that the Bank had failed to disclose those risks to investors. The claim was lodged under provisions in the Australian *Corporations Act 2001* (Parliament of Australia 2001) that: (i) companies must include a financial report within the annual report which gives a true and fair view of its financial position; and (ii) companies must include a director's report that allows shareholders to make an informed assessment of the company's operations, financial position, business strategies and prospects (Foerster & Peel 16 August 2017). The shareholders argued that the bank knew – or should have known – that climate related risks could seriously disrupt the bank's performance and that investors should have been told about the bank's strategies for managing those risks - so that they could make an informed decision about their investment (Foerster & Peel 16 August 2017). Although the claim has been withdrawn, perhaps a whole new aspect of the social contract, as it relates to corporate governance and environmental responsibility, is being opened. An increased demand for environmental responsibility is also one of the drivers behind the introduction of the *Bill* for an *Accountable Capitalism Act* introduced into the US Congress in 2018 (see Section 2.4.2).

In 2015, Mayer (2016) recognised a further aspect of changes in the nature of corporations that could have a marked impact on whether or not existing TOTF are still relevant. Based on a study of both UK and USA companies, Mayer concluded that, from about 2000, the dependence of large companies on intangible assets (research departments, patents and licences), as against tangible assets (plant, equipment and buildings), increased from about forty percent to eighty percent of their capitalised value (Mayer 2016, pp. 54-6). Such an approach could make it very difficult to apply TOTF that depended on an understanding of the tangible assets of a company (such as Resource Based Theory and Natural Resource Based Theory) in any way. Mayer (2016, p. 65) concluded that 'most firms die within twenty years'. However, he then found that companies owned by an 'industrial foundation' survived for 'at least sixty years'. The author (Mayer 2016, pp. 65-6) concluded that the reason behind this significant difference in longevity is the way that corporations owned by 'industrial foundations' balanced and integrated the six components of capital that are the base for business activity. These bases are: (i) human capital (employees and producers); (ii) intellectual capital (both knowledge and understanding); (iii) material capital (buildings and machinery); (iv) natural capital (the environment, land and nature; (v) social capital (public goods and social infrastructure); and (vi) financial capital (both equity and debt) (Mayer 2016, p. 65).

Even the sixty year age is not great by comparison with that of some of the early English mercantile companies. Although the Imperial British East Africa Company only lasted for twelve years and the New Zealand Company for nineteen years, the

Royal African Company lasted for eighty years, the South Australian Company existed for one hundred and fourteen years and the (English) East India Company for two hundred and seventy five years. While these ages are remarkable, they fade into insignificance beside the life of the Bank of England (323 years – including seventy one years as a nationalised entity), the Hudson Bay Company (447 years) and the Muscovy Company (462 years). The Muscovy Company, the Hudson Bay Company and the Bank of England are still in existence. As are the Bank of New South Wales (now Westpac) (founded in 1817), the Van Diemen's Land Company and the Australian Agricultural Company (both established in 1824). The age of companies listed on the ASX is, however, difficult to determine because of the frequency of mergers, de-mergers and delistings.

The data given in Table 2.4 suggests that approximately 1.2 percent of the companies registered in Australia fail (due to insolvency) every year. This failure rate is a considerable impost on both the shareholders in those companies and on the Australian society as a whole. There are many costs associated with creating a public company and listing it on the ASX. Quite apart from the cost of registering the company with ASIC, establishing an initial board of directors and creating the public documents associated with invitations to subscribe for shares, there is the cost of the initial listing on the ASX and then the annual listing fee. The initial listing fee is based on the number of shares to be issued and their nominal value (ASX 1 July 2018). An outline of these charges is given in Table 2.8.

Table 2.8: An outline of ASX initial and annual listing fees as at July 2018

Value of equities to be listed (A$m)	Initial listing fee (A$)	Annual listing fee (A$)
Up to $3m	$36 750	$13 864
$3 000 001 to $10m	$36 750 + 0.525% over $3m	$13 864 + 0.1787395% over $3m
$10 000 001 to $100m	$115 550 + 0.735% over $10m	$26 376 + 0.02069475% over $10m
$100 000 001 to $500m	$152 250 + 0.44625 over $100m	$45 001 + 0.004182% over $1 000m

Source: ASX Listing Rules Guidance Note 15A 1 July 2018

After an extensive review of the evolving nature of the implicit social contract between the global society, governments and business, Byerly (2013) suggests that the paradigm in which business enterprises exists has changed significantly and that a series of 'new' perspectives now underlies business structure and operations. These perspectives are summarised in Table 2.9.

Table 2.9: Changes to the business paradigm

Traditional views of the role of the firm	Paradoxes and new perspectives
Championing of individualism and personal gain; a mechanistic approach to business purpose, structure and activity; abundant resources; business size and influence within reasonable scope and size.	Society much more pluralistic, globally connected and interdependent; limits to resources; negative externalities of production; business size and influence very powerful.
Emphasis on individual property rights; social issues localised; slow and gradual social change; larger expectations of nation states to protect society as the institution of legitimate and effective power; business trepidation and self - protection where government was concerned.	Dramatic social change with pressing and significant social issues; increasing emphasis on global issues with larger effect and significance; larger expectations of powerful multinational business institutions to legitimately use power and influence for the common good.
Moral persuasion limited in light of prevailing notions of free market capitalism; limited notions of corporate social responsibility without government requirement and enforcement.	Increasing acknowledgement of the social obligations of major businesses; greater education and awareness of society leading to greater expectations of business social responsibility and citizenship.

Source: Byerly 2013, p. 13, Table 1

The possible changes to USA corporate legislation outlined in Section 2.4.2 should also be borne in mind by Australian companies in the ASX 100 index as, if the changes are enacted by the USA Congress, they might also become a part of the changing social contract between society, government and business here. Whilst this possibility is only conjecture, it might be born in mind when companies prepare the risk analyses included in each annual report to their shareholders.

Each of these changes could have a significant impact on how companies are structured and operate and any collective impact could be enormous. The impact on the development of an integrated TOTF (the objective of the Research Question behind this thesis (Section 1.4) is considered in Chapter 7.

2.8 A Summary of the chapter

The principal purpose of this chapter has been to recognise the form of companies in Australia and to suggest the business form used in the analysis reported in Chapter 7. Another purpose has been to identify similar company forms in other jurisdictions. From this work, a base for a new, integrated, TOTF is established. The Australian base for the analysis reported in Chapter 7 is the public, limited liability, companies in the ASX 100 index (as at 30 June 2016). Similar companies in other countries are:

- the UK – the *public liability company* (PLC);
- the USA – the *stock corporation* (under the DGCL);
- France – the *Société Anonyme* (SA) company;
- Germany - the *Aktriengesellschaft* (AG) company;
- the EU – the *Societas Europaea* (SE) company.

Section 2.7 identifies emerging impacts on the future structure, activities and size of companies. All of these matters are considered in the development of an integrated theory of the firm undertaken in Chapters 7 and 8. Chapter 3 of the thesis now reviews the literature that describes current thinking about existing TOTF that will be analysed in Chapter 7 and that may underlie the development of the new Integrated TOTF.

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Overall, the contents of the chapter address the objectives set out in Section 2.1 They are:

- to summarise the present law relating to incorporated business entities in Australia, the UK, the USA, France and Germany;
- to develop an understanding of the present structure of businesses in the countries identified in the objective above; and
- to provide a summary of the views of other researchers as to the future of incorporated business forms.

Chapter 3 is the first of three chapters that provide the literature review on which the research behind the thesis is based. In it, twenty one theories of the firm are explored.

CHAPTER 3 LITERATURE REVIEW – THE THEORY OF THE FIRM

3.1 Introduction to this chapter.

Chapter 2 explored the forms of business entity (and particularly incorporated business structures) that are possible in both common law and civil law countries. Chapter 3 now explores the twenty one TOTF recognised in Section 1.2 (particularly limited liability public companies) that may explain the creation, existence and operation of such structures.

Companies are an integral part of the business environment in all national legal jurisdictions – but many people now doubt that they serve the useful social functions that they once did. Some of this dissatisfaction is due to changing expectations within the social contract that binds society, government and business and to the impact that these changes have on corporate ethics and governance. The research behind this thesis has recognised twenty one theories of the firm that range in age from the Neo-classical model of the firm (reflecting the work of Marshall (1890), Friedman (1962) and Kantarelis (2007)) to the Corporate Sustainability model proposed by Lozano et al. (2015). For ease of analysis in this thesis, these theories are grouped as follows: (i) corporate entity theories (3); (ii) the Neo-classical model (1); (iii) other economics based theories (5); (iv) behavioural based theories (5); (v) stakeholder theories (2); (vi) theories relating to the growth of the firm (2); (vii) institutional theories (1) and (viii) contemporary theories (2) (see Section 1.2).

The characteristics of existing theories of the firm, together with changes inherent in the evolving social contract between society, government and business, the implementation and upholding of corporate ethics and the changing requirements of corporate governance are all examined in the literature reviews undertaken in Chapters 3, 4 and 5. These fields of research are the bases that are used to develop a new, integrated and evolutionary theory of the firm. In this way, the concepts outlined above contribute to answering the Research Question posed in Section 1.3.

The objectives of this chapter of the thesis are:

- to review the literature relating to the TOTF recognised in Section 1.2;
- to identify gaps in the literature that could be addressed by further research; and
- to guide the development of a conceptual model that will act as the framework for the research philosophy and strategy used to explore the analysis undertaken in Chapter 7.

Figure 3.1 shows how this chapter fits into the overall structure of the thesis.

Chapter 2 Business entities	Content:	• What is a business? • Outline of company law development • Forms of companies • Into the future
Chapter 3 Literature review – Theories of the firm	Content:	• Section 3.1 introduces the theories to be reviewed; • Section 3.2 explores the literature relating to the existing theories of the firm; • Section 3.3 summarises the gaps in the literature identified in Section 3.2; • Section 3.4 identifies the need for an integrated theory of the firm; • Section 3.5 provides a summary of the chapter.
Chapter 4 Literature Review – The social contract	Content:	• The evolving social contract • Possible reinforcement of the social contract by proposed changes to law • A local social contract

Figure 3.1: The structure of Chapter 3 and its connection to Chapters 2 and 4

3.2 Existing theories of the firm

It could be argued that the basic theory of the firm has its origin in the work undertaken by Adam Smith in the late 18th century. Such an argument could be contentious and is not pursued in this thesis. However, from early times (Marshall 1890) many TOTF have grown and they now have bases in law, principal/agent arrangements, transaction costs, resource availability, evolution and learning and in institutional activity. Section 1.2 of this thesis lists the twenty one theories of the firm that were recognised during the preliminary research and presents them in eight groups. This section of the thesis examines these theories in detail and identifies relevant gaps in the literature.

3.2.1 Corporate entity theories

The three theories in this group are: (i) Artificial Entity Theory; (ii) Aggregate Entity Theory; and (iii) Real Entity Theory.

3.2.1.1 Artificial Entity Theory

This theory describes most of the companies formed by Royal Charter in the 17th, 18th and 19th centuries in Britain. Such companies included the (British) East India Company (formed in 1600 by a Royal Charter signed by Elizabeth I (Robbins 2012, p. xvi), the (British) Royal Africa Company (formed in 1660), and (much later) the (Australian) Bank of New South Wales (formed under a charter issued by Governor Lachlan Macquarie in 1817) (Clark 1962, p. 318). The formation of such companies was not limited to Britain and many countries formed similar chartered companies to trade with the East Indies. Examples include Denmark (1616), Portugal (1628), France (1664) and Sweden (1731) (Mundle 2015, p. 17). In Britain, there were never more than twenty of these companies in existence at any one time and they were often considered to be extensions of the state. The charter of each company specified the objectives of the company, the number (and qualifications) of its shareholders, the management structure and its duties as well as the expected life of the company. For members of the (English) East India Company, the right to vote at quarterly and annual meetings was limited. A member had to hold more than 500 pounds (sterling) worth of stock before they could vote at either meeting (Robbins 2012, p. 27).

The last of the companies created around settlement in Australia was the South Australian Company. Formed in 1835 to encourage the purchase of land in a new colony, this company ceased to exist in 1949 (samemory n.d.). There are, however, many contemporary Australian examples of Artificial Entity companies – all of which have been created under legislation enacted by various State and Commonwealth governments. Examples of these companies are CS Energy Limited, Sunwater Limited (both formed under the (Queensland) *Government Owned Corporations Act 1993* (Parliament of Queensland 1993) and the Snowy Mountains Hydroelectric Authority – which was created under Commonwealth Legislation in 1949 (Snowy Hydro n.d., Our Energy page). Each of these organisations has characteristics similar to those companies formed, in Britain, by Royal Charter.

There are no Artificial Entity companies in the ASX 100 index and this theory is not used in the analyses reported in Chapter 7. However, this merely reflects the present structure of several companies that are listed. The largest (by A$ capitalisation on 30 June 2016) company on the ASX 100 index that was previously a Government Owned Enterprise is the Commonwealth Bank of Australia (CBA) (Number 1 in the ASX 100 index (as at 30 June 2016) – which was formed in 1911 as an arm of the government of the Commonwealth of Australia (CBA n.d.). The CBA is closely followed in its evolution by CSL Limited (Number 7 on the ASX 100 index), Suncorp Group Limited (SUN) (Number 18 in the ASX 100 index) and AGL Energy Limited (AGL) (Number 26 in the ASX 100 index). All of the references to the ASX 100 index are for the year 2015-16. Artificial Entity theory could, therefore, be important in addressing the question posed as part (ii) of the Research Question (about the evolution of companies) given in Section 1.3 of this thesis.

3.2.1.2 Aggregate Entity Theory

Aggregate Entity Theory presents a business entity as being separate from the State but being both an extension of its members and the sum of its human and non-human components (Machen 1911). The principal components of the theory are that: (i) the corporation is created by an association of people who agree to undertake a business activity; and (ii) the property of the enterprise is not the possession of any person (or group of persons) within the enterprise but is available for use by the managers. The business entity is also thought to be separated from society and the environment and to regard skilled labour as able to be replaced by unskilled labour and technology. It is seen to be a profit generating activity that exists for the benefit of its shareholders

(Crossan n.d., p. 2). Although the managers of such an enterprise have the power to make changes and to influence enterprise outcomes, they are, ultimately, bound by the shareholders' wishes.

The Australian business form that best fits the above description is the co-operative. There have been many such businesses in Australia – with most of them having a base in rural and/or agricultural activities. One such organisation (founded in 1895 and still in existence in New South Wales and Queensland) is the Norco Co-operative Limited (Norco). Norco supplies dairy products (including milk, cream and cheese) and is owned by 326 active farmers who operate 214 dairy farms. The company produces 220 million litres of milk per year and has an annual turnover of approximately A$555 million per year (Norco Co-operative Limited n.d., Home Page). In 2016, the company generated a profit of A$2.013 million – all of which was distributed to its shareholders (Norco Co-operative Limited, 2016, p. 34).

There are no such businesses in the ASX 100 index at 30 June 2016 and the Aggregate Entity Theory plays no part in the analysis undertaken in Chapter 5. The theory could, however, play an important role in exploring the application of existing TOTF to the wider range of companies listed in the ASX 200 index as it also addresses part (ii) of the Research Question posed in Section 1.3 (about the evolution of companies) of this thesis.

3.2.1.3 Real Entity Theory

Real Entity Theory sees a company as being 'a new real person, a real corporate animal … endowed with a will and with senses.' (Machen 1911, p. 256). According to Lozano et al. (2015, p. 433) and under this theory, the company:

- is an actual being;
- must be incorporated within the legal and civic laws of a particular state;
- is integrated within the fabric of society;
- acts through agents (its employees, managers and appointed agents);
- can be accused of certain crimes and be judged at law; and
- has responsibility ensuring that its employees comply with the law of the land.

The more important characteristics above are: (i) the requirement to be incorporated within the legal and civic laws of a particular state; (ii) the need to be integrated within the fabric of society; and (iii) having the responsibility to ensure that employees comply with the law of the land. While the first of these points highlights the importance of the *Corporations Act 2001* (Parliament of Australia 2001) (as the vehicle for incorporation of and the management framework for an Australian company), it also suggests the need to comply with all laws of the land. This requirement encompasses laws relating to workplace health and safety, environmental conservation and pollution management. The third point identifies a company as being integrated within society and this suggests that the evolving social contract between society, government and business (Chapter 4) is an important framework for the existence and activities of companies. The fourth and sixth points highlight the responsibility of a company for the actions of its agents and suggests a need for positive monitoring and assessment of employee performance (see the discussion on ethics in Chapter 5).

The need for a board of directors to actively monitor the performance of employees is highlighted in data revealed to the Royal Commission into Misconduct in the Banking, Insurance and Financial Services Industry undertaken in Canberra between November 2017 and October 2018. A summary of the costs incurred by the four major banks in the ASX 100 index due to the misbehaviour of staff is as follows (Knight 2018, pp. 1-3):

- Commonwealth Bank of Australia - A$700 million in fines over money laundering charges and A$389 million in regulatory and risk management costs;
- Westpac Banking Corporation - A$235 million profit downgrade due to compensation and remediation charges around wealth management;
- ANZ Banking Group - A$55 million in legal fees and A$422 million in customer remediation costs: and
- National Australia Bank - A$314 million in compensation programs (Ryan 2018).

A later report (Letts 2019) suggests that costs to the NAB will exceed A$1 billion as an additional A$749 million had been set aside for customer remediation activities.

The above costs may seem large and the provision for future costs extremely large. However, the provisions, in the case of the NAB, have proven worthwhile as, in mid 2021, the ASIC served notice on the bank that it would seek a fine of A$40 million relating to services not delivered but invoiced over the period 2013 to 2018 (Ross 2021). All of these costs will be carried by the shareholders – who will see the value of their shareholdings downgraded due to lower than otherwise possible profit distributions. Such actions have implications for several TOTF such as Principal-Agent and Shareholder Theories. These implications are examined in Chapter 7.

3.2.2 The Neo-classical theory of the firm

The only theory in this group is the Neo-classical Theory itself. The Neo-classical firm is considered to have six foundations as follows (economicsdiscussion.net n.d.):

- an entrepreneur is the owner of the firm and there is no division between ownership and management;
- the firm has the single goal of maximising profit;
- the goal is attained at the point where marginal cost equals marginal revenue;
- the world is one of certainty;
- the ability of firms to enter the market may vary with the market model; and
- the firm acts within a time horizon that varies with factors including the capital intensity of production, product lifecycle and the rate of innovation.

This description fits reasonably well with observations by Marshall (1890), Friedman (1962) and Kantarelis (2007) about the profit maximising actions and social responsibility of firms. However, Kantarelis (2007, p. 45) adds several qualifications that are at odds with some of the points outlined above. These include that profit maximisation is not realistic due to complexities in the marketplace and to the existence of objectives other than profit. Kantarelis (2007, p. 45) proposes the model given in Figure 3.2.

Input Market Information	Output Market Information	Government Regulation

The firm's 'Black Box' or production function – the information, intellectual property and processes that give the firm a competitive advantage.

The firm's products and services – its revenue function.

Profit
For an unregulated firm, the short run maximum profit occurs at the point where marginal cost equals marginal revenue.

Adapted from: Crossan n.d., p. 1; Kantarelis 2007, p. 45

Figure 3.2: A model of the Neoclassical Theory of the Firm

Although this model allows for the variable nature and timing of market information and government regulation, it does not consider whether or not an entrepreneur is the sole owner and manager of the firm. It does, however, recognise that input data (particularly on technological advances) may impact on the timing and duration of the resulting profit. These considerations (and the contents of the 'Black Box') are important for the analysis reported in Chapter 7.

A theory that arises from the Neo-classical TOTF is Profit Maximisation Theory. The assumptions that underlie Profit Maximisation Theory (Chand 2017) are:

1. The entrepreneur is the sole owner of the firm.
2. The objective of the firm is to maximise profits.
3. Profits are maximised in both the short and long run.
4. The tastes and habits of consumers are given and constant.
5. The firm produces a single, perfectly divisible and standardised commodity.
6. The production techniques used by the firm are given and fixed.
7. The firm has complete knowledge about the amount of output that can be sold at each price.
8. The firm's own demand and costs are known with certainty.
9. New firms can only enter the market in the long run.
10. The firm maximises its profits over some time horizon.

This theory appears to offer considerable guidance in understanding the creation, existence and operation of the ASX 100 companies in the material analysed in Chapter 7. However, it is dismissed for the following reasons:

1. None of the firms listed in the ASX 100 index (Appendix 1) has a single owner.
2. None of the ASX 100 companies produces a single commodity.
3. The tastes and habits of ASX 100 company consumers are seldom known and are not constant.
4. No ASX 100 company has complete knowledge about the quantity of its output that can be sold at any given price.
5. The production techniques used by each ASX 100 company are fixed only in the short term and vary with advances in technology and the level of capital used. t.
6. No ASX 100 company knows its own input demand and costs with certainty.

3.2.3 Other economics based theories of the firm

There are five theories in this group. They are: (i) Transaction Cost Theory; (ii) Contract Theory; (iii) Team Production Theory; (iv) Resource Based Theory; and (v) Natural Resource Theory.

3.2.3.1 Transaction Cost Theory

Transaction Cost Theory is based on the work of Ronald Coase and finds its origins in his papers *The Nature of the Firm* (1937) and *The Problem of Social Cost* (1960). In these works, Coase does not suggest specific transaction costs but identifies them as being the cost of using the price mechanism to determine enterprise structure and activity. Medema and Zerbe (2000, p. 836) maintain that, in the later paper, Coase argues that, from an economic perspective, the goal of the legal system should be to establish a pattern of rights such that economic efficiency is attained. The basic concept of the theory is that a business enterprise will produce in-house all those goods and services that it can do so at a lower cost than it would incur in buying them from external sources.

It was not until 1966 that a concise outline of the theory was developed. In that year, Stigler suggested that the correct interpretation of the theory was 'The Coase Theorem … asserts that under perfect competition private and social costs will be equal.' (Stigler 1966, p. 113). Braendle (n.d., p. 4) questions the application of the theory to 'firms' on the ground that the theory rests on the assumption that there are no legal, strategic or informational barriers to bargaining. However, he later concedes that these barriers merely made activities more expensive and are, themselves, transaction costs. Regan (1972, p. 427) extends the understanding of the theorem to:

> … in a world of perfect competition, perfect information, and zero transaction costs, the allocation of resources in the economy will be efficient and will be unaffected by legal rules regarding the initial impact of costs arising from externalities.

Table 3.1 is a summary of what other researchers consider transaction costs to be.

Table 3.1: Identification of transaction costs by other researchers

AUTHOR	Allen	Braendle	Coase	Medema and Zerbe
Transaction costs identified	Any direct costs as well as any concomitant inefficiencies in production arising from them. The costs of investment and of any resultant increases in costs of production. The costs of establishing and maintaining property rights.	Legal costs. Information costs. Costs of organising a business over time. Planning for the future. Limiting future risks.	Production costs. Identifying potential trading parties. Negotiating contracts. Negotiating variations to contracts. Monitoring contract performance. Purchasing assets and other property.	Costs associated with search, negotiation, monitoring and enforcement. Transaction costs are those associated with establishing and maintaining property rights. Strategic behaviour. Consumer income, taste and preference effects.

Sources: Allen 2000, pp. 898-899; Braendle n.d., pp. 2-4; Coase 1937; Medema and Zerbe 2000, pp. 851-855

These transaction cost groups are used in Chapter 7 to determine whether or not such costs can be identified in the financial tables associated with ASX 100 company reports and so act as a guide to the utility of the theory.

Medema and Zerbe (2000, pp. 875-878) conclude that the importance of the Coase Theorem lies not in the fact that it is correct but in that: (i) it draws attention to the role of transaction costs in understanding economic systems; (ii) it is a positive statement (it describes how things are) rather than a normative one that describes how things ought to be; and (iii) the theorem is not about markets or costless bargaining but about the costs of co-ordination. This latter claim fits well with Coase's argument that, in the Neo-classical TOTF, there is no room for direction or co-ordination – yet in all observable examples of a company there is a function (management) whose job is to direct and co-ordinate (Allen 2000, p. 895).

3.2.3.2 Contract Theory

A slightly different view is Contract Theory. This approach suggests that the firm is a nexus of contracts by which the various groups within a company (shareholders, directors, executives, other employees, suppliers and consumers) agree to carry out specified activities for an agreed remuneration (Lozano et al., 2015, p. 435). The major difficulty in negotiating contracts is that one party (if not both) often lacks sufficient information, time or incentives to negotiate a 'complete' contract. Such 'incomplete' contracts frequently leave terms and conditions open to interpretation and future implementation subject to doubt. Further doubts about the value of the approach could arise if there are multiple parties to a contract and each of those parties approaches the negotiations with differing values and objectives.

Contracts could be seen as a means of maximising profits for shareholders, but there are many criticisms of the approach. These include (Lozano et al. 2015, p. 435) that:

- contracts are usually only bilateral and may exclude some interested parties;
- contracts are often incompletely specified and so run the risk of being vague, general and omitting the interests of many groups of stakeholders;
- the firm, markets and regulatory agencies may interpret the contract differently;

- there may be hidden (or unaddressed) social costs (such as corporate impacts on the environment);
- the firm is treated as a 'black box' that is supposed to meet marginal conditions with respect to inputs and outputs at the same time as maximising profits;
- contracts between management and organised labour may lead to unforeseen outcomes for one of the parties;
- technological and organisational aspects of production may be neglected; and
- large corporations may use their market presence to negotiate unfair contracts,

Cheung (1969) offers an interesting expansion of Contract Theory when he suggests that a firm, faced with a choice between competing contracts for the same service, will make a choice based on the transaction costs of each contract. Such a proposition suggests that price is not the only determinate in the marketplace. Williamson (1971) raises another challenging view when he suggests that sunk costs (related but unavoidable costs that will not be recovered through the contract) may also need consideration in contract negotiation.

Information about contracts between the company and its suppliers and customers is seldom mentioned in ASX 100 company annual reports. Mining and energy companies sometimes mention new contracts for raw materials; but usually, the only contracts mentioned are those that provide fixed remuneration and incentive packages for senior executives. Occasionally, general staff bonus schemes are mentioned. This is quite different to the requirement in both the UK (see section 2.4.1) and France (see Section 2.4.3) where the disclosure of 'commercial contracts' is required. The analysis undertaken in Chapter 7 draws on material in these annual reports to determine the utility of Contract Theory.

3.2.3.3 Team Production Theory

A variation of Transaction Cost and Contract Theories is the Team Production Theory discussed by Alchain and Demsetz (1971) and Blair and Stout (1999). The general theme of this theory is that activities are carried out by groups internal to the corporation that collectively contain the skills, knowledge and equipment needed to create a product or service at an internally competitive price. Alchain and Demsetz (1971) define team production as being production in which: (i) several types of resources (people as well as equipment and materials) are used; (ii) the output is not the sum of the separable output of each co-operating resource; and (iii) not all the resources used in the process either belong to or are contributed by one person.

Blair and Stout (1999) recognise the need for co-ordination and control inherent in team production. They also argue that the major economic function of a public corporation is not to address principal/agent problems but to provide a vehicle by which shareholders, creditors, executives, ordinary employees and other potential corporate stakeholders (including communities) can, for their own benefit, jointly relinquish control over the resources that they have contributed to the corporation to a board of directors. These authors also suggest that Team Production Theory has important connotations for corporate governance because it suggests that maximising shareholder wealth should not be the principal goal of corporate law. The principal goal of public corporations, they (Blair & Stout 1999) suggest, should be to maximise the joint welfare of all stakeholders.

Alchain and Demsetz (1972) recognise possible problems with the whole approach. They suggest that these problems included the potential for 'free riders' who do not contribute 'their fair share' to the team effort and the possibility that team members might collude to cheat the principals. They also conclude that individuals would only want to be part of a team if, by doing so, they could share in the economic surplus produced by the team (Alchain & Demsetz 1972, p. 274). To overcome these problems, they suggest a hierarchy of responsibility that would include mediating disputes amongst team members as well as the allocation of duties and rewards (Alchain and Demsetz 1972, p. 278).

Whether or not the 2016 Annual Reports of the ASX 100 companies provide data that can be tested against Team Production Theory is explored in Chapter 7.

3.2.3.4 Resource Based Theory

Resource based theory suggests that a corporation is a collection of productive resources that are innate to the corporation and that are either (i) tangible (plant, equipment, natural resources, finished goods and waste products; or (ii) human (skilled and unskilled labour, financial, technical and managerial staff). Intangible resources, such as team skills and capabilities, are also applicable (Lozano et al. 2015, p. 435). The bases of this view are that one corporation can then produce goods or offer services better than can another, that the emphasis is on reducing costs and that the company needs to develop its internal resources (including the transfer of knowledge between individuals) in order to create a competitive advantage. This resource based view considers the social and time dimensions of resource development but, in its original concept, did not consider environmental impacts.

The resources of a company that may lead to a competitive advantage (or, and perhaps more importantly, to competitive survival) can be described as being: (a) valuable; (b) rare; (c) inimitable; and (d) non-substitutable (Barney 1991, pp. 106-7). It is hard to use these adjectives to describe the coal, other mineral and CSG resources of companies listed on the ASX (particularly as those resources are not rare, their value is often unproven and they may, even in the intermediate term, be subject to substitution by other energy types). Therefore, we need to look at the non-physical assets of these companies to see if they have other resources that meet the attributes listed above.

Based on the work of Baxt (2002), two possibly unique assets of any company could be its board of directors and their approach to corporate governance: for, as Duztas (2008, p. 18) states 'a good corporate governance structure is a working system for principled goal setting, effective decision making and appropriate monitoring of compliance and performance'. Udayasankar (2008, pp. 164-172) develops this thought further by suggesting that 'boards of directors can be a key source of various resources based on human capital and social capital'. These resources are said to include advice and expertise, legitimacy and links to other organisations. Udayasankar (2008, pp. 164-172) also claims that 'The relationship between board capital and firm performance is well documented, thereby making the resource dependence view a key theory in corporate governance.' Duztas (2008, pp. 39–40) extends this relationship further by quoting Pfeffer and Salancik (1978) 'when an organisation appoints an individual to a board, it expects the individual will come to support the organisation, will concern himself with its problems, will favourably present it to others and will try to aid it'. Such assistance could improve organisational performance and increase returns to shareholders.

Increasing the variety of people who serve on boards could be important as it would offer the opportunity to tap into a rich pool of talented candidates, help to add depth to existing skills and ideas and could bring the board closer to properly representing its stakeholders (Al-Jarah 2012, pp. 11-12). One source of variety at board level can be found in gender diversity and a Conference Board of Canada study suggests that 'those (corporations) with two or more women on the board were far more likely to be industry leaders in revenues and profits' (Al-Jarah 2012, p. 12). Al-Jarah (2012, p. 15) also summarises other research findings (Burgess & Fallon (2003); Huse & Solberg (2006); & Ourcommunity.com.au (2007)) as suggesting:

> Many people believe that there are a range of qualities that only women can bring to a boardroom – things like better communication and consultation skills, a more 'caring' attitude towards the organisation they are governing, a better knowledge of community issues and so on.
>
> Having women on the board also makes a strong statement about the organisation's willingness to seek out and take into account the views of all of its stakeholders.

A summary of the human resources of the boards of a selection of the ASX 100 companies (as at 30 June 2016) is in Appendix 7. This data is used in the analysis reported in Chapter 7.

3.2.3.5 Natural Resource Theory

What has become known as Natural Resource Theory is based on the work of Hart (1995) – who suggests that a different view of the firm is needed because traditional management theory ignores the restraints imposed on a firm by its natural environment (Hart 1995, p. 986). The theory attributes the competitive advantage of a firm to its relationship with the natural environment. It also proposes three interconnected strategies (pollution prevention, product stewardship and sustainable development) that underlie sustained competitive advantage. The picture painted by Hart (1995) fits well with the broader, economy wide scenarios contained in the research of Solow (1974), Stiglitz (1974) and Stokey (1998) - whose work suggests that sustained economic growth is possible, despite ever tightening pollution restrictions that are met by costly abatement measures (Chambers & Jang-Ting 2009, p. 1). The key components of Hart's (1995) theory are described in Table 3.2 – which also links them to a sustainable competitive advantage for a company.

TABLE 3.2: A natural resource based view of the major elements of a firm

Strategic Initiative	Environmental Driving Force	Key Approach	Competitive Advantage
Pollution prevention	Minimise emissions, effluent and wastes	Continuous improvement	Lower costs
Product stewardship	Minimise the life cycle costs of products	Stakeholder integration	Pre-empt competition
Sustainable development	Minimise the environmental impact of firm growth and development	Shared vision	Establish the desired future position

Source: Hart 1995, p. 992

The strategies and the links to competitive advantages outlined in Table 3.2 can also be found in the National Strategy for Ecologically Sustainable Development (NSESD) guidelines proposed by the (Australian) Commonwealth Department of the Environment in 1992. The guiding principles from this Strategy (Department of the Environment 1992) include:

- the need to develop a strong, growing and diversified economy which can enhance the capacity for environmental protection should be recognised;
- decision making processes should effectively integrate both long and short term economic, environmental, social and equity considerations;

- where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental damage? and
- decisions and actions should provide for broad community involvement in issues that affect them.

Both the suggestions by Hart (1995) and the guidelines proposed by the (Australian) Department of the Environment (1992) are applied in Australia through the (Commonwealth) *Environmental Protection and Biodiversity Conservation Act (1999)* (Parliament of Australia 1999). The objective of the *Act* most relevant to the work behind this thesis is s3(1)(b) which aims ‘to provide ecologically sustainable development through the ecologically sustainable use of natural resources’ (Parliament of Australia 1999). However, s3(2)(d) demonstrates how the *Act* is applied to business activity through its claim that the *Act* ‘adopts a timely and effective Commonwealth environmental assessment and approval process that will ensure that activities that have significant impact on the environment are properly assessed’ (Parliament of Australia 1999). Although the provisions of this *Act* are relevant to Corporate Sustainability Theory, they are left for later exploration.

Of recent years, several variations of Hart’s (1995) Natural Resource Based View of the Firm have been proposed. One such approach is the Social Resource Based View advanced by da Silva and Bitencourt (2018). This work advances Hart’s (1995) view by suggesting that the resources available to a company are much more diverse than physical assets and people. However, because social resources can be considered as being just one of the many natural resources available to a firm, the work of da Silva and Bitencourt (2018) is, in this thesis, considered as part of Hart’s (1995) approach and is not treated as a separate theory.

The material analysed in Chapter 7 explores the utility of Hart’s (1995) Natural Resource Theory in explaining the existence and operation of companies included in the ASX 100 index as at 30 June 2016.

3.2.4 Behavioural based theories

There are five theories in this group. They are: (i) Principal/Agent Theory; (ii) Revenue Maximisation Theory; (iii) Managerial Discretion Theory; Growth Maximisation Theory; and (v) Stewardship Theory.

3.2.4.1 Principal/Agent Theory

Foss et al. (2000, pp. 631-658) suggest that all TOTF can be divided into either Principal/Agent or incomplete contracting approaches. Incomplete contracting is briefly considered in Section 3.2.3.2 (Contract Theory) and only Principal/Agent theory is examined in this section. Foss et al. (2000) contend that Principal/Agent Theory allows agents/managers to write elaborate contracts characterised by ex-ante incentives under constraints imposed by asymmetric information. This may be the case where executives are renegotiating existing contracts but can hardly be the case where a board of directors is appointing a new executive from outside the company. The board of directors would be derelict in its duty if it allowed an executive to write an employment contract without reference to or oversight by the board.

The classical understanding of a company is that of a business entity in which ownership is separated from the direct management of resources and restricted to receiving the profit from the trading activities of the managers. Such a view places the shareholders as the principals of the organisation and regards the managers as agents (Kantarelis 2007, p. 185). This understanding immediately raises questions such as:

- How do the principals transfer their values and expectations to their agents?
- How do the principals ensure that their agents faithfully implement these values and expectations and act in their (the principals') best interests? and
- How can the principals monitor the performance of their agents in a cost effective manner?

One of the major shortcomings in this linear relationship is that the agent may look for short term benefits for the principals and neglect the possibility of better long term benefits (Lozano et al. 2015, p. 435). Baumol (1959) had earlier developed this approach as his 'Revenue Maximization Hypothesis' in which he suggests that, after agreed levels of profit are reached, managers might maximize sales (rather than profits) as increasing the size of the firm could give them increased benefits and status. The owners of the business may seek to motivate their 'agents' by offering them a remuneration package that includes incentives to achieve goals that are acceptable to the owners. Such an approach is examined in the discussion on Shareholder Theory (Section 3.2.5.1) and examples of this approach in the ASX 100 companies (as at 30 June 2016) are identified in Appendix 6.

3.2.4.2 Revenue Maximisation Theory

The basic assumption behind this theory is that after achieving an agreed level of profit, a company should produce more product, keep prices low and increase advertising expenditure so as to increase product demand. The theory has three approaches based on the work of Baumol (1959), Marris (1964) and Williamson (1971).

The work of Baumol (1959) can be interpreted as suggesting two models of the revenue maximising firm. They are the static model and the dynamic model. Both may be driven by advertising expenditure but the dynamic model considers the impact of present decisions on future performance. Table 3.3 outlines the basic components of each model.

Table 3.3: The characteristics of Baumol's revenue maximising firm and their limitations

THE MODEL OF THE FIRM	STATIC	DYNAMIC
CHARACTERISTICS	• The time frame of the firm is a single period. • The firm ignores what might happen in future periods. • The minimum acceptable level of profit is the starting	• The time frame of the firm is its life time. • The firm considers the impacts of plans and decisions made in the present on future events. • A minimum level of profit is not seen as the

THE MODEL OF THE FIRM	STATIC	DYNAMIC
CHARACTERISTICS (cont)	point for revenue increases. • The acceptable profit level is determined by market conditions. • The acceptable profit level is determined by market conditions • The product demand curve is downward sloping - based on price. • The average cost curve is a U shape.	constraint that is adopted in the static model. • The present value of future streams of incomes is estimated using discounted cash flow techniques. • Both the demand and cost curves are the same shape as in the static model of the firm.
LIMITATIONS	• Production costs are assumed to be independent of advertising levels. • Firms already operating at the maximum level of efficiency may incur diseconomies of scale.	• The model does not consider that, in the long run, both market demand and input costs change.

Source: Baumol 1959

Marris (1964) modifies this approach by suggesting that the revenue maximising firm would aim for balanced growth and that this could be achieved by increasing both advertising expenditure and the availability of the capital needed to finance growth. He argues that this balanced growth also depends on:

- the planning and decision making skills of the managers;
- expenditure on research and development;
- the levels of co-ordination, co-operation and team work within the firm;
- the debt/equity and liquidity ratios within the firm; and
- the level of profits retained to finance growth.

The limitations to Marris's (1964) approach include that it does not recognise the interdependence of decision making within a firm and that it appears to exclude social, cultural and environmental costs.

Williamson (1971) suggests that the revenue maximisation theory needs to consider:

- that the agreed level of profit sought acts as a constraint on managerial discretion;

- whether or not managers actually have the discretion to pursue activities that increase their utility as against that of the owners of the business; and
- that the utility function of managers includes non-financial factors (such as employment security, power status and prestige) as well as financial (remuneration) factors.

Revenue Maximisation Theory appears to be a powerful variation on Transaction Cost Theory. Whether or not the 2016 Annual Reports of the ASX 100 companies provide data that supports an analysis against it is examined in Chapter 7.

3.2.4.3 Managerial Discretion Theory

Managerial Discretion Theory provides a challenging variation on Principal/Agent Theory. It assumes that, once the level of profit required to provide shareholders with an adequate return on their investment has been reached, that managers have the discretion to spend on activities that increase managerial utility. Managerial utility is seen as having both a fixed and discretionary component. The fixed component is mostly salary but includes job security, power and status, prestige and professional accomplishment. The discretionary component includes the power to employ additional staff and to undertake projects that may not directly relate to the core business of the enterprise but which increase managerial power, status and prestige (Marris 1964). This component may also include managerial expense accounts, the provision of cars and luxurious offices. Basic assumptions behind the theory include: (i) ownership and management of the business enterprise are separated; (ii) competition in imperfect markets exists; and (iii) that the enterprise must achieve a level of profit that will give investors an adequate return on their investment before discretionary expenditure can occur (Williamson 1964).

Williamson (1964) also argues that managers have discretion in pursuing policies that would maximise their own utility. Managerial power to pursue discretionary expenditure appears to arise from the observation by Berle and Means (1932, p. 66) that ‘if one can determine who does actually have the power to select directors one has located the group of individuals who for practical purposes may be regarded as (having) the control'. This observation is supported by the conclusion by McEachern (1975) that boards of directors generally include top management teams who hold a considerable amount of power due to their expertise and inside knowledge and that the firm's CEO is often also chairman of the board. This joint office holding affords the CEO a great deal of power over future board members.

Much of the theory requires circumstances that seldom exist in ASX 100 companies. In these companies, the CEO is infrequently also the chair of the board of directors and while the board may include the CEO and one or two executive (management) directors, the number of non-executive directors always outnumbers the number of executive directors (Appendices 2 and 7). The power to appoint directors does not reside with the CEO (although the ability to nominate them may) but with the nomination committee of most ASX 100 company boards. Similarly, the power to set and then allocate executive remuneration and incentives resides with the remuneration committee of most ASX 100 company boards. Just how well the data in the 2016 Annual Report for the ASX 100 companies supports comparison with Managerial Discretion Theory is examined in Chapter 7.

3.2.4.4 Growth Maximisation (Managerial Capitalism) Theory

This theory is based on Marris's (1964) text 'The Economic Theory of Managerial Capitalism'. It is also referred to as the Theory of Managerial Capitalism and this is the terminology used in this thesis. The concepts behind the theory are: (i) the owners of the firm would prefer to maximise dividends and share prices; and (ii) the managers appointed as agents for the owners would prefer to maximise the rate of growth of the firm as this would maximise their self interest/utility. The usual ways to finance growth are by retaining profits, by borrowing (particularly long term loans) and by raising additional capital. As all these approaches advance managers' self-interests and disadvantage the owners, a balanced rate of growth, that satisfies both parties, is often sought.

Chand (n.d.) considers the assumptions behind Marris's (1964) approach as being:

- firms are assumed to grow through diversification;

- firms are assumed to grow at a constant rate;
- production costs within a given enterprise are constant;
- input prices for the factors of supporting enterprise activities (administration, sales, marketing) are constant;
- there is no interdependence between oligopolistic firms; and
- all major variables (costs, sales and profits) are assumed to grow at the same rate.

These assumptions also seem to be based on three underlying factors that may not always be so. They are:

- a constant rate of growth in demand for the enterprise's product;
- a commensurate rate of growth in the available supply of capital; and
- managers are able to cope with changes in several factors at the same time.

The theory can be criticised on the grounds that it (Chand n.d.):

- assumes that firms can grow continuously by creating new products and does not consider consumer preferences for established suppliers;
- assumes a given product price but does not consider how input prices are established in a competitive market;
- does not analyse interdependence between firms created by non-price competition; and
- assumes that R and D, sales and marketing costs can be combined and does not recognise that such diverse costs may not have the same impact in any given period.

Other defects in the approach include that: (i) it fails to recognise that firms may not always grow at the same rate; and (ii) it assumes that all major variables (costs, prices and profits) will vary at the same rate. It also ignores the difficulties associated with trying to determine a rate of growth that will maximise the market value of the firm without attracting unsolicited take-over offers (Chand n.d.).

Despite these apparent defects, Marris's work is considered to be a major contributor towards understanding the activities of both firms and their managers, It is a major contributor to understanding the Theory of the Growth of the Firm developed by Penrose and examined in Section 3.2.7.1.

3.2.4.5 Stewardship Theory

The above Behavioural Theories are concerned with managing the problems associated with the divergence in interests that can arise between the owners of a firm and the persons appointed to manage its activities. One approach to overcoming this problem is for the board of directors to closely monitor the performance of the Chief Executive Officer (CEO) and other senior managers and to offer them remuneration packages that tie their self-interest to the achievement of shareholder objectives (particularly profit maximisation). Such monitoring may be most effective when the roles of CEO and chair of the board of directors are separated.

However, there are theories that suggest ways to achieve high standards in performance other than just trying to overcome self-interest. Such (usually non-financial) approaches can be found in the motivational theories of Herzberg (1959), Mazlow (1943) and McGregor (1960). These theories suggest that managers might be motivated towards superior performance by a need to achieve, by exercising authority and responsibility and by successfully performing challenging work. Such goals could lead to greater recognition by both more senior officers and peers and promote a merging of individual egos, self-esteem and corporate prestige. These motivational theories became the base for Stewardship Theory as proposed by Donaldson (1990) and Barney (1991). Thus, Stewardship Theory focusses on the creation of facilitative and empowering structures within a firm and holds that a combination of the roles of CEO and chair of the board will enhance effectiveness and produce superior shareholder returns (Donaldson and Davis 1990, p. 52-3).

The issue then becomes whether or not the organisational structure helps the executive to develop and implement plans for high achievement. Donaldson and Davis (1991) suggest that such an enabling structure is achieved with the CEO having complete, unambiguous and unchallenged authority over a corporation. They further suggest that this is more easily attained when the positions of chief executive officer and chair of the board are combined (Donaldson & Davis 1991, p. 51-2). As is discussed in Chapter 7, this is seldom the case with ASX 100 companies (as at 30 June 2016). To test their hypotheses, Donaldson and Davis (1990, p. 54) undertook a study of CEO/chair of the board roles and return on equity in 337 USA companies. Their findings suggest that the combination of the roles (one of the facilitative structures proposed by Stewardship Theory) could produce superior results for shareholders. However, the authors recognise that there may be cultural differences that preclude ready acceptance of their findings in some countries and stress the need for future research to test the relationship based on Australian data (Donaldson & Davis 1990, p. 61-2).

A suitable conclusion to this section of the thesis can be found in the work of Davis, Schoorman and Donaldson (1997) – who suggest that the stewardship relationship could result from a rational choice of both principals and managers. They develop a four segment model of the choices faced by principals and their managers and suggest combinations of the possible relationships that would determine whether or not it would be a Principal/Agent or Principal/Steward outcome. This model is shown in Figure 3.3.

Principal's Choice

Agent	Steward	Manager's Choice
Minimum Potential costs Mutual agency relationship	Agent acts opportunistically Principal is angry Principal is betrayed	Agent
Principal acts opportunistically Manager is frustrated Manager is betrayed	Maximise potential performance Mutual stewardship relationship	Steward

Adapted from: Davis, Schoorman and Donaldson (1997)

Figure 3.3: A model of the Principal/Agent/Steward choice relationship

Of the four possible choices, the Steward/Steward relationship appears to offer the maximum advantage for a company and the lowest costs – particularly in terms of the costs of monitoring performance. Unfortunately, there is no data contained in the 2016 Annual Reports of the ASX 100 companies that would enable the determination as to where the relationship between their principals (perhaps represented by the board of directors) and their senior executives lies in this model.

Perhaps the major point illustrated by the work of Davis, Schoorman and Donaldson (1997) is their contention that both principals and managers can learn from the constant interaction between them and that the principal/agent relationship can evolve to that of principal/steward. A major driver for this change could lie in the suggestion by Donaldson and Davis (1990, p. 52-3) that Stewardship Theory focusses on the creation of facilitative and empowering structures within a firm and holds that a combination of the roles of CEO and chair of the board will enhance effectiveness and so produce superior shareholder returns.

3.2.5 Stakeholder Theories

There are two theories in this group. They are Shareholder Theory and Stakeholder Theory. Shareholder Theory forms a base for both Neo-classical and Principal/ Agent theories. Its principal current proponent is Milton Friedman and his work is explored in Section 3.2.5.1. Stakeholder Theory is more recent and its principal proponent is Robert Freeman. His contributions are explored in Section 3.2.5.2.

3.2.5.1 Shareholder Theory

Shareholder theory draws on both Transaction Cost and Principal/Agent theories in that it focusses on activities/behaviours that maximise enterprise efficiency (Farrer 2010, p. 87) and shareholder value. By common definition, a shareholder is a person who holds shares in a company. This person may be either a real or an artificial person and Appendix 3 gives an example of the major shareholders in the companies listed in the ASX 100 index at 30 June 2016. One of the observations that can be made from this appendix is that almost all of the five larger shareholders in each company are nominee companies – a business entity that holds shares beneficially owned by others and which must vote as each of those share owners directs.

As the shareholders collectively own all of the shares in a company, it could be assumed that they are the owners of the company and so are entitled to the residual monies remaining after all debts have been settled. Friedman (1970, p. 1) maintains that this is so and that corporate executives are the agents of the individuals who own the company and that their primary responsibility is to the shareholders. These agents are also employees of the company and their responsibility is to 'conduct the business in accordance with their (the owners') desires, which generally will be to make as much money as possible while conforming with the rules of society, both those embodied in law and those embodied in ethical customs'. If this is so, then corporate philanthropy and other activities not directly related to generating shareholder wealth may be a waste of shareholders' money and, potentially, immoral as they amount to theft (Farrer 2010, p. 87). Farrer (2010, p. 87) also contends that the market will punish, or weed out, firms that engage in illegal or unethical behaviour and that ' … in general, excessive oversight and regulation of industry is unnecessary'. This contention is examined in the analysis reported in Chapter 7. Friedman's (1962 & 1970) views are supported by many researchers and Bishop (2008, p.210) maintains that:

> … corporations have the right to be autonomous, to engage in economic activities and to pursue private purposes. They have a responsibility to respect human freedom and rights, but they do not have pre-legal responsibilities to pursue any social goals.

While Cho (2009, p. 35) is generally supportive of Friedman's (1962 & 1970) approach, he maintains that corporations are tied to society by a social contract and that any breach of this contract could lead to revocation of the contract as a whole. It would appear, then, that one way to tie executive performance to the owners' desires would be to issue shares to the executives and make them owners. This approach is almost the norm in ASX 100 companies (as at June 2016) and is examined in the analysis in Chapter 7.

However, Friedman's (1962 & 1970) view is not universally held and Stout (2013) has developed an argument that the shareholders have property rights in shares but not in the company. The argument takes issue with some of the basic issues advanced by Friedman (1962, 1970) and claims that:

- shareholder primacy is an abstract economic theory that lacks support from economics, law and empirical evidence;
- shareholder primacy is a recent invention (companies in the 18th and 19th centuries were formed for large commercial ventures (such as the construction of

roads, canals, railways and banks) and were structured to provide a good service at a reasonable price and not to maximise investment returns);

- shareholders are residual claimants only when a company is being liquidated due to bankruptcy and the company is otherwise able to keep its profits and to use them as the directors see fit; and
- shareholders lack the legal authority to control either directors or executives.

Stout (2013) claims that shareholder value thinking does not even serve shareholders well and contends that (American) shareholders are suffering their worst investment returns since the Great Depression, that the number of publicly listed companies has fallen by 40 percent and that the average corporate life expectancy has fallen from 75 years in the early 20th century to 15 years in 2013. Stout (2013) also claims that studies that examine shareholder value maximising strategies are looking in the wrong place and at the wrong time. While individual investors may value investment returns in the near future, policy and governance experts should care about returns to investors as a class and over longer intervals. These claims are briefly explored in the analysis examined in Chapter 7 but, due to the time constraints of a PhD thesis, a study of shareholder value in Australian public companies is left to the future.

Although Shareholder Theory maintains the primacy of shareholder interests in business enterprise actions, a slightly different view is posited in Fisher's Separation Theorem of Finance (Fisher 1930). This theorem provides a set of decision making rules that could be employed when a business is making investment, financing and dividend decisions. The theorem can be summarised as follows (Fadhil Consultancy and Training 2017):

- there are two time frames – now and then;
- the firm and its shareholders are separate;
- the firm's policy should be to maximise the utility of all shareholders;
- the theorem separates the investment decisions of management from the consumption decisions of shareholders;
- the firm does not consult each shareholder before it makes a decision to invest; and

- the firm should invest up to the point where the return on marginal investment equals the interest rate in the capital market,

Fisher's Separation Theorem does recognise the interests of shareholders but appears to allow managers the discretion to make investment decisions without consulting them. This variation on Shareholder Theory is not considered in the analysis reported in Chapter 7 as the annual reports of the companies examined in that chapter do not contain information that would support such an analysis.

3.2.5.2 Stakeholder Theory

In a much earlier time, Berle and Means (1932) started a different train of thought when they postulated that corporations had ceased to be merely legal devices through which the private business transactions of individuals could be carried on. They maintained that the corporation was a means of organising economic activity and had attracted a combination of power and prominence that required it to be dealt with as a major social institution. Freeman (1984, p. 39) extended this thought. He argued that a combination of legal, economic, political and moral challenges to the understanding of a firm as a nexus of contracts between the owners of factors of production and customers required the reconsideration of their fiduciary relationship. He suggested a responsibility to a wide range of stakeholders including suppliers, customers, employees, stockholders and local communities. This idea became the base for the Stakeholder TOTF (Freeman, 1984, p. 39). Freeman (1984, p. 39) does not dispute the fiduciary responsibility of executives towards shareholders – he merely holds that this responsibility could be better discharged by conducting the affairs of the corporation not 'at the expense of other claimants on the firm'.

Freeman (1984, p. 46) more generally describes stakeholders as being 'any group or individual who can affect or be affected by the achievement of an organisation's objective' and Werhane (2011, pp. 115-6) splits stakeholders into two groups. The first group is primary stakeholders (shareholders, executives, government, customers and suppliers) and the other group is secondary stakeholders. This group includes communities and community groups, academics and government agencies such as police forces. Wilburn and Wilburn (2011, pp. 9-11) categorise primary stakeholders as those with vested interests in a company or project and secondary stakeholders as those without a vested interest. They further suggest that vested stakeholders should have both a voice and a vote when it came to community/company interaction, but non-vested stakeholders should only have a voice. Wilburn and Wilburn (2011, pp. 9-11) do, however, recognise that the voice of non-vested stakeholders might be made more influential when amplified by the news and public affairs media.

Other bases for categorising stakeholders and in establishing an order of priority in stakeholder concerns exist. One such base is that used by Xstrata (2007, pp. 16-19) in trying to prioritise stakeholder concerns about their proposed Wandoan coal project. This approach considers:

(i) groups with a high, frequent level of impact, interest or influence over items:

(ii) groups with a medium/semi frequent level of impact, interest or influence;

(iii) groups with a low or infrequent level of impact, interest or influence.

Once stakeholder concerns have been recognised, it becomes necessary to apply some form of ranking to their concerns and to apply a reasoned strategy towards the satisfaction of these concerns. Friedman and Miles (2006, p.162) develop a 'ladder' of stakeholder engagement and management techniques that could be applied. The twelve levels in their ladder range from manipulation of stakeholders by company executives to stakeholder control of events. This 'ladder' is depicted in Table 3.4.

Table 3.4: A ladder of stakeholder engagement and management

Degree of Power	Stakeholder Management Approach	Intention of Engagement	Form of Engagement	Level of Stakeholder Influence
Some degree of stakeholder power	12. Stakeholder control	Majority representation of stakeholders in decision making.	Multi-party dialogue	Forming or agreeing to decisions
	11. Delegated Power	Minority representation of stakeholders in decision making.	Multi-party dialogue and/or board representation	
	10. Partnership	Joint decision making over specific projects.		
	9. Collaboration	Some decision making power	Multi-party dialogue – joint ventures	Having an influence on decisions

Table 3.4 (cont)

Degree of Power	Stakeholder Management Approach	Intention of Engagement	Form of Engagement	Level of Stakeholder Influence
A degree of involvement	8. Involvement	given to stakeholders over specific projects.	Multi-party dialogue – strategic alliances	
	7.Negotiation	Stakeholders give conditional support.		Being heard before a decision is made
	6.Consultation	Organisation has the right to decide but stakeholders can advise.	Constructive dialogue	
A degree of tokenism	5.Placation	Appease the stakeholders but no assurance of being heeded.	Reactive bargaining	
	4.Explaining	Educate stakeholders.	Two way dialogue - questionnaires, focus groups	Knowledge about a decision
Non-participation	3.Informing	'Cure' stakeholders of their ignorance and preconceived beliefs.	Advisory panels	
	2.Therapy	'Misleading' stakeholders, attempting to change stakeholder expectations.	Workshops	
	1. Manipulation		Verified corporate social reports Briefing sessions, leaflets, newsletters, magazines, corporate reports	

Source: Friedman and Miles 2006, p. 162

Inherent in the above approaches to the recognition and management of stakeholders is the idea that successfully managing stakeholder concerns could give a company a competitive advantage and so benefit its shareholders. Harrison, Bosse and Phillips (2010) propose a model for successful interaction in which both executives and stakeholders would disclose their utility functions to each other in the expectation that this would enable them to develop the firm to their mutual advantage. This approach is supported by Wu (2012, p. 160) when he suggests that 'an enterprise should acknowledge the needs of its multiple stakeholders and collaborate with them to generate value that can benefit itself as well as its stakeholders'. These approaches are based on trust - particularly on that trust extended by stakeholders to the company and its representatives and it has been suggested that this trust could be influenced by either the good name of the company or its reputation. Tuck (2012) suggests three bases for assessing how trustworthy a company might be. They are: (i) an estimate of reputation formed by individual stakeholder groups; (ii) the network of associations by which individual stakeholder groups transmit and compare their estimate of reputation; and (iii) the perception of the reputation of the industry to which the company belongs.

There is considerable evidence suggesting a strong link between stakeholder engagement, competitive advantage and corporate sustainability. However, Sarker (2011), after a study of social responsibility in the Australian and Malaysian oil and gas industries, concluded that ‘A severe lack of stakeholder engagement is a major failing in the Australian mining industry especially when it comes to coal seam gas projects.’. He then suggests that regulation of stakeholder/company interaction is not the answer and that there is a need for a strategic stakeholder model that involves all parties on a continuous basis.

Weiss (n.d., p. 106) suggests that there are five ‘cracks’ in the foundation of Stakeholder Theory that raise serious doubt about the validity and utility of any prescriptions that it offers. These ‘cracks’ are:

1. Conceptual confounds - Weiss suggests that the theory confuses the terms enterprise and corporation and that, as most of the business entities in the USA are sole traders and not corporations, the conclusions drawn are not relevant to most business entities. The situation in Australia could be similar as the second larger group of business entities there also centres on sole proprietors (Table 2.1).
2. The idea of a social contract for business – Weiss maintains that, if there is a social contract for business in a capitalist society, it lies only in the provision of rights and institutional arrangements that support the creation of enterprises. He also maintains that Stakeholder Theory assumes that value creation resides in the enterprise itself and that stakeholders have a claim on some of this value because the enterprise is a creature of society.

3. The general applicability of Stakeholder Theory – Weiss suggests that because ownership of an enterprise is diffuse, the property rights and moral agency of owners are increasingly irrelevant. This diffusion of ownership, he maintains, opens the way for further legitimating the claims of stakeholders against those of owners.
4. Ownership and property rights – Weiss suggests that, given the diversity of ownership in a modern corporation, the concept of maximising the wealth (or other interests of stockholders) cannot morally be taken as being more privileged than maintaining the interests of others who have a stake in the business.
5. The ideological defence of a Professional-Managerial Class – Weis maintains that if the basic premise of Shareholder Theory (the property rights of owners) is repudiated, then this repudiation of conventional rights would also legitimate the control of the enterprise by management and establish its independence in identifying, balancing, responding to and mediating among the interests of different stakeholders.

Overall, Weiss (n.d., p. 9) maintains that Stakeholder Theory might be too limited and its foundation too weak to be considered as either valid or useful. This claim is not considered in the analyses reported in Chapter 7, but, due to the time constraints of a PhD thesis, is left to a later date for examination in the Australian context.

Freeman (1994, p.43) also raises the matter of a social contract between local communities and companies working within their boundaries. He postulates that a local community grants a firm the right to build facilities within its boundary and so benefits from its tax base and economic and social contributions. In return for the provision of local support services, the firm is expected to be a good corporate citizen. However, if the firm runs into trouble and then fails to inform the local community and to work with that community to overcome the problem, it is in the same position as a citizen who commits a crime. That is, it has violated the social contract and can expect to be distrusted and ostracised.

3.2.6 Institutional Theory

According to Kraft and Furlong (2007), Institutional Theory is ‘policy making that emphasises the formal and legal aspects of government structures’. The theory faces the same major difficulty that Transaction Cost Theory does – there is no widely accepted understanding as to what an institution might be. (Scott 1995, p. 33) describes institutions as being:

> … social structures that have attained a high degree of resilience. They are composed of cultural-cognitive, normative, and regulative elements that, together with associated activities and resources, provide stability and meaning to social life.

Institutional Theory has been developed over many years. However, during the 1970s, a subset, known as New Institutional Theory, became dominant and it is this branch of the theory that is used in this thesis. Berthod (2017) suggests that the approach is based on beliefs, rules, design features and practices that are accepted as norms and that underlie the creation and spread of organisational forms. He also contends that compliance with these norms assists the gaining of legitimacy, decreases uncertainty and improves an understanding of organisational actions and activities. Scott (1991, p. 165) reinforces this understanding with his view that these beliefs and rules include symbolic elements that are capable of affecting organisational forms. It is easy to understand that the rules would include organisational forms, design features and rules as are contained in the (Australian) *Corporations Act 2001* (Parliament of Australia 2001) and the boundaries to corporate activities as maintained by both ASIC and the APRA. However, they would also include design features such as the multidivisional firm (Fligstein 1985) and the guidance provided by the implicit social contract between society, government and business.

Scott (1995) supports this latter view when he suggests that while companies may seem to be formed so as to reflect the values and interests of their owners, they must conform to the rules and belief systems prevailing in the community and its environment if they are to survive. These rules and belief systems are often found in the institutions and bureaucracies that a society creates to facilitate and govern activities (including business activities) within its boundaries. In Australia, these institutions include political power and freedom, the base for legislation, the courts of law, industry regulators, ownership structures, property rights, the existence of stock markets, openness to trade, finance institutions and corporate governance requirements. The bureaucracies include the Commonwealth and State Parliaments, their structures for examining possible changes to corporate legislation, facilitating organisations such as the ASX and industry associations. Another 'institution' that has a major potential for impact on business activities in Australia is Royal Commissions (such as the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry). The findings of this Royal Commission and its implications for the banking, insurance, superannuation and financial services industries in Australia are considered in Chapter 7.

Dimaggio and Powell (1991, pp. 1-38) suggest that Institutional Theory 'seeks to find cognitive and cultural explanations for social and organisational phenomena by considering properties … that cannot be reduced to aggregations or direct consequences of individual attributes or motives'. This approach is also considered in Chapter 7.

3.2.7 Theories relating to the growth of the firm

There are two theories examined in this subsection of the thesis. They are the Theory of the Growth of the Firm and the Theory of the International/Multinational Firm. Both these theories are extensions of the Transaction Cost approach based on the work of Coase (1937).

3.2.7.1 The Theory of the Growth of the Firm

The major assumptions that underlie this theory are that:

(i) a desire to increase total long run profit is the goal of those running the firm;

(ii) firms will want to expand as fast as they can to take advantage of the opportunities that they find to be profitable; and

(iii) each firm's managerial team will have acquired skills in combining and managing resources that are based on the firm's historical development.

There are a number of early contributors (Marris (1971) being a major contributor) to the development of this theory, but a significant contribution is found in the writings of Penrose (1995). The contribution made by Penrose is now known as 'the Penrose Restraint' (Devine, Lee, Jones & Tyson (2019) Chapter 4 (no page numbers given)). This 'restraint' suggests that, given the ready availability of opportunity and capital, the rate of growth of a firm depends on the internal availability of managerial entrepreneurism, skills and experience. Penrose recognises that any required skill can be acquired (at a price) but suggests that it will take time to adapt that skill to business entity processes and practices (Devine et al. 2019, Chapter 4).

Devine et al. (2019, Chapter 4) suggest that the rate and direction of expansion will depend on the inducements and obstacles presented to the firm. These include:

- internal inducements – an unused/underused pool of productive resources;
- internal obstacles – scarcity of managerial skills and experience;
- external inducements – changes in demand, technological innovation and changes in the market that allow the firm to improve its competitive position; and
- external obstacles – competition, patents or other restrictions on the availability of knowledge and scarcity of the factors of production.

According to Devine et al. (2019, Chapter 4), it is the balance between the internal and external factors that will drive expansion. However, Penrose also offers the following warning:

> … if a firm deliberately or inadvertently expands its organisation more rapidly than the individuals in the expanding organisation can obtain the experience with each other and with the firm that is necessary for the effective operation of the group, the efficiency of the firm will suffer, even if the optimum adjustments are made in the administrative structure.

The essence of this warning is that there is an upper limit on the rate of growth within any enterprise.

BHP (Number 6 in the ASX 100 index at 30 June 2016) provides some evidence of the adverse impacts of growth in its annual reports. After having spent a total of A$50 billion in the acquisition and development of shale oil leases in North America since 2011, BHP announced, in 2017, that it would sell those leases as soon as possible (Letts 23 August 2017). This followed a reduction in the potential resource represented by the leases of 337 million barrels of oil equivalent in the company's 2016 Annual Report (BHP 2016, p. 245).

3.2.7.2 The Theory of Multinational Enterprises

There have been many attempts at describing multinational enterprises. What they all have in common is existence of an income generating enterprise in more than one country. Where they differ is in describing the extent of ownership of enterprises in other than the parent country. After a review of the literature, Kusluvan (1998, p. 163) suggests that such ownership means majority ownership (more than 50%). The United Nations is, however, happy with accepting a much lower threshold and has accepted that firms that had either control of ten percent of the voting stock or of twenty five percent of the sales or assets of a foreign associate should be regarded as Multinational Enterprises (MNEs) (United Nations 1973, p. 5). As another description, Vernon (1971) suggests that, to be of a suitable size to be considered a MNE, a company group should operate in at least six countries and have a turnover of at least US$100 million in sales. These descriptors are now dated, but they describe a view that prevailed in the late 20th Century. A paper by Dunning (1989, p. 5), however, gives a description that serves the present well. An MNE is '… an enterprise which owns or controls value adding activities in two or more countries. These activities might lead to the production of tangible goods or intangible services or some combination of the two.' Many of the ASX 100 index companies (as at 30 June 2016) meet these descriptions and are explored against the Theory of Multinational Enterprises in Chapter 7.

The Theory of Multinational Enterprises is based in Transaction Cost Theory and maintains that 'if firms incur lower costs or higher revenues, then they will internalise markets across national boundaries' (Kusluvan 1998, p. 172). Buckley and Casson (1976, p. 74) propose four factors that could be behind such an international internalisation decision. They are:

- industry specific factors relating to the nature of the product and to the structure of the external market;

- region specific factors relating to the geographical and social characteristics of the regions linked by the market;
- nation specific factors relating to the political and fiscal relations between the nations concerned; and
- firm specific factors which reflect the ability of management to organise an internal market.

There are other explanations as to why firms might engage in international expansion. The two approaches briefly examined here are Kindleberger's (1969) market imperfections thesis and Johnson's (1970) public goods approach. Kindleberger (1969)) argues that, in a world of perfect market competition, foreign direct investment would not exist. He then suggests that one of four market imperfections must be a driver of foreign expansion. These imperfections are:

- ownership of a brand name, product differentiation, marketing skills and pricing;
- unavailability of technology, discrimination in access to the capital market and differences in the skills of managers;
- economies of scale either external to or internal within the market; and
- government limitations on entry to the market or on enterprise output.

Johnson (1970) considers special knowledge and skills to be the most important 'public good' of a firm and suggests that these 'public goods' could be exploited, in a foreign market, at little, or no, extra cost to the enterprise. This knowledge could result from research and development and would arise from the production of information. As with the Neo-classical Theory of the Firm, this knowledge would reside in the firm's 'black box' and could be used to give the firm a competitive advantage. This approach fits well with Vernon's (1966) product life cycle approach – in which he recognised three stages in the life of any product. They are: (i) the new product; (ii) the maturing product; and (iii) the standardised product. These stages assist with product differentiation (see Kindleberger 1969) and can also lead to a competitive advantage.

A purpose of the research behind this thesis is to determine the utility of existing TOTF in explaining the existence and operation of companies listed in the ASX 100 index as at 30 June 2016. Consequently, although the Theory of Multinational Enterprises is used in the analysis undertaken in Chapter 7, not all of the issues recognised above are explored in that chapter. However, the theory does reveal useful information about the ASX 100 companies and will form the base for future research.

3.2.8 Contemporary theories of the firm

There are two contemporary theories of the firm. The first is the Theory of the Evolutionary Firm (as proposed by Frederick (2004)) and the second is the Sustainability Oriented Theory of the Firm proposed by Lozano et al. (2015).

3.2.8.1 The Theory of the Evolutionary Firm

The Theory of the Evolutionary Firm has its foundations in the work of Frederick (2004) - who suggests that a firm has both organic and non-organic components, but is, itself, not organic. The theory suggests that a firm survives and grows because of its ability to learn and to adapt.

The Evolutionary Theory considers the firm to be motivated by profit but differs from the Neo-classical TOTF in that the firm is not assumed to be profit maximising. Rather, the theory suggests that the evolutionary (and profitable) corporation will drive less profitable competitors out of business (Lozano et al. 2015, p. 435). Proponents of the theory further suggest that this 'survival of the fittest' approach does not mean that the firm that does survive is the most ruthless, corrupt or unethical or that the long term survival of any firm is guaranteed (Lozano et al. 2015, p. 435). According to Holzl (2005) this theory can help to understand industrial dynamics (for example: routines and behaviour) and the cognitive nature of the firm (especially knowledge development, processing and storage).

Frederick (2004, pp. 147–149) describes the evolutionary firm as follows:

> The firm has organic and non-organic parts but is not itself organic or genic. The firm's organic core is a coalition – an alliance, a collective, a team – of biological agents (i.e. people) who act collectively and symbolically as an adaptive unit,

> displaying a suite of organic behaviours and interacting with the environment as do all organisms.

Frederick (2004, pp. 146-150) identifies the five core functions of the evolutionary firm as being: (i) motivator/driver; (ii) innovator/generator; (iii) organiser/co-ordinator; (iv) enabler/strategizer; and (v) moralizer/valuator. He then suggests that a careful examination and delineation of these functions offers a framework for enquiry into the moral behaviour of firms.

There is one company listed in the ASX 200 index, as at 30 June 2016, that can easily be categorised as being evolutionary and that is the New Hope Corporation Limited (NHC). NHC began as an underground coal miner in the Bundamba section of the West Moreton Coal Field (in south east Queensland) and became a horizontally integrated miner when it expanded into open cut mining at Jeebropilly. Downstream vertical integration began when the company acquired a bulk coal export terminal on the Brisbane River and the evolutionary growth of NHC began when it realised that the bulk loading facility was of interest to others and expanded its capacity. This learning and growth in different directions continued when NHC acquired a significant interest in Arrow Energy NL – a major player in the then embryonic coal seam gas (CSG) industry in Queensland. The evolution of NHC into a diversified energy company continued when it bought the Bridgeport Energy Group and so entered into oil exploration and production. Innovation gained pace when NHC invested in coal to liquids (CTL) research and started to build a pilot conversion plant at its Jeebropilly site. Innovation also continued when NHC began a project to demonstrate that rehabilitated land at its Acland mine (north of Toowoomba) could produce cattle at least as profitably as could nearby unmined land. NHC has always held a major crossholding of shares in its own major shareholder (Washington H Soul Pattison) and annually receives a significant cash flow from this and other investments. Not all of these diversifications have been long lasting or successful and NHC sold out of Arrow Energy when that company was bought by Royal Dutch Shell plc and PetroChina Ltd. It also closed its CTL pilot plant when no commercial application could be found for the research (NHC 2015,).

The NHC 2015 Annual Report shows that its net profit for the year results from significant income from its investments, a small profit on its coal sales and handling activities and a loss on its oil based operations (NHC 2015 Annual Report and Financial Statements). While many of its local coal mining competitors have ceased operation, NHC continues to trade profitably (even if at a declining rate of profit) and so is a reasonable example of the characteristics of an evolutionary firm identified by Lozano et al. (2015) and Frederick (2004).

3.2.8.2 The Sustainability Oriented Theory of the Firm.

Some TOTF (such as the Neo-classical and Transaction Cost Theories) are best understood as being applicable to companies in the short term. The Sustainability Oriented TOTF considers how the firm might be made sustainable in the long term and is described in the works of Lozano et al. (2015). These authors conclude that none of the existing TOTF provides an extensive coverage of corporate responses to sustainability issues. They then develop a theory that builds on the profit motive described by Friedman (1962) and that integrates aspects of Principal/Agent, Transaction Cost, Resource and Stakeholder theories. Miron, Petcu and Sobolevschi (2011, p. 175) suggest that there are four criteria that predict how a corporation might develop and maintain a sustainable, competitive advantage. These criteria are: (i) performance in the market; (ii) performance of research and development; (iii) economic and financial performance; and (iv) social performance. These criteria have been subsequently adjusted to include technology, flexibility in operations and trends within the industry sector.

The Sustainability Oriented TOTF advocated by Lozano et al. (2015, p. 440) states:

> The firm is a profit generating entity in a state of constant evolution. This entity is a system comprised of resources and networks of relationships with stakeholders. The firm's employees are responsible to represent the firm, manage its resources and empower its stakeholders so that the firm complies with laws, maintains its 'licence to operate', increases its competitive advantage and better contributes to foster the evolution of more sustainable societies by holistically addressing the economic, social and time dimensions.

Although the theory postulated by Lozano et al. (2015) may be reasonably new, approaches to corporate sustainability reporting in Australia are not. In June 2003, the (Commonwealth) Department for the Environment and Heritage published a guide titled *Triple Bottom Line Reporting In Australia – A Guide to Reporting Against Environmental Indicators*. Fifty three organisations participated in the development of the guide. Chapter 1 of which states that 'Triple Bottom Line reporting is becoming an accepted approach for organisations to demonstrate they have strategies for sustainable growth.' (Department for the Environment and Heritage 2003, p. 3). Participants in the development of the guide that are still in the ASX 100 index are WBC, RIO, IAG, ORI and BEN (Numbers 2, 16, 24, 34 and 72 in the ASX 100 index (as at 30 June 2016) shown in Attachment 1). However, in 2007, KPMG analysed the sustainability reporting of the top 100 public and the top 100 private companies in Australia and reported variable results. The principal findings were that although corporate sustainability reporting, in Australia, was increasing, there was a considerable lag behind similar reporting in other countries (KPMG 2007, p. 2).

A further KPMG (2008, pp. 2, 3, 9) report suggests that:

- publishing a sustainability report has a strong positive impact on readers' views of the reporting company;
- readers use the reports to understand the specific sustainability issues of the company and to establish the company's accountability for those issues;
- readers want to see a stronger role for stakeholders in the reporting of issues and in analysing company performance against them;
- readers use such reports as a base for further decisions about their relationship with the company; and
- readers believe that reporting companies were likely to omit failures from their sustainability reports.

In July 2014, McKinsey and Company published the results of a global survey on sustainability's strategic value. The survey covers more than 2 900 companies – some of which (94) are in the extractive industries (McKinsey and Company 2014, p.

1). The three principal reasons (McKinsey and Company 2014, Exhibit 3) that the surveyed companies address sustainability issues are:

- to demonstrate alignment with the company's values and business goals;
- to build, maintain and/or improve corporate reputation; and
- to improve operational efficiency and to lower costs.

The major characteristics in approaches to corporate sustainability reported in the survey (McKinsey 2004, sidebar to Exhibit 6) are:

- actively engaged leaders at all levels, employee engagement and a clear strategy;
- a clear business structure and accountability measures;
- use of external ideas, networks and relationships; and
- a focus on talent and employee incentives for sustainable work practices.

The above analysis of the TOTF answers background question five in Section 1.3

The above material is used, in Chapter 7, to explore the utility of the Sustainability Oriented TOTF in helping to understand the existence and activities of companies listed in the ASX 100 index as at 30 June 2016.

3.3 Gaps in the literature

While the above review of literature associated with TOTF is extensive, it is not exhaustive. It is sufficient, however, to enable the identification of gaps that might be addressed by additional research:

The major gaps identified firm include:

- few of the TOTF recognised in the research behind this thesis address more than one or two aspects of the creation, existence and operation of companies;
- some of the recognised TOTF are more readily applicable to business enterprises other than public, limited liability companies;
- several of the TOTF require access to data on companies that is not in the public realm;

- little work appears to have been addressed at assessing the utility of existing TOTF in understanding the creation, existence and operation of public, limited liability, companies; and
- despite several calls for the development of an integrated TOTF, little work in this area is reported.

Only points four and five are addressed in Chapter 7. This is because they have a direct relevance to understanding the creation, existence and operation of public, limited liability, companies contained in the ASX 100 index as at 30 June 2016. While the other three points are certainly worthy of further research they are left to a future when the time and financial constraints of a PhD thesis will not limit their exploration. The next section of this thesis addresses the need for an integrated TOTF.

3.4 The need for and possible contents of an integrated TOTF

The need for an integrated TOTF is recognised in the works of Hart (1989), Miner (2003) Foss et al. (2004) and Radin (2004). A fitting introduction to this section of the thesis can be found in Hart's (1989) observation that 'Most formal models of the firm are extremely rudimentary, capable only of portraying hypothetical firms that bear little relationship to the complex organisations we see in the world.'. Miner (2003, p. 259) offers guidance on how a theory should be constructed in the statement 'If one wishes to create a highly valid theory, which is also constructed with the purpose of enhanced usefulness in practice in mind, it would be best to look to motivation theories, often with a more limited domain, for an appropriate model.' These motivation theories can be found in the works of Mazlow (1943), Herzberg (1959) and McGregor (1960) and are considered in the creation of a new, integrated, TOTF in Chapter 8.

Foss et al. (2004) and Radin (2004) suggest what the contents of a more useful TOTF might be and these suggestions are outlined in Section 1.3. One of the major omissions from most of the theories examined in Section 3.3 is any outline of tests by which other researchers might be able to explore the utility of the theories in explaining the creation, existence and operation of firms in a way that does not require access to data normally not published in company annual reports. This matter is addressed in the creation of a new, integrated TOTF in Chapter 8.

The outline of the contents of a more useful TOTF above partly answers background question 7 as posed in Section 1.3. A more complete answer is given in Chapter 8.

3.5 A Summary of the chapter

The objectives of this chapter of the thesis are:

- to review the literature relating to the TOTF recognised in Section 1.2;
- to identify gaps in the literature that could be addressed by further research; and
- to guide the development of a conceptual model that will act as the framework for the research philosophy and strategy used to explore the analysis undertaken in Chapter 7.

Chapter 3, therefore, contains a summary of the literature relating to twenty one existing TOTF. While extensive, the data presented is not an exhaustive exploration of the literature. It is, however, sufficient to enable the deduction of characteristics against which the ASX 100 companies might be compared and the recognition of major gaps in the literature that might form the base for future research.

There is a counterpoint to the present understanding of TOTF. Braendle (n.d., p. 16) suggests that existing TOTF are of a negative nature – in that they tend to describe the existence of firms as a means of overcoming inefficiencies and that there is a need for a positive TOTF that focusses on matters such as generating value. Demsetz (1988) suggested that one positive function of the firm is as an efficient device for accumulating, storing and using knowledge. These matters are considered in Chapter 8 - the chapter devoted to the development of an integrated theory of the firm.

Chapter 3 has explored the characteristics of twenty one TOTF. Chapter 4 now examines how the social contract between society, government and business might impact on those theories.

CHAPTER 4 LITERATURE REVIEW – THE SOCIAL CONTRACT BETWEEN SOCIETY, GOVERNMENT AND BUSINESS

4.1 Introduction to this chapter

Chapter 3 explored the characteristics of the twenty one TOTF recognised in Chapter 1. Chapter 4 now explores how the social contract between society, government and business might impact on those theories.

Whether or not there is (or should be) a social contract between society, government and business is often strongly debated. Friedman (1970, p. 1) suggested that the responsibility of corporations, and of their executives, was ‘to make as much money as possible while conforming with the rules of society, both those embodied in law and those embodied in ethical customs’. However, Bishop (2008, p.210) countered with a view that:

> … corporations have the right to be autonomous, to engage in economic activities and to pursue private purposes. They have a responsibility to respect human freedom and rights, but they do not have pre-legal responsibilities to pursue any social goals.

Byerly (2013, p. 13) is close to Friedman’s view and suggests that in times of social change and with increasing emphasis on global issues, there are larger expectations of powerful multinational business institutions to legitimately use their power and influence for the common good. Cho (2009, p. 35) carries this contention further and maintains that corporations are tied to society by a social contract and that any breach of this contract could lead to revocation of the contract as a whole.

This chapter explores the literature relating to this social contract, the social licence to operate that surrounds it and corporate social responsibility.

The objectives of the chapter are:

- to review the literature relating to the social contract between society, government and business and the social licence to operate that surrounds that contract;

- to identify how constantly evolving community values find their way into the social contract;
- to identify gaps in the literature that could be addressed by further research; and
- to guide the development of a conceptual model that will act as the framework for the research philosophy and strategy used in the research reported and analysed in Chapter 7.

Figure 4.1 shows how this chapter fits into the overall structure of the thesis.

Chapter 3 Business entities	Content:	• Existing theories of the firm • Gaps in the literature • The need for an integrated theory of the firm
Chapter 4 Literature review – The social contract between society, government and business	Content:	• Section 4.1 introduces the chapter • Section 4.2 explores the social contract, the licence to operate that surrounds it and corporate social responsibility; • Section 4.3 summarises the gaps in the literature identified in Section 4.2; • Section 4.4 provides a summary of the chapter.
Chapter 5 Literature Review – Corporate ethics and Corporate governance	Content:	• Corporate ethics • Corporate governance • Gaps in the literature • Implications for an integrated TOTF.

FIGURE 4.1: The structure of Chapter 4 and its connection to Chapters 3 and 5

4.2 The social contract between society, government and business

The concept of a social contract between members of a community and the governance structure that that community erects so as to achieve common goals is an old one. While the social contract between society, government and the businesses that operate within that society is not as old, it is an enduring one and one that places additional obligations on business. These two concepts are explored in this section of the thesis as is the evolving nature of the social contract that grows out of changing societal values. In addition to the social contract between the whole of a society and government and the businesses that operate within their boundaries, there is a further relationship between a local community and any business that operates within its boundary. This relationship may require a specific social licence to operate (SLTO) that must be constantly maintained. This concept is also explored in this section of the thesis – as is the social responsibility that businesses may incur as a result of their relationship with local communities.

4.2.1 The social contract between society and government

The concept of a social contract has its origin in the writings of Plato and continues to excite contributions and debate until the present. Despite this interest, questions as to whom the contract is between, the binding nature of such a contract and the way in which the terms of such a contract might be ratified still arise. The purpose of this sub-section is to develop a brief overview of what such a contract might entail as the base for widening the concept to include business entities.

Plato attributes the following statement to Glaucon (Plato Book II – The Ring of Gyges):

> They say that to do injustice is, by nature, good; to suffer injustice, evil but that the evil is greater than the good. And so when men have both done and suffered injustice and have experienced both, not being able to avoid the one and to obtain the other, they think that they had better agree amongst themselves to have neither; hence arise laws and mutual covenants; and that which is ordered by law is termed by them to be lawful and just.

This statement covers the basic concept of men (sic) recognising a position that is to their mutual advantage and agreeing to be bound by that which they have accepted. Hobbes (1651) develops a strong argument in support of this proposition when he posits that, in the absence of law and order, everyone would have unlimited freedoms that could lead to war between all. To avoid such conflict, free people would contract with each other to establish a civil society in which they would all gain security by subjecting themselves to the absolute authority of one person (or an assembly of persons). Hobbes (1651) thus advanced the discussion from considering an agreement between people to being an agreement between people who willingly submit themselves to a civil society and to government.

Locke (1689), Rousseau (1762), Hume (1741), Kant (1797), Rawls (1958 & 1996), Gauthier (1986) and Freeman (2007) all started from the same basic position but then found difficulties with almost all parts of the concept. Locke (1689) and Rousseau (1762) argued that law and order were human (not natural) creations and that they may be the best way of obtaining a general welfare while maintaining individual freedoms. However, they then suggested that the authority that created and maintained such law and order was only legitimate (and might only be supported) as long as it maintained the contract to the satisfaction of those whose interests it represented: that is, the authority maintained the consent of the governed.

This wider concept then leads to the quandary recognised by Rawls (1958) – all parties to the negotiation might not have either the same expectations of the outcome or start with the same information. This quandary leads to the expectation that an appreciation of this difference is necessary before discussion can begin. If these starting points can be recognised, then the major social institutions of a society (political constitution, legally enforceable forms of property, organisation of the economy and the nature of the family) will all fit into the basic structure sought (Rawls 1996, p. 258). This does assume, however, that all parties reason in the same way and this may not be the case. Where differences persist, they might be resolved by bargaining, by aggregation of solutions or by determining an equilibrium acceptable to most (Stanford Encyclopedia of Philosophy 1996, pp. 9-10). Rawls (1958) is not in favour of bargaining as he believes that such approaches rely on the 'threat advantage' held by some of the parties.

The above discussion appears to apply priority to consent by the parties to an agreed social contract. However, Kant (1797) suggests that consent is not fundamental to a social contract but maintains that, if the various parties have agreed to such a contract, then they have a duty to act according to its terms. Such consideration would appear to be fundamental to any approach seeking to involve 'real persons' (such as companies) in the social contract between society and government and this approach is now explored. This suggestion will be considered in the formulation of the new, integrated, TOTF in Chapter 8.

4.2.2 The social contract between society, government and business

(Byerly 2013, p.7) suggests that inherent in Rawls' (1958) reasoning is the recognition that society would not endure without rules regarding property, the transfer of goods and services, regulation of economic production, trade and consumption and without some political mechanism for enforcing economic and co-operative norms. Such agreements might be best obtained through a social contract.

These concepts are some of the founding blocks of business entities and Rawls' (1958) reasoning expands an earlier approach by Dodd (1932) - who hypothesises that business has a responsibility towards society (as a whole) because society allows and encourages business to exist as a service to the community and not primarily as a means of profit for its owners. Carroll (1991) suggests that this implied social contract brings business into an acknowledged relationship with society and that business entities function by public consent. This view would require that business entities consent to the basic purpose of serving society by assuming broader responsibilities, by serving a range of human values and by contributing more to the quality of life than just supplying goods and services (Byerly 2013, p. 7). Byerly (2013, p. 8) also suggests that the social contract be seen as being binding on business and not be seen as artificial, idealistic and conceptual until 'governing officials make it official'. Perhaps a suitable conclusion to this part of the thesis can be found in the words of Byerly (2013, p. 8) 'Where law and governance do not exist to protect society from harm, the social contract becomes paramount.'

While it is easy to recognise that an implicit contract could exist between a specific society, its government and businesses that operate within that jurisdiction, many businesses now operate on a multinational basis and it becomes necessary to contemplate the possible existence of an implicit, multinational, social contract. Several authors (Cragg (2000), Kathrani (2010) and Waddock (2005)) consider that not only is such a contract a possibility, but that it is already emerging. Byerly (2013, p. 5) summarises their views:

> Yet a few offer hope and argument that a new normative global ethic and social contract is emerging that frames business activities in the global marketplace, includes recognition by businesses of their obligations to communities and citizenship, that acknowledges respect for fundamental human values, and that embraces partnerships with government and civil society.

Byerly (2013, p. 5) argues that the drivers behind this emerging, multinational, social contract lie in a changing paradigm in both domestic and multinational corporate worlds. These drivers are: (i) growing societal concerns and expectations in an interdependent global society; and (ii) the rapidly expanding presence, power and influence of global corporations. Many of the ASX 100 companies (as at 30 June 2016 examined in the analysis reported in Chapter 7 are multinational in nature and the impact of an emerging global social contract on them needs consideration. It therefore has a roll in the development of the integrated TOTF suggested in Section 1.3.

Sections 4.2.1 and 4.2.2 have considered the evolution of the social contract to date and the ways that it has been supported by changes in law. However, there have been several attempts to modify corporate legislation in Australia that, while being based on changing societal values and expectations, have been unsuccessful. Three of these attempts are briefly examined in Section 4.2.3

4.2.3 The evolving social contract in Australia

The social contract between society, government and business is in a constant state of change and many of these changes either find their ultimate expression in law or in attempts to change laws. A major change occurred in 2011. Probably as a result of changing stakeholder expectations around corporate accountability and transparency in activities, the Commonwealth Government passed an amendment to the *Corporations Act 2001* that gave shareholders the power to reject certain executive remuneration decisions by a board of directors. If such rejection occurred two years in succession, the shareholders could then vote on a spill of the board (Wilkins 8

October 2012). The impact of this change, on both company/shareholder relations and on Shareholder Theory, is examined in Chapter 7. However, other attempts to change corporate law to reflect changes in community expectations have not been successful. Business should, however, remain aware of these attempted changes as they do represent changes in societal attitudes that could have a future impact on business operations. The following sub-sections outline three changes in attitudes toward businesses, in Australia, that are worthy of continuing study by business owners and managers.

4.2.3.1 The *Corporations Act 2001*, the responsibilities of directors and CSR

On 30 June 2005, the (Commonwealth) Parliamentary Joint Committee on Corporations and Financial Services resolved to investigate the ability of company directors to respond to the needs of stakeholders other than shareholders and of the broader community (Commonwealth of Australia 2006). The terms of reference for the Committee's investigation (Commonwealth of Australia 2006, Terms of Reference) included:

(a) The extent to which organisational decision-makers have an existing regard for the interests of stakeholders other than shareholders, and the broader community.

(b) The extent to which organisational decision-makers should have regard for the interests of stakeholders other than shareholders, and the broader community.

(c) The extent to which the current legal framework governing directors' duties encourages or discourages them from having regard for the interests of stakeholders other than shareholders, and the broader community.

(d) Whether revision of the legal framework, particularly to the *Corporations Act 2001*, are required to … encourage incorporated entities or directors to have regard for the interests of stakeholders other than shareholders and the broader community. In considering this matter, the Committee will also have regard to obligations that exist in laws other than the Corporations Act.

A dominant theme amongst corporate input to the investigation was that the enlightened self-interest of directors meant that they would consider (and act upon) the legitimate interests of stakeholders other than shareholders to the extent that these interests were relevant to the corporation and that there was no need to change the

Corporations Act 2001 '… because it is currently sufficiently open to allow companies to pursue a strategy of enlightened self- interest' (Commonwealth of Australia 2006). The Committee obviously accepted this argument as its first recommendation was:

> The Committee finds that the Corporations Act 2001 permits directors to have regard for the interests of stakeholders other than shareholders, and recommends that amendment to the directors' duties provisions within the Corporations Act are not required.

The hearing by the Committee represented an attempt, by Australian society, to have their changing expectation as to wider stakeholder interests incorporated into corporate legislation. Although the *Corporations Act 2001* was not changed on this occasion, the hearing did demonstrate how the social contract between Australian society, government and business is evolving and gives fair warning that corporate activities do not always meet with overwhelming community support. Such possible changes have implications for Stakeholder and Shareholder Theories as well as for Principal/Agent, Evolutionary and Corporate Sustainability Theories. As such they are considered in the formulation of the new, integrated, theory in Chapter 8.

4.2.3.2 The Queensland Protection of Prime Agricultural Land and Other Land from Coal Seam Gas Mining Bill 2013

In June 2013, the Parliament of Queensland referred a Private Member's bill to the Agriculture, Resources and Environment Committee of the House for consideration. The *Bill* (Parliament of Queensland 2013) sought to:

- Prohibit all coal seam gas and other exploration mining activities east of the Condamine River from Chinchilla to the New South Wales border and from a longitudinal line running directly through the Chinchilla Post Office east to the coast; and
- Protect any land under the *Strategic Cropping Land Act 2011*.

The *Bill* represented the anti-coal seam gas mining sentiments of many communities in South East Queensland (see Scenic Rim Regional Council 2011). However, the Committee decided that the disadvantages disclosed in the drafting of the *Bill* outweighed any advantages that it might confer on such communities and recommended that the *Bill* be allowed to lapse. This attempt to reinforce the implicit, changing, local, social contract between the communities of South East Queensland, the State Government and companies exploring for or developing coal seam gas deposits in the area failed. However, it did serve notice to companies of a change in community values that they would have been wise to heed. The companies listed in the ASX 100 index (as at 30 June 2016) that might have been affected by the proposal are AGL Ltd (Number 26) and Santos Ltd (Number 50). Again, the implications of the proposed changes are considered in the development of the new, integrated, theory of the firm proposed in Chapter 8.

4.2.3.3 The Productivity Commission report on Competition in the Australian Financial System dated 29 June 2018

On 29 June 2018, the Australian Productivity Commission delivered, to the Australian Government, its final report on an enquiry into the Australian financial system (Productivity Commission 29 June 2018). Among its many recommendations, the one that has particular importance for the creation of a more ethical environment around Australian public companies is Recommendation 9.2 – the creation, within all financial sector companies (particularly within banks and insurance companies) of a Principal Integrity Officer (PIO). This recommendation (Productivity Commission 29 June 2018, p. 44) requires the Australian Government to mandate:

- that a PIO should have a statutory duty to advise the entity's board on performance related to remuneration and practices that may be inconsistent with serving a customer's best interests … ; and
- that the PIO would be required to report independently to ASIC an unsatisfactory response to its reports, including persistent failures of (the entity's) board to observe standards supporting consumer best interest obligations.

The Government was not expected to act on the recommendations until 2019 (and there has, as yet, been no further action) but the manner in which financial service organisations report on the ethical aspects of relationships between their staff and agents and their customers was about to change. The impacts of such a change are considered in the development of the new, integrated, theory of the firm in Chapter 8.

Other avenues for understanding the evolving nature of the social contract between society, government and business can be found in the research undertaken in academic institutions and in the published papers and public addresses of such bodies. One such example arises from research undertaken within the Australian Graduate School of Management (University of New South Wales) and made public through a colloquium held in July 2019. The research was undertaken with the co-operation of directors from AMP, CBA, BHP, QAN, JHL, ORI (all ASX 100 companies as at 30 June 2016), AWB Ltd and Storm Financial and explores how directors can validate the decisions made by senior managers without interfering with the decision making of those managers and without becoming involved in the day to day activities of a company (Knight 28 June 2019). Such an enquiry arises from the changing societal expectations of directors (and of the companies that they lead) and goes directly to the heart of both Principal/Agent and Stewardship TOTF.

Although there is, as yet, no call for changes to the (Australian) *Corporations Act 2001* of the nature of those in the proposed American *Accountable Capitalism Act* (see Section 2.4.2), it would be wise for Australian directors to be aware of the direction and intent of such changes and for them to contemplate how such modification to the local social contract between society, government and business might be accommodated in Australian practice. Some of these changing expectations are amongst the issues explored in the next section of this thesis.

4.2.4 A local social contract

Australian companies may be formed in accord with and be governed under Commonwealth and State legislation, but they operate in local communities. Such companies certainly bring employment and purchasing opportunities, but their operations may also have dramatic (and adverse) impacts on the physical environment (such as in open cut mining) and on the quality of life of local residents. Examples of these impacts include the noise generated by manufacturing equipment or by the operation of wind turbines. If a company mismanages its relationship with the local community and violates its social contract with that community it 'should expect to be distrusted and ostracized' and should not be surprised if punitive measures are invoked (Freeman 2012). Cho (2009, p. 35) reinforces this view when he maintains that:

> Society provides corporations with a legitimate status: thus an organisation's quest for legitimacy is primarily defined by a social contract that is established between corporations and society … not merely with its shareholders. However, a breach of this contract may lead to revocation of the contract itself.

Anshen (1970, pp. 9-10) suggests that the impact of some companies may have reached a point where pressures for the reformulation of the local social contract are becoming far reaching, powerful and inescapable. Johnsen (2009, pp. 33-62) supports this view and contends that 'all communities are free … to specify appropriate ethical norms for commercial conduct as the product of a micro-social contract based on constructive consent'. However, Johnsen (2009, pp. 33-62) adds a rider to his contention in that he maintains that such constructive consent needs to be based on acceptance by a substantial majority within the community and that dissenting members of the community still have an option to openly disagree. It is becoming very clear that, for some local communities, quality of life will weigh equally with economic progress. However, Bishop (2008, p. 210) argues a different view when he postulates that:

> … corporations have the right to be autonomous, to engage in economic activities and to pursue private purposes. They have a responsibility to respect human freedom and rights, but they do not have pre-legal responsibilities to pursue any social goals.

An example of the difficulties that a company can face if it fails to maintain its local social contract can be found in the attempt by Santos Ltd (Number 50 in the ASX 100 index as at 30 June 2016) to establish a CSG field in the Pilliga Scrub, near Narrabri, in north west New South Wales. In 2011, Santos bought the CSG leases from Eastern Star Gas for A$924 million (Schneiders 23 March 2015) and started to create an Environmental Impact Statement (EIS) which it would lodge with the New South Wales (NSW) Government in an attempt to have the project approved. The 7 000 page document was lodged in early 2018 (Miskelly & Daniel 10 April 2017) and immediately drew objections from local residents and environmental groups across the State. The project was expected to generate hundreds of jobs as well as a new supply of domestic gas for NSW. Over the course of two decades, some 850 production wells would be drilled to depths between 500 and 1 200 metres and a pipeline built to transport the gas to east coast markets. The planned wells would pass through several freshwater aquifers and would bring approximately 430 000 tonnes of salt to the surface during the life of the project. The 95 000 ha of the leases (farm lands as well as forests) would be criss-crossed by roads, well heads and pipelines.

At the time of lodging the EIS, Santos Limited had spent approximately A$2 billion (Miskelly & Daniel 10 April 2017). However, Santos had failed to allay community concerns over possible impacts on the underground water aquifers (on which local farmers depend), about fugitive gas emissions and about the possible impact of saline water and surface salt stockpiles and faced strong objection to its plans.

4.2.5 A social licence to operate

The social contract between society, government and business is an informal arrangement that is sometimes reinforced by government legislation. Similarly, any local social contract is also informal and the terms and obligations of that contract are often inferred by each party to the 'contract' in terms of their own needs and/or preferences. To overcome this lack of a common understanding, many companies (and communities) now seek a more formal understanding – but one that still falls short of a binding contract. This more formal arrangement is often referred to as a social licence to operate (SLTO). The Commonwealth Scientific and Industrial Research Organisation (CSIRO) describes an SLTO as 'An operation is said to have a social licence when it achieves ongoing acceptance or approval from the local community and stakeholders who can affect its profitability.' (CSIRO 10 September 2012 (updated 16 October 2012), p.1). The key words in this definition are ongoing acceptance, approval, local community, stakeholders and profitability and the connotations of these words are now explored.

4.2.5.1 Understanding the concept of a social licence to operate

The Business for Social Responsibility group (BSR) adds a further concept (that of legal issues) to the above definition when it claims that 'Gaining a social licence to operate simply means gaining support for the project from concerned groups, or stakeholders, over and above meeting any legal requirements.' (BSR n.d., p. 4); The On Common Ground/Boutilier and Associates group (n.d., p.1) add additional dimensions to the definition when they suggest the possible financial impacts of failing to gain an SLTO and the detail that an SLTO was project specific and not necessarily company wide:

> However, at the level of individual projects, this acceptance is neither automatic nor unconditional. Today, there is the need to gain and maintain the support of the people who live and work in the area of impact and influence of any given project – to have the social licence to operate. There is ample evidence that a failure to gain and maintain this Social Licence can lead to conflict, delays or cost for the proponents of a project.

The SLTO concept frequently drives mining company and community interactions and the BSR group (n.d., p.5) advances a business case for a company to negotiate an SLTO as follows:

> Even minor opposition can lead to work stoppages or delays that increase the cost of putting a mine into production, local opposition can lead to problems with regulatory or political authorities. In turn, such problems can cause lack of investor confidence, affecting the viability of a project. … These reputational costs can linger for many years

The Australian Coal Association (n.d., Home page, Social Licence to Operate), however, appears to suggest that an SLTO could be industry wide when it claims 'The Australian coal industry respects that its long term future relies on its 'social licence to operate. … The Australian coal industry places premium value on maintaining its social licence to operate.'

There is often a significant diversity of interests in any community and this lack of a common focus could cause difficulty for any company attempting to identify a ‘community leader’ with whom it could negotiate an SLTO. Consequently, Wilburn and Wilburn (2015, p. 5) suggest that such a company needs to address three issues in preparing to negotiate an SLTO. These issues are:

(i) How is the community defined - is it on the base of geography or of interest?

(ii) If a consensus of opinion cannot be found within the community, how is any decision reached validated? and

(iii) If there is no political process to adjudicate in any dispute, what constitutes an adequate level of consent?

If these difficulties can be overcome, the company is then faced with the question of how to determine whether or not the SLTO remains in place. The On Common Ground/Boutilier and Associates group (2012, Measuring the Social Licence to Operate page) suggest a four step process by which continuing community acceptance of and approval for a project could be measured. These steps (and the indicators by which they could be measured) are shown in Table 4.1.

Table 4.1: The levels of a social licence to operate and indicators of the attainment of the level

Level of the social licence	Indicator of level
Acceptance withheld or withdrawn	Shutdowns, blockades, boycotts, violence, sabotage, legal challenges
Acceptance/tolerance	Lingering/recurring issues and threats, presence of non-local groups and watchful monitoring
Approval/support	Company seen as a good neighbour and pride in collaborative achievements
Psychological identification	Political support, co-management of projects, united front against critics

Source: On Common Ground Consultants Inc and Robert Boutilier and Associates 2012, Measuring the Social Licence to Operate page

Although there is some evidence of community action groups implementing the first two sets of actions in their protests against mining development, there is no evidence of the second two steps being implemented in the ASX 100 company annual reports for 2015-16.

4.2.5.2 Corporate social responsibility

The three major requirements for the establishment of an SLTO are legitimacy, credibility and trust (On Common Ground Consultants Inc & Boutilier and Associates 2012, p. 2). Each of these steps must be both established and maintained and it is the maintenance of trust that will ensure that any SLTO endures. It is probably also in the maintenance of trust that the greatest difficulty arises and this mainly occurs because of the number of parties (each with probably still competing objectives) to any SLTO and because the SLTO is an implicit arrangement without a formal, written, base. It is as a means of maintaining an SLTO that the observable discharge of corporate social responsibility (CSR) can play its most important role. This importance, for a company, can be estimated from a statement attributed to BHP Billiton Ltd (Number 6 in the ASX 100 index list of companies (as at 30 June 2016) examined in Chapter 7) (KPMG 2013, p. 7):

> We have an economic and social responsibility to contribute in a positive way to the communities, regions and countries where we operate. By developing partnerships with our host communities, we are helping to foster sustainable development, share the socio-economic benefits from our operations and alleviate poverty.

CSR can be described as the voluntary actions taken by a company to either improve the living conditions (economic, social and/or environmental) of local communities or to reduce the negative impacts of company projects. These voluntary efforts go beyond any legal or contractual obligations. There are, however, three broad criticisms that can be levied against any CSR program. They are that: (i) any CSR activities could be seen as merely an extension of the company's public relations program and are not intended to benefit the community; (ii) promised funding for community oriented activities either does not appear or is less than promised; and that (iii) any such expenditure diverts funds from company profits and hence away from the shareholders. It is, therefore, very important that any company formulating a CSR program be fully committed to implementing the activities to which it has agreed.

Examples of the nature and extent of Australian company investment in CSR during 2015-16 is hard to determine. However, the following companies do include community engagement and support in their annual reports for that year: (i) CBA (Number 1 in the ASX 100 index as at 30 June 2016); (ii) Fortescue Metals Group Ltd (Number 38 in the ASX 100 index as at 30 June 2016); (iii) WOW (Number 9 in the ASX 100 index as at 30 June 2016); and (iv) BKL (Number 91 in the ASX 100 index as at 30 June 2016). The support offered to external stakeholders is in many forms. WOW donated food equivalent of 6.4 million meals and employee time to the value of $7.4 million. BKL financially supported more than fifty charitable organisations, worked with the World Wildlife Fund to ensure sustainable fish supplies and raised ‘millions’ for charity through its Sydney Running Festival.

While the activities and dollar amounts mentioned above are reasonably large at the community level, they are very small in comparison to annual company turnover. KPMG (2013, p. 5) suggests that these investments might be undertaken for a variety of reasons that range from regulatory compliance through risk mitigation and community compensation to the sharing of economic opportunity.
Company investment in any project may result in a failure to protect the environment, to delays in the settlement of contractual obligations and to poor working activities that could have a negative effect on the company and impact adversely on its long term economic performance. However, while any investments in CSR activities may result in short term disadvantage to a company, they are likely to lead to fewer community objections to construction and operational activities and to intermediate and long term productivity improvements (Miron et al. 2001, p. 172). Such outcomes are then likely to lead to an improvement in longer term economic performance and to a sustainable company advantage.

Porter and Kramer (2006) regard CSR as a way of looking at business that does not regard corporate success and social welfare as zero sum activities. They suggest that there are four justifications for CSR (Porter & Kramer 2006, p. 2). These are:

- a moral obligation to do the right thing;
- the sustainability of a business enterprise that comes from meeting the needs of the present without compromising the ability of future generations to meet their needs;

- an SLTO approach based on the legitimacy of an organisation that comes from securing the permission of its stakeholders to conduct business; and
- the notion that CSR will improve a company's image and build its brand equity.

These criteria do not suggest that just any activities can be justified. It is, therefore, up to senior company executives to ensure that the activities agreed to draw on company resources and expertise to benefit society as well as to contribute towards corporate sustainability (Porter & Kramer 2006, p. 1). Working towards both these objectives will build a mutual dependence between companies and society and will reinforce a concept of shared value (Porter& Kramer 2006, p. 4). This shared value approach becomes an important contributor to maintaining community interest and support. However, any community must beware becoming too dependent on such support as the resource on which it is based may be quickly exhausted or become insufficiently cost effective to maintain long term company investment.

Porter and Kramer (2006, p. 6) suggest the model given in Table 4.2 for prioritising the issues arising from an SLTO that might be addressed by a CSR program.

Table 4.2: A scale for establishing the priority of social issues

PRIORITISING SOCIAL ISSUES		
Generic social issues	**Value chain social issues**	**Social dimensions of competitive advantage**
Social issues that are not significantly affected by a company's operations nor materially affect its long term competitiveness.	Social issues that are significantly affected by a company's activities in the ordinary course of business.	Social issues in the external environment that significantly affect the underlying drivers of a company's competitiveness in locations where it operates.

Source: Porter and Kramer 2006, p. 6

The items covered in each part of the scale may vary by company and by industry sector. For instance, carbon emission management may seem like a generic social issue for a bank, a value chain component for a transportation company and both a value chain and competitive advantage issue for a manufacturing company (Porter & Kramer 2006, p. 6). Porter and Kramer (2006, p. 7) further suggest that the above scale could be used to rate potential CSR activities as either Responsive CSR (based on good corporate citizen considerations) or Strategic CSR (based on activities that have large and distinctive benefits for a company).

Another model for how to rate the importance of stakeholder issues comes from Miron et al. (2011, p. 171). These researchers propose that a matrix for determining stakeholder satisfaction priorities could be based on the following:

- high power, high interest groups;
- high power, low interest groups;
- low power but high interest groups; and
- low power, low interest groups.

These groupings are somewhat similar to the vested and non-vested interest groups proposed by Wilburn and Wilburn (2011). However, it is not possible to determine which stakeholders the ASX 100 companies assign to each of these groups. This is because the 2016 annual reports of these companies contain no data on stakeholder recognition.

It is easy to establish that the most important thing that a company can do for society is to contribute to a prosperous economy, but this vision cannot excuse a company that seeks short term profits deceptively or that shirks the social or environmental consequences of its actions. However, Porter and Kramer (2006, p. 13) maintain that perceiving shared value as something other than damage control or as a public relations exercise still requires a dramatic shift in business thinking. Perhaps a suitable closing point for this examination of CSR comes from another Porter and Kramer (2006, p. 11) postulation:

> Corporations are not responsible for all the world's problems, nor do they have the resources to solve them all. Each company can identify the particular set of societal problems that it is best equipped to help resolve and from which it can gain the greatest competitive benefit.

The ASX 100 company annual reports used as the base for the analysis in Chapter 5 contain many examples of CSR programs and engagement with communities. However, apart from suggesting the contribution of such activities to TOTF relating to corporate sustainability, this data does not contribute significantly to answering the Research Question posed in Section 1.4 of this thesis. Any further exploration of CSR is, therefore, an area for future research.

4.3 Gaps in the literature relating to the social contract

Most of the literature relating to the social contract is international and not specifically Australian in origin. This does not restrict its relevance. Where the literature can be shown to have more direct relevance is in proposed changes such as those outlined in Sections 4.2.3. However, there is little in the literature to suggest how local changes to the terms of the social contract might be ratified (other than by changes in law) and so become more widely binding. This issue becomes of increasing importance as companies expand beyond either their local community, or their country of origin, and so needs to be considered in theories relating to the growth of the firm. The impact of the changes is explored in Chapter 7.

4.4 Contribution to the Research Objectives

The objectives of the research behind this thesis are given in Section 1.4. The material contained in Chapter 4 contributes to these objectives in that it identifies gaps in the literature relating to the social contract between business, government and society in Australia. These gaps suggest research that could lead to the development of a comprehensive and integrated theory of the firm suggested in Section 1.3. By providing material relevant to the evolution of this social contract, it also contributes to the analysis reported in Chapter 7.

4.5 Summary of the chapter

In addressing the objectives described in Section 4.1, this chapter of the thesis provides a summary of the literature relating to the evolving social contract between society, government and business. It highlights how changes in this implicit contract might be incorporated into laws that impact on the formation, operation and reporting requirements of companies in Australia. The importance of the section is that it highlights the need for companies to be aware of changes in their external environment so as to ensure that their activities remain within what the community around them considers to be acceptable behaviour. Many of the changes result from changes in community values and, accordingly, companies need to ensure that their values, ethics and conduct always reflect those of the community around them. The chapter also highlights that consent to the social contract, by business, might be implicit because of acceptance of the legitimate status that the laws of society afford it (Cho 2009, p. 35).

The next chapter examines whether or not a company can be a moral person, corporate ethics and the approach to corporate governance in Australia.

CHAPTER 5 LITERATURE REVIEW – CORPORATE ETHICS AND CORPORATE GOVERNANCE

5.1 Introduction to this chapter

Chapter 4 explored the social contract between society, government and business. It also considered the possible impacts of a similar contract between a company and the local community in which it operates as well as the implications of an international social contract. These issues start to verge on company ethics. This chapter explores the literature relating to corporate ethics and corporate governance. One of the major issues to be explored is whether or not a company (being a legal entity only) can be a moral person.

The objectives of this chapter of the thesis are:

- to review the literature relating to both corporate ethics and corporate governance;
- to identify gaps in the literature that could be addressed by further research; and
- to guide the development of a conceptual model that will act as a framework for the research philosophy and strategy used to develop the analysis undertaken in Chapter 7.

In pursuing these objectives, the work reported in this chapter contributes significantly to the Research Objectives presented in Section 1.4.

Figure 5.1 shows how this chapter fits into the overall structure of the thesis.

Chapter 4 - The social contract between society, government and business	Content:	• The social contract between society, government and business • Gaps in the literature
Chapter 5 Literature review – Corporate ethics and Corporate Governance	Content:	• Section 5.1 introduces the chapter • Section 5.2 explores the literature relating to corporate ethics; • Section 5.3 explores the literature relating to corporate governance; • Section 5.4 summarises the gaps in the literature identified in Sections 5.2 and 5.3; • Section 5.5 provides a summary of the chapter.
Chapter 6 Methodology	Content:	• The conceptual model behind the research • The research philosophy • Research methods • Data used in the analysis • Criteria used to establish the utility of existing TOTF

Figure 5.1: The structure of Chapter 5 and its connection to Chapters 4 and 6

5.2 Corporate ethics

There is a very significant body of literature that can be accessed under the heading 'corporate/business ethics' and so it could be inferred that the concept of a company possessing 'ethics' is widely accepted. Such a view could be reinforced by a definition of ethics as a generally accepted set of moral principles often held by a particular group (and, therefore, possibly by a company) and a definition of morals that refers to the goodness and right or wrong of an action (Diffen.com n.d.; Horner 2003; Walker & Lovat 2014). It would seem that the concepts 'company', 'morals' and 'ethics' can be easily linked together. However, there is an equally significant body of literature that challenges the idea that a company can be a 'moral' person and it is worthwhile examining this challenge before rushing into an exploration of 'corporate ethics'. This section of the thesis answers the question Can a company be a moral person? It also explores how corporate ethics could contribute to corporate governance (particularly in Australia).

5.2.1 Corporate ethics defined

There are many definitions of corporate (or business) ethics. Two definitions that appear to contain all the elements suggested by others are those of the Applied Corporate Governance group (n.d.) and Sullivan and Shkolnikov (2006). The Applied Corporate Governance (n.d.) group suggests that the following elements need to be considered in developing an ethical standard for a business: (i) the role of business in the national and international marketplace; (ii) corporate social responsibility and the ethical issues facing an individual enterprise; and (iii) the behaviour and actions of individuals within that enterprise. This definition then boils down to 'business ethics is the application of a moral code of conduct to the strategic and operational management of a business'. Sullivan and Shkolnikov (2006, p. 1) describe business ethics as being 'a set of principles and guides of business behaviour rather than a set of rigid rules' and conclude that:

> Business ethics is not only an attempt to set a standard by which all of the employees of a firm can know what is expected, but it is an attempt to encourage employees, managers and board members to think about and make decisions through the prism of a shared set of values.

After an examination of many businesses, El-Garaihy, Mobarak and Albahussain (2014, pp. 110-111) conclude that one of the four elements of corporate activity that contribute to creating a socially responsible corporation is ethical standards. Francis and Armstrong (2003, pp. 375-6) extend this understanding further by suggesting that 'there are compelling reasons to consider good ethical practice to be an essential part of … good risk management' and describe business ethics as being ' … the moral philosophy, values and norms of behaviour that guide a corporation's behaviour within society'. Whether or not values and norms of behaviour are described in the annual reports of the ASX 100 companies (as at 30 June 2016) is discussed in Chapter 7.

The conclusion by Francis and Armstrong (2003) differs from the findings of a major Canadian study undertaken by KPMG Canada (1997) and summarised by Harris (2001). Harris (2001, p. 8) reports that a recent study of Canada's top one thousand companies showed that twice as many companies considered that ‘aspirational’ was a better description of their code (of ethics) than ‘rules and regulations’.

Just how these moral values and norms are applied within business is explored in Section 5.2.2.

5.2.2. Individual morals, community values, corporate ethics and the law

It would often appear that the words ‘morals’, ‘ethics’ and ‘values’ are used interchangeably. However, the meanings of these words are not the same (Diffen.com n.d.; Horner 2003; Walker & Lovat 2014) and the meanings adopted for this thesis are:

- morals – the goodness (or otherwise) or right or wrong of an action (and, therefore, often a personal compass);
- ethics - a generally accepted set of moral principles often held within a particular group or culture; and
- values - a personal set of standards relating to what is considered important.

This sub-section of the thesis now examines the literature surrounding these concepts and identifies gaps that might be pursued by further research.

5.2.2.1 Morals – a corporate compass of right and wrong?

It is easy to see that the above definitions could apply to real persons: but could they apply to artificial (but legal) persons such as a company? Sepinwall (2017) argues that a capacity for emotion is necessary for knowing the difference between right and wrong - thus arguing that corporations, not being capable of emotion, are not persons and so cannot be moral. Smith (2017) counters this concept by suggesting that acts of individuals within a corporation become the intended acts of the corporation by a corporate internal decision structure. However, Smith (2017) also agrees that the moral responsibilities of firms and individuals are not mutually exclusive. List (2017) further argues that firms can be held morally responsible (that is be a moral agent) if the following three conditions apply: (i) there is the possibility of doing something good or bad; (ii) the agent has access to relevant information and had the evidence necessary to make judgement about the options available; and (iii) the agent has control over the choice of options.

Grima (2007, pp. 168, 173) considers that a firm is a moral agent in so far as it is bound by contractual obligations both internally (to its employees) and externally (to its suppliers, consumers and society (such as through tax laws)). This author also contends that the concept of corporate social responsibility faces a major risk in that, being voluntary, it may not be so important that companies will change their internal and external operations merely to satisfy social or environmental concerns (Grima 2007, p. 170-4). Grima (2007, p. 174) also argues that a firm is a moral agent ‘to the extent that it engages its employees into a project that is more than just an economic enterprise and on the external front it cooperates with different stakeholders in the interest of the common good’. Grima (2007, pp. 174-5) finally concludes that although the firm, as a moral agent, needs to acknowledge and respect its contractual obligations towards employees, customers and suppliers, it would distort its moral status if it did not take its obligation to act profitability seriously.

As discussed by Smith (2017), Grima (2007) and Sepinwall (2017), whether or not a company can be a moral agent raises many questions. Not the least of these questions is how do we treat the company if it is not a moral agent? Lampert (n.d., p. 2) suggests that the question can be examined in three approaches as follows:

(i) If the company is capable of taking intentional action, then it is a moral agent.
(ii) Even if the company is not considered to be a moral agent in the primary sense, (it is not considered capable of taking intentional action) then maybe it can be considered to be a secondary moral agent.
(iii) Even if the company cannot be considered to be a moral agent in any form, it might still be useful to treat it as such.

Lampert (n.d., pp. 3- 6) then demolishes each of these contentions as follows:

- Even if it can be shown that a company is an intentional agent, not all intentional agents are moral. Why, therefore, should a company be considered to be moral?
- If the company (not being a real person) cannot act directly, then maybe it can be held responsible for the actions of persons acting on its behalf. However, this

assumes that ‘intentionality’ can be transferred across the barrier between real and merely legal persons and this has not yet been demonstrated.

- One reason to treat a company as if it was a moral person is that it could then be held to blame for the outcome of its actions and punished for adverse outcomes. However, the company, as such, cannot be punished. Any fine on a company is transferred (directly or indirectly) to customers or shareholders and even deregistration of a company impacts directly on its shareholders and does not just stay with the company.

Because of these contentions, Lampert (n.d., p. 1) argues that it would be a mistake to regard a company as a moral agent but suggests that they do have social obligations that should be honoured - even if those obligations sometimes stand in the way of profits. It would seem, therefore that corporate ethics might be ‘right’ if they support the relationships between a company and those with whom it has contractual obligations but ‘wrong’ if they detract from the obligation of the firm to act profitably and in the interests of its shareholders. It would appear, therefore, that morals, of themselves, might not be a sufficient compass of right and wrong.

5.2.2.2 Ethics – and their relationship to companies

Ethics is based on the study of values and on the justification of right and good actions. The concept springs from the works of Aristotle (virtue ethics) and finds more recent expression in the writings of Kant (duty based ethics) and Bentham and Mill (utilitarian and consequential ethics) (Horner 2003). It is interesting therefore that, after a study of major companies in Australia, Canada and Sweden. Svensson, Wood, Singh and Callaghan (2009, p. 398) found that the major reasons for developing corporate codes of ethics had nothing to do with philosophy but were: (i) as a support for corporate culture; (ii) as a base for staff integrity; and (iii) to develop a core competence within the business. Given that the ASX (2014) *Corporate Governance Principles and Recommendations* (that are applicable to all companies listed on the ASX) were introduced in 2003, it is of interest that only 5.3 percent of the Australian respondents to the survey identified the ASX requirement as a reason for developing a code of ethics (Svensson et al. 2009, p. 398-9).

The potential contribution of ethics in the business environment can be summarised as follows ‘properly understood, the practice of business had a fine logical and ethical foundation, and enabled real improvement in the welfare and dignity of the individual and in the equality of society’ (Newton 2014, p. v). However, Mackay suggests that, in business, ‘ethics may be incidental’, that the real problem may be community standards and that when the survival of a company is at risk, ethics may be suspended (Longstaff 1991). This latter sentiment is reflected in the findings of the National Business Ethics Survey undertaken by the (British) Ethics Resource Centre in 2011. From these findings, the Centre concluded that: (i) the proportion of companies with weak ethical cultures had climbed to near record levels; (ii) companies behaved differently during times of economic uncertainty; and (iii) that as the economy improved and both companies and employees became less pessimistic about the future, misconduct would rise and standards of reporting would drop (Ethics Resource Centre 2011).

Casson (2013, pp. 7-8) argues that there are five aspects of corporate governance that have an ethical component. These aspects are: (i) board behaviours; (ii) board structure and processes; (iii) the purpose, strategy and vision for the business; (iv) values and standards; and (v) structures and procedures for oversight and control. These examples of the nexus between ethics and corporate governance are recognised here but are not discussed until Section 5.3 Corporate governance.

5.2.2.3 Values – how do companies identify and express their values?

Francis and Armstrong (2003, p. 376) consider that ‘business ethics is concerned with the moral philosophy, values and norms of behaviour that guide a corporation’s behaviour within society’. They recognise seven values that might act as a guide to ethical behaviour (Francis & Armstrong 2003, p. 377):

1. Dignity - treating each individual as an end rather than as a means and the avoidance of ruthlessness, callousness and arrogance;
2. Equitability – being just, fair and even handed in decisions;
3. Prudence – exercising a degree of judgement that makes a situation no worse;

4. Honesty – straightforwardness, truthfulness and avoidance of lying, cheating and stealing;
5. Openness – not concealing that which should be revealed;
6. Goodwill – a concern for others that is reflected in kindness and tolerance; and
7. Avoidance of suffering – pain and suffering should be avoided (for example: avoiding oil spills, avoiding production for chemical/biological warfare).

A suitable framework for the development and expression of corporate values and ethics would include an ethics committee at board level, the involvement of people from all levels within the organisation, the formalisation of a code of conduct and periodic and transparent reporting (Francis & Armstrong 2003, p. 383).

Perhaps reflecting the emphasis on the involvement of people at all levels of the organisation suggested above, Svensson et al. (2009, p. 397) found that, by 2005-6, the board of directors, the CEO and senior managers of a company were most often involved in the development of codes of conduct and other levels of staff were less often involved. Customers and suppliers were sometimes involved – as were others outside the company. Svensson et al. (2009, p. 262) suggest that an ethics ombudsman, an ethics training committee and ethics training for all staff should also be part of such a framework for implementing such codes. As a result of their study of companies in Australia, Canada and Sweden, Swensson et al. (2009, p. 399) suggest that the more common means of disseminating codes of ethics within companies are by booklet, induction training and by electronic communication. Direct training and staff meetings are a much less important means of dissemination.

Perhaps a critically important part of how these values and infrastructure are reinforced within a company lies in the way that they influence plans and reporting against the implementation of plans. Svensson et al. (2009, pp. 257-8) strongly advocate that a company committed to an ethical approach should include its values in its strategic planning process and that they should measure both those plans and performance against these espoused values. They also question why a company would develop and implement a statement of values and a code of ethics if they did not help resolve ethical questions in the marketplace. Harris (2001, p. 7) suggests the existence of codes of ethics, by themselves, is not enough and that such codes could be more effective in bringing about changes in culture and behaviour if they were supported by a willingness to enforce them with sanctions.

Little in the material examined above suggests any importance in the role that leaders (that is, senior managers) might play in introducing and maintaining ethical behaviour amongst company employees. However, Gerpott, Van Quaquebeke, Schlamp and Voelpel (2019, p. 1064) set out to examine this aspect of leadership and found that leaders are more effective in influencing subordinate behaviour if their subordinates see the leaders as being: (i) ethical persons themselves; and (ii) being truly representative of the group. Such an approach, by company executives, could be of critical importance in helping understand company behaviour. This particularly applies to organisational citizenship behaviour (OCB). OCB includes courtesy, conscientiousness and civic virtue – all concepts that are not included in position descriptions but which make team work easier. However, there is no data in the ASX 100 companies' annual reports for 2016 that supports examination of this hypothesis and it is not considered further in this thesis.

This discussion addresses the question 'Can a company be a moral person?' raised in the introduction to Section 5.2. For the purposes of this thesis, it is held that a company can be such a person (see Section 5.2.2.1).

5.2.2.4 Corporate ethics in Australia

There is no mention of ethics in the Australian *Corporations Act 2001* (Parliament of Australia 2001 Definitions), but there are many references to the topic in the 'soft' law and non-binding guidelines surrounding companies (Herbert Smith Freehill 2016). The principal such reference, as it relates to companies listed on the ASX, is found in the ASX's (2014) *Corporate Governance Principles and Recommendations.* Principle 3 states that 'a listed entity should act ethically and responsibly' (ASX 2014, p. 19) and the text associated with the principle states:

> Acting ethically and responsibly goes well beyond compliance with legal obligations and involves acting with honesty, integrity and in a manner that is consistent with the reasonable expectations of investors and the wider community. It includes being, and

seen to be, a 'good corporate citizen' …. Acting ethically and responsibly will enhance a listed entity's brand and reputation and assist in building long term value for its investors. A listed entity should: (i) have a code of conduct for its directors, senior executives and employees; and (ii) disclose that code or a summary of it.

Adoption of the ASX Principles and Guidelines is not compulsory and no listed entity is required to adopt them. However, as a condition of listing on the ASX, where a listed entity chooses not to adopt any of the recommendations, it is required to explain, in its annual report, why it has not done so (ASX 2014, pp. 3-4). The ASX Principles and Recommendations were introduced in 2003 and updated in 2007, 2010 and 2014 (ASX 2014, p. 2). Their introduction, however, was not greeted with unbounded acclaim. The St James' Ethic Centre had little good to say about the document:

> … the guidelines are entirely silent about the role of values and principles in decision making. Instead, the guidelines limit themselves to comments about the standards of ethical behaviour – which are further defined to apply in very limited areas included in suggestions for the content of a code of conduct being conflicts of interest, corporate opportunities, confidentiality, fair dealing … compliance with laws and regulations … . It is not that these areas of concern are unimportant. It is just that these defined areas are a breathtakingly narrow example of what a sound ethical framework should apply to a corporation … (Longstaff 2003, p. 1).

5.2.2.5 Whom does a lack of corporate ethics affect?

It could be expected that ethical behaviour is an internal aspect of company behaviour and that the impact of a lack of ethical behaviour would only be felt by company 'insiders'. However, this is not the case and as the explanatory notes to Principle 3 in the *ASX Corporate Governance Principles and Recommendations* (ASX 2014, p. 19) state:

> Acting ethically and responsibly goes well beyond compliance with legal obligations and involves acting with honesty, integrity and in a manner that is consistent with the reasonable expectations of investors and the wider community. It includes being, and seen to be, a 'good corporate citizen' … . Acting ethically and responsibly will enhance a listed entity's brand and reputation and assist in building long term value for its investors.

The latter part of this quote fits well with the contention by Francis and Armstrong (2003, pp. 375-6) that strong ethical behaviour is an essential part of a risk management strategy. Two examples of how poor ethical behaviour can affect all stakeholders associated with a company are: (i) the partial collapse of the Murray Goulburn unit trust shares in 2015; and (ii) the finding that the mistreatment of customers and lying to the corporate regulator by executives of AMP Limited (Number 20 in the ASX 100 list of companies given in Appendix 1) have had on customers, suppliers, shareholders and senior executives. These two examples are now examined briefly.

The float of Murray Goulburn unit trust shares, on the ASX, on 3 July 2015, brought what was the largest milk processor in Australia to the attention of institutional and retail shareholders. However, it was only months later that the share price fell dramatically and the price paid to milk producers was slashed. The company also introduced a controversial scheme under which it would lend money to milk producers so that they could weather an equally controversial 'claw back' scheme aimed at recovering supposedly 'over payments' to them (Butler 29-30 April 2017, p. 27). In April 2017, the Australian Competition and Consumer Commission (ACCC) commenced court proceedings against both the former CEO and the former Chief Financial Officer of Murray Goulburn. The ACCC alleged that the two officers caused the company to engage in 'unconscionable conduct or misleading and deceptive conduct' and sought to have them fined heavily and banned from running a company 'for years rather than for months'. The ACCC would also seek to ensure that Murray Goulburn set up a compliance plan to prevent the recurrence of such behaviour (Butler 29-30 April 2017, p. 27).

The issuing of statements on which both milk suppliers and investors relied, the subsequent share price collapse and the attempted 'claw back' of payments to milk producers together raise the question of how ethical was the behaviour of the company officers. It might be said that shareholders and milk producers had to wait a long time to see those responsible for their losses held to account. However, on 6th December 2018, it was announced that the former CEO of Murray Goulburn was fined (in a Federal court) A$200 000 for 'being knowingly involved in the company's misleading claims about the farm gate milk price it expected to pay dairy farmers during the 2015-16 milk season' (Lafrenz 6 December 2018). However, this fine against the Murray Goulburn CEO was not the end of the company's financial problems. On 25 June 2019, the company announced that it had agreed to pay A$42 million to settle a class action brought against it by 1 300 investors as a result of a downgraded profit guidance note in 2016 (Druce 25 June 2019). This note had been issued to explain the company's immediate future prospects as influenced by its difficulties with its raw milk suppliers.

Sometimes the need for an inquiry into corporate behaviour is recognised by society at large well before action is taken by the relevant authority and this has certainly been the case in regard to reported misconduct by financial service entities in Australia. As a result of considerable public disquiet and pressure from the Opposition in the Federal parliament, the Commonwealth Government yielded to this pressure and appointed a Royal Commission of Inquiry. On 14 December 2017, an entry was made in the Federal Register of Patents that established the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. These Letters Patent required the appointed Commissioner to inquire into (amongst other matters):

(a) whether any conduct by financial service entities (including by directors, officers or employees of, or by anyone acting on behalf of, those entities) might have amounted to misconduct and, if so, whether the question of criminal or other legal proceedings should be referred to the relevant Commonwealth, State or Territory agency;
(b) whether any conduct, practices, behaviour, or business activities by financial services entities fall below community standards and expectations; (Federal Executive Council 14 December 2017, p. 2).

The Inquiry was conducted through a request for public submissions and then through a series of public hearings in various cities throughout Australia. During April 2018, the Commissioner examined allegations of misconduct against AMP Limited (Number 20 on the ASX 100 index of companies as at 30 June 2016) and heard from the company's Group Executive for Advice (ABC News 30 April 2018) that:

(i) The company had misled the Australian corporate regulator (ASIC) by reporting ‘fee for no service’ activities as a mistake when there was a deliberate policy to charge customers fees for 90 days even when they had received no advice services.

(ii) The company’s board ordered changes to an ‘independent review’ of the ‘fee for no service’ scandal and those changes were made.

On 2 May 2018, AMP’s largest shareholder reported ‘shock and disappointment’ at the revelations before the Royal Commission (Canberra Times 2 May 2018) and indicated that the shareholder considered the departure of staff and directors from the company was warranted. On 10 May 2018, the *Brisbane Times* reported that ‘the revelations about AMP’s treatment of customers have undermined the institution’s trustworthiness’ (Brisbane Times 10 May 2018). By 1 November 2018, the following impacts on stakeholders had occurred:

- the Chair of the Board of Directors had resigned (ABC News 30 April 2018);
- two non-executive directors had withdrawn their bid for reappointment at the AGM and another director had announced an intent to step down at the end of the year (Brisbane Times 10 May 2018);
- the company’s Chief Executive Officer had resigned (Canberra Times 2 May 2018);
- the company’s Group General Counsel and Company Secretary had resigned and forfeited previously assigned deferred bonuses and incentives (ABC News 30 April 2018);
- the directors of the company had agreed to a 25% salary reduction for the remainder of 2018 (ABC News 30 April 2018);
- AMP shares had fallen by 25 percent of their price over a period of only three weeks (Canberra Times 2 May 2018);
- AMP shares fell a further 24 percent during October 2018 after the company revealed that it planned to sell parts of its insurance business (Danckert 31 October 2018); and
- the company is likely to face criminal penalties for misleading the corporate regulator (ABC News 30 April 2018).

The total impact on AMP shareholders was yet to be felt – as, in July 2018, the company announced that it was making a provision of A$615 million to cover costs associated with the adverse findings of the Royal Commission.

It should not be assumed that misconduct in the management of companies is limited to Australia. In December 2018, it was reported that a former Chairman of Nissan Motors, another executive and the company itself had been charged, in Japan, of under-reporting the former Chairman's income to the extent of A$61.5 million over a period of five years (ABC News 10 December 2018). Both the Chairman and the other executive were removed from their executive positions at Nissan and arrested. What is of particular interest here is that Nissan Motors is the eighty-second largest economy (based on revenue) in the world (Green 20 September 2016). It would appear that company size is not a determinant of ethical behaviour.

Bazerman and Tenbrunsel (2011, pp. 2-3) suggest that activities such as the above might have had a different outcome if they were seen as having an ethical base and not just a business one. They suggest that few executives 'grasp how their own cognitive biases and the incentive systems they create can conspire to negatively skew behaviour and obscure it from view'. They also suggest that such systems might be based on: (i) ill-conceived goals; (ii) motivated blindness (powerful conflicts of interest that help blind people to their own unethical behaviour); (iii) indirect blindness (whereby people have a cognitive bias that blinds them to the 'unethicality' of what they are doing); (iv) being on a slippery slope (where we fail to notice the gradual erosion of standards); and (v) overvaluing outcomes (Bazerman & Tenbrunsel 2011, pp. 3-15). Due to the time constraints of a PhD thesis, the contribution of such systems to ethical breakdowns in the ASX 100 companies is not examined in Chapter 7 but left until another time.

An example of non-binding guidelines relating to ethics is found in the Principles of Conduct promulgated by the Australian Petroleum Producers and Exploration Association (APPEA). The Principles are voluntary in nature but a footnote to them states that 'Commitment to these principles is an expectation of APPEA membership' (APPEA n.d., Principles of Conduct). The Principles are:

1. Continuously strive to improve health, safety and the environment in ways that: (i) protect people and the environment … ; (ii) incorporate risk management strategies based on sound science … ; and (iii) engage constructively with government and industry to develop appropriate principles/objectives based standards.
2. Presenting and adhering to ethical and responsible business practices so that members: (i) make both ethical business practices and good corporate governance features of company operations; and (ii) use open and effective communication and engagement with … affected parties.
3. Supporting social and economic development in Australia in ways that: (i) respect the rights, property and dignity of the communities in which we operate … ; (ii) enable members to co-exist with stakeholders to generate long term mutual benefit … ; and (iii) provide Australian suppliers full and fair opportunity to compete for commercially competitive resource development opportunities.

There are four companies on the ASX 100 index (as at 30 June 2016) used as the base for the analysis reported in Chapter 7 that are members of the APPEA. They are BHP Ltd (through its subsidiary BHP Billiton Petroleum Pty Ltd) (Number 6), Origin Energy Ltd (Number 34), Santos Ltd (Number 50) and Woodside Energy Ltd (Number 13) (APPEA n.d., Membership). As indicated above, these companies are expected to commit to the APPEA Principles of Conduct in addition to codes of conduct that they may have within their organisation.

It has been suggested that business ethics could form the base for standards that guide a company's behaviour within a society (Francis & Armstrong 2003, p. 376). It is possible to infer from such a statement that a company could be exposed to risks if it does not follow these norms. Risk management can apply to the management of stakeholders as well as to the management of physical resources (Francis & Armstrong 2003, p. 376) and a company's approach to the management of stakeholders will be based on the values and ethics that company directors and officers are required to observe. Francis (2000) had earlier identified that the annual reports of major Australian companies show that few companies report adequately on ethics. He also found that while some companies asserted a commitment to ethical behaviour, almost none gave details of ethical infrastructure, monitoring or training (Francis 2000, p. 14). Francis (2000, p. 5) then suggests that 'Codes of Ethics need to be of a fixed quality. It is not appropriate to have a series of codes of increasing leniency from which to select.' This lack of 'fixedness' has been highlighted by Jackall (1988, p. 101) and he suggests that:

> The moral ethos of managerial circles emerges directly out of the social context (of managers). It is an ethos most notable for its lack of fixedness. In the welter of practical affairs in the corporate world, morality does not emerge from some set of internally held convictions or principles, but rather from ongoing albeit changing relationships …

In 2009, Svensson, Wood, Singh and Callaghan reported the results of a study into the existence and implementation of codes of ethics in the top 500 companies operating in the private sector in each of Australia, Canada and Sweden (Svensson et al. 2009, p. 391). The data extracted was of a longitudinal nature in that it examined changes over the period 2001/2002 (Period 1) to 2005/2006 (Period 2). For Australia, in Period 1, 111 usable responses were received but in Period 2 the usable responses received fell to 93. The principal industry sectors that provided useable responses were finance (15 usable responses in Period 1 and 17 usable responses in Period 2) and manufacturing (21 usable responses in Period 1 and 15 usable responses in Period 2) (Svensson et al. 2009, p. 394). Eighty-one of the Period 1 responses and seventy-six of the Period 2 responses reported that they had codes of ethics (Svensson et al. 2009, p. 396) and, for the Period 2 responses, more than 75 percent of respondents reported that CEOs and senior managers were involved in creating the codes, 68 percent reported that the board of directors was involved, but only approximately 28 percent reported that other staff were involved (Svensson et al. 2009, p. 397). Respondents to the Period 2 study reported the reasons that the codes were developed as being: (i) to support corporate culture (30 percent); (ii) to promote staff integrity (28.9 percent); (iii) to promote a core competence (12.3 percent); and (iv) to meet ASX requirements (5.3 percent) (Svensson et al. 2009, p. 398).

Electronic communication emerged as the major form of communication of codes of ethics (68.4 percent) by Period 2 and far eclipses other means (booklet (47.4 percent) and induction training (27.6 percent) (Svensson et al. 2009, p. 399). Also, in Period

2, 66.7 percent of usable returns claimed that the company informed their customers of their codes of ethics and 53.3 percent informed suppliers of the existence of codes of conduct (Svensson et al. 2009, pp. 400-401). It is interesting to note that, for Period 2, 67.7 percent of responses claim that their code of ethics assisted interaction with customers and with suppliers (41.9 percent) (Svensson et al. 2009, p. 403). In Period 1, 92.6 percent of usable responses claim that the codes of conduct showed a profitability effect, but, in Period 2, such an effect was claimed by only 65.8 percent (Svensson et al. 2009, p. 404).

Given the above data, it is interesting to note that, for Period 2, 15 percent of usable responses claim that the reasons for adopting a code of ethics were altruistic (earning the respect of stakeholders or being a good corporate citizen), 17.7 percent claim that the reasons were mercenary (increasing business performance, assisting profit and being in the long term interest of the company) and 24 percent claim that their codes were adopted in response to regulatory pressures (avoid potential problems, focus employee efforts and avoid litigation and fines) (Svensson et al. 2009, p., 405). Callaghan, Wood, Payan, Singh and Svensson (2012) report the results of a similar study into codes of ethics in Australia, Canada and the USA. The study group was again the top 500 companies in each country (Callaghan et al. 2012, p. 17). The major findings from this study concern the consequences that an employee might incur for a breach of the code and the use of the code as a guide to strategic planning. The study found that, in Australia, over 80 percent of the responses suggest that the consequences of a breach of the code of ethics are a verbal warning, a formal reprimand or dismissal, 57.7 percent suggest that legal action could be instituted and 29.6 percent suggest that demotion might occur (Callaghan et al. 2012, p. 19). The Australian study indicates that approximately 47 percent of respondents use their code of ethics as a guide to strategic planning (as against 38 percent in Canada and 35 percent in the USA) (Callaghan et al. 2012, p. 22). Some 36 percent of the Australian responses suggest that the code of ethics is used as the basis of their planning philosophy (as against 41 percent in Canada and 35 percent in the USA) (Callaghan et al. 2012, p. 23).

Based on the above analysis, it would appear that a lack of ethics in a company can affect all stakeholders. The existence of codes of ethics and conduct and a supporting infrastructure, the way in which they are reported in company annual reports and their influence on planning and corporate governance in major Australian companies is explored in the research analysed in Chapter 7.

5.2.2.5 Corporate ethics and profitability

Hitt and Collins (2007, p. 355) suggest that firms with a culture that embraces stakeholders and their ethical concerns and that incorporates high quality and diverse inputs into the firm's strategic decision making process are the most likely to recognise opportunities arising from ethical concerns. They also suggest that about 90 percent of (USA) companies have made ethics and ethical behaviour one of their top concerns (Hitt & Collins 2007, p. 355). It would seem to follow that such a massive adoption of ethical behaviour could bring about a significant economic advantage. However, such does not appear to be the case. Hitt and Collins (2007, p. 354) also undertook a study of Canadian mutual funds that adopted ethics related investment criteria and concluded that 'the performance differential between ethical mutual funds and their conventional peers is statistically insignificant'. From this finding, they conclude that 'Using an ethical decision making approach can satisfy stakeholder expectations, but is unlikely to produce above average returns.' (Hitt & Collins 2007, p. 355).

A paper by Harris (2001) comes to a slightly different conclusion and suggests that 'organisations with clearly articulated beliefs and strong cultures are likely to be "outstanding performers"' (Harris 2001, p. 9). Harris also draws on the work of others to support the contention that

> ... the ethical climate of an organisation is a knowledge-based asset that cannot be reduced to writing and that cannot be bought and sold. But it can be exploited by the organisation in dealings with clients, customers and employees. It is commercially valuable (Harris 2001, pp. 9-10).

From this statement, it is possible to consider an ethical climate as being part of the ‘black box’ that gives the Neo-classical firm a competitive advantage. This consideration is considered in the analysis reported in Chapter 7.

The claims by Harris (2001) fit well with the Resource Based TOTF examined in Chapter 3 and are examined in the analysis undertaken in Chapter 8 to see if they contribute to the development of an integrated TOTF. Ethics may also fit into Transaction Cost Theory (Section 3.2) as Harris (2001, p. 3) claims that ethical behaviour may help lower transaction costs and that that aspect, combined with the ‘hard to copy nature of a company’s ethical culture’, may support the bottom line value of ethical behaviour.

5.2.2.6 If not profitability, then what?

The research behind this thesis does not dispute Friedman’s (1962) contention that the only social obligation of a company is to make a profit – with the qualification that such profit making occurs within the laws and mores of the society within which the company operates. However, the papers cited in Section 5.2.2.5 suggest that there may not be a direct link between corporate ethics and profitability. If this is so, why would a company invest time and effort in developing, implementing, monitoring and reporting ethical standards and behaviour? The answer may lie in a summary of research into the contribution of codes of ethics, undertaken between 2000 and 2006 (Stevens 2008). This research suggests that codes of ethics may, provided that they are adequately supported by senior management, be an effective means of shaping ethical behaviour and guiding employee decision making. By these means, corporate ethics may make a substantial, but indirect, contribution to company profitability. The research papers examined by Stevens (2008) are outlined in Table 5.1.

Table 5.1: A summary of papers examining the contribution of corporate ethics to corporate behaviour over the period 2000 to 2006

Year	Author	Country	Number of responses	Reporting a positive contribution to corporate behaviour	Reporting a negative contribution to corporate behaviour
2000	Marnburg	Norway	449	No	Yes
2001	Fisher	UK	45	Yes	No
2001	Somers	USA	613	Yes	No
2001	Schwartz	Canada	57	Yes	No
2002	McKendall et al	USA	108	No	Yes
2002	Healy & Iles	UK	125	No	Yes
2003	Trevino & Weaver	USA	Multiple studies	Yes	No
2003	Chonko et al	USA	286	Yes	No
2004	Snell & Herndon	Hong Kong	171	No	Yes
2004	A & R Moore	Israel & USA	812	Yes	No
2006	O'Dwyer & Madden	Ireland & Spain	142	Yes	No
2006	Veal	USA	152/235	Yes	No
	12			8	4

Source: Stevens (2008, pp. 603 and 605)

The following general observations can be drawn from Table 5.1:

- Many of the studies reviewed suggest a positive relationship between the existence of codes of ethics and a positive contribution to corporate behaviour.
- The studies based in the UK, the USA and Canada mostly suggest a positive relationship between the existence of codes of ethics and corporate behaviour whereas those in other countries seem to produce indeterminate results. Except in the case of Norway, the studies with the larger numbers of respondents give a constant positive relationship between the existence of codes of ethics and corporate behaviour.

The studies reported in Table 5.1 suggest a positive contribution, by corporate ethics, to corporate behaviour and may have significance for the development of an integrated TOTF (the objective of the research behind this thesis) and such a contribution will be considered in Chapter 8.

5.2.2.7 Can corporate ethics be taught?

After an extensive review of international approaches to tertiary education in ethics, corporate social responsibility and corporate sustainability, Seto-Pamies and Papanikonomou (2016, p. 523) conclude that:

> Integrating sustainability into all levels of education may be one way to deal with the flaws of the structuralist approach which holds that behaviours can change only if structures change and policies are implemented.

However, this conclusion is not their only finding and they also conclude that teaching about business ethics, corporate social responsibility and corporate sustainability should be combined. Their reasoning is that the three topics are related (even though they may have evolved from different backgrounds) and that they have significant areas of overlap as they are all focussed on enhancing societal welfare (Seto-Pamies & Papanikonomou 2016, p. 525). They support this view by the observation that there is a necessity to develop a more holistic and integrated model of management education 'in order to contribute to a more profound and lasting change in students' attitudes, knowledge and behaviour' (Seto-Pamies & Papanikonomou 2016, p. 525).

The authors concentrated on tertiary education for the following reasons: (i) any meaningful and lasting change in the conduct of corporations must involve the institutions that most directly act as drivers of business behaviour – especially academia; and (ii) the expectation that management educational institutions should be leading thought and action on issues related to ethics, social responsibility and sustainability (Seto-Pamies & Papanikonomou 2016, p. 524). The authors also considered whether or not the combined topics should be taught as a stand-alone subject, or incorporated into other subjects and conclude that an integrated approach would be more effective as repeated exposure to ethical issues would increase both awareness and future recognition of them (Seto-Pamies & Papanikonomou 2016, p. 530). They also concluded that 'ethics education improves students' ethical awareness and moral reasoning' and that '… the students exposed to issues related to sustainability and responsible management may easily identify them and (develop) an analytical mindset to develop sustainable … strategies' (Seto-Pamies & Papanikonomou 2016, p. 530). The authors' final conclusion is that:

> … universities have an important role to play in developing a new generation of leaders that are aware of the complex challenges faced by business and society … (but that) education cannot be seen as a panacea that will resolve all ethical dilemmas but it could become a place for exposure, interaction and experiences to produce a cognitive and affective change in students (Seto-Pamies & Papanikonomou 2016, p. 534).

Ethics training/education may not, by itself, be enough and Kaptein (2015, p. 415) concludes that there is a direct relationship between the number of components of an ethics programme that are adopted within a company and observed unethical behaviour. The suggested composition of an ethics programme is: (i) a code of ethics; (ii) ethics training and communication; (iii) accountability policies; (iv) monitoring and auditing; (v) investigation and correction policies; (vi) an ethics officer; (vii) an ethics report line; and (viii) incentive policies. Kaptein's (2015, p. 415) observation then became that this sequence corresponds closely to the pattern adopted by many organisations in the USA.

Some argue that a university education (particularly in economics and business related topics) may not be a suitable background for teaching ethics. Hummel, Pfaff and Rost (2018, pp. 559-577) examine the contention that:

> … theories and ideas taught in universities engender moral misbehaviour amongst some managers, as these theories mainly focus on the primacy of profit maximization and typically neglect the ethical and moral dimensions of decision making.

Their conclusion is that '… university education in general does not seem to foster graduates' moral development' (Hummel et al. 2018, Abstract, p. 559). However, this conclusion is not totally at odds with the findings of Seto- Pamies & Papanikonomou (2016, p. 530) and could be seen as confirmation of the need to integrate ethics education into many educational fields so as to broaden exposure to the topic and so reinforce the understanding of them.

It would appear that ‘business ethics’ can be taught but that the context of such education needs careful consideration. However, after an exhaustive study of rise and fall of the (English) East India Company, Robins (2012, pp. 210-211) comes to a different view and suggests that an ‘ethics gene’ needs to be inserted into company law:

> … society gives companies the privilege of limited liability: such a privilege should have social responsibility associated with it. For this to happen, an ‘ethics gene’ needs to be inserted into company law. The first law of ethics is to ‘do no harm’. To realise this in the corporate context, company directors need to be given a legal duty of care to ensure that their actions do not damage society or the environment; investors equally need to have a parallel duty to ensure that their demand for financial returns does no harm. Generate a profit by all means, but this cannot be at the expense of others.

Whether or not such a requirement might be inserted into the (Australian) *Companies Act 2001* is set aside for examination in further research.

5.2.2.8 Contribution of Section 5.2 to the Research Question

The Research Question given in Section 1.3 contains two elements. The first explores the potential elements of a TOTF that covers the gaps in existing theories recognised by other researchers and the second directs attention to the elements of a TOTF that supports the examination of companies in an evolutionary phase. Corporate ethics contributes to both of these questions in that it requires an understanding of the relationships between company insiders and outsiders (an element of economic, behavioural and stakeholder theories) (Francis & Armstrong 2003, p. 376). Such a contribution consideration of:

- the degree to which established ethical standards are certain (for example, the claims of lack of ‘fixedness’ asserted by Francis (2000, p. 5), Harris (2001, p. 8) and Jackall (1988, p. 101);
- the way in which corporate ethics is interwoven into other corporate activities (Bazerman & Tenbrunsel 2011; Seto-Pamies & Papanikonomou 2016; Stevens 2008);

- the existence of an ethics support infrastructure including an ethics ombudsman, an ethics training committee and ethics training for all staff (Svensson, Wood, Singh and Callaghan (2009, p. 262));
- any legal requirement for the inclusion of ethics in company documents (such as a code of ethics and/or conduct) and reporting of such matters (such as the 'soft law' annual reporting of ethics management required by the ASX); and
- the perceived adequacy of such documents (such as the claim of absolute inadequacy asserted by Longstaff (2003, p. 1).

The existence of codes of ethics/conduct, supporting infrastructure, the inclusion of ethical standards in all company activities and reporting standards in Australian companies is examined in the analysis reported in Chapter 7. Implications for an integrated TOTF are drawn from this analysis.

5.2.2.9 Gaps in the literature relating to corporate ethics

The major gap in the literature, as far as the research program behind this thesis is concerned, is that none of the material examined attempts to tie the work reported to the evolution of an integrated TOTF. Other gaps in the literature relating to corporate ethics are: (i) there is little contemporary examination of the application and contribution of ethical standards in Australian companies; and (ii) there is no reported examination of the level and type of ethics supporting infrastructure that exists within such companies. Callaghan (2012, p. 27) suggests that an area worthy of further research is the way that codes of ethics influence strategic planning.

Hitt and Collins (2007, p. 356) suggest several other areas as also being worthy of future research. Three of these areas are:

(a) What is the relationship between the variety of ethical demands faced by firms and the firm's propensity to make high quality strategic decisions?

(b) What effect does developing explicit decision making guidelines for complying with business ethics demands have on strategic risk taking?

(c) What role do the characteristics of strategic leaders play in the reconciliation of ethical demands versus the economic demands facing the firm?

These three gaps do not directly impact on the objective of the research behind this thesis but they could bring a wider range of thinking to any relationship between insiders and outsiders that is inherent in the proposed theory.

5.2.2.10 Summary of Section 5.2

There is considerable debate as to whether or not a company, being an artificial person and not a real one, can be a moral person and so be expected to exhibit ethical behaviour. Accordingly, this section of the thesis opens with a definition of corporate ethics (Section 5.2.1) and quickly advances to a discussion of the relationship between companies and ethics (Sections 5.2.2.2 and 5.2.2.3). The basis for corporate ethics in Australia is examined in Section 5.2.2.4 and the question as to who is impacted by the presence or absence of corporate ethics is addressed in Section 5.2.2.5. The section also includes a brief discussion on the impact of ethical failures in two Australian companies.

The discussion then advances to a consideration of the contribution (or otherwise) of ethics to corporate profitability and to a discussion on whether or not ethics can be taught (particularly at university level). Section 5.2.2.8 includes a summary of possible contributions to the Research Question that lies behind this thesis. Section 5.2.2.9 identifies gaps in the literature that form part of the base for the analysis reported in Chapter 7.

Following the order of topics outlined in Section 5.1 of this thesis, the discussion now advances to a consideration of the potential contribution that corporate governance might make to the development of an integrated theory of the firm.

5.3 Corporate governance

In Australia, corporate governance is a relatively new term in the language of corporate executives and institutional investors. Bosch (2002, p. 273) describes the background to its emergence as follows:

> Before the crash of 1987, the term 'corporate governance' was rarely used in Australia and few people gave much thought to the concepts now covered by it. Shareholders were essentially passive … Institutional shareholders paid almost no attention to the way that companies were governed, and if they were dissatisfied with one of their investments, they took the 'Wall Street walk' and sold their shares.

The need for good corporate governances became more obvious after 2002 and, in 2014, the ASX Corporate Governance Council produced an updated version of its *Corporate Governance Principles and Guidelines* (ASX Corporate Governance Council 2014). This document suggests that all companies listed on the ASX should include a significant section on corporate governance in each annual report. (Note: this document was updated in 2019 and applied from early 2020. Because of these dates, the few changes made are not applicable to ASX listed companies in 2016).

Acceptance of this background requires an understanding of just what corporate governance encompasses and this is explored in the following sections.

5.3.1. Corporate governance defined

Generally speaking, corporate governance is concerned with holding a balance between economic and social goals and between individual and communal goals. It may also encourage the efficient use of resources (Cadbury 1992). These matters may be the goals of corporate governance, but what is corporate governance? There are many definitions of the subject (AICD n.d.; Cadbury 1992; Casson 2013; Denis & McConnell 2002; Lynall & Golden 2003; OECD 2004; SAI Global Limited 2009, Standards Australia 2003; University of Technology Sydney n.d.) but they all have several common components. Casson (2013, p. 6) gives a description that is used in this thesis as it very adequately outlines the major aspects of corporate governance as it is seen in both common and civil law jurisdictions.

> Corporate governance lies at the very heart of the way businesses are run. Often defined as 'the way businesses are directed and controlled', it concerns the work of the board as the body which bears ultimate responsibility for the business. Governance relates to how the board is constituted and how it performs its role. It encompasses issues of board composition and structure, the board's remit and how it

> is carried out and the framework of the board's accountability to its stakeholders. It also concerns how the board delegates authority to manage the business throughout the organisation. It does this by cascading down specified limits of authority to committees, the CEO and employees more generally. The authority allows management to carry out, in accordance with specified budgets and timings, the purpose, vision and strategy which the board has agreed.

It is generally claimed that there are two models of corporate governance. There is the market based Anglo-American model that emphasises the maximisation of shareholder value and there is the European relationship based model that emphasises the interests of a broader range of stakeholders (Mitchell, O'Donnell, Ramsay & Welsh, 2014). It may appear that the shareholder model applies in Australia and this issue will be explored in the analysis in Chapter 7. Businesses characterised by responsible corporate governance can be expected to exhibit the following characteristics (Kuhndt, Tuncer, Andersen & Liedtke 2004 paper 19):

> … assume societal responsibility for leadership; clearly and specifically identify their social, environmental and economic values in accordance with the demands of their stakeholders; define their social, environmental and economic priority areas of action; adopt specific management practices to integrate these values into their operations and take measurable action; disclose comprehensive data on their social, environmental and economic impacts; involve in comprehensive review of their activities; strive for continuous learning.

The next section of this thesis explores who are the parties that may be interested in corporate governance in any company.

5.3.2. Interested parties

There are both internal and external parties with an interest in how companies are governed and operated. Fleming (2003, p. 196) identified eight groupings of these parties as follows: (i) substantial minority shareholders; (ii) small shareholders; (iii) the board of directors; (iv) debt holders; (v) senior executives and other employees; (vi) suppliers; (vii) the community in which the company operates; and (viii) customers. The numerical composition of some of these groups can be identified from company annual reports and these numbers for the five larger companies (by capitalisation) listed on the ASX (as at 30 June 2016) are given in Table 5.2. These companies are used as an example because of their position in the ASX 100 index as at 30 June 2016. The data in the table illustrates that it is not always possible to identify (from annual reports) all stakeholders in the larger Australian companies.

Table 5.2: Capitalisation and selected data on interested parties associated with the five larger companies listed on the ASX as at 30 June 2016

Interested Party	CBA	WBC	ANZ	NAB	TLS
Capitalisation (A$m)	133 721	99 673	72 618	71 765	68 953
Shareholder equity (A$m)	60 756	58 181	57 927	51 315	15 907
Substantial shareholders (5% +)	Nil	Nil	Nil	Nil	Nil
Substantial minority shareholders (Top 20) • Percent shares	20 47.22	20 53.06	20 56.22	20 52.03	20 51.08
Smaller shareholders • Number • Percent shares	819 593 52.78	622 654 46.94	544 692 43.78	591 918 47.97	1 394 126 48.92
Board of Directors • Men • Women	12 9 3	10 8 2	9 6 3	11 8 3	10 7 3
Debt holders • Number • A$ debt (A$m)	NA 169 502	NA 169 902	NA 113 044	NA 127 942	NA 17 302
Senior executives	11	13	10	10	12
Other employees (FTE)	45 129	32 190	46 544	35 000 (approx.)	33 000 (approx.)
Number of suppliers	NA	NA	NA	NA	NA
Number of customers	NA	NA	NA	NA	NA

Source: Capitalisation data was taken from the company's ASX home page.
All other data was taken from the Annual Report for the company named for the 2016 year.
Notes: 1. Identification of interested parties is based on the work of Fleming (2003, p. 196).
2. A$ debt includes both short and long term interest bearing borrowings.

CBA Commonwealth Bank of Australia
WBC Westpac Banking Corporation
TLS Telstra Corporation Limited
NAB National Australia Bank
ANZ Australia New Zealand Bank
FTE Full time equivalent

Table 5.2 identifies the numerical extent of 'insider' stakeholders (substantial shareholders, directors and senior executives) and 'outsider' shareholders (smaller shareholders, debt holders and other employees) in the five larger companies listed on the ASX as at 30 June 2016. Similar data can be collected for all other companies included in the research analysed in Chapter 7. However, the data in Table 5.2 is sufficient to suggest that, based on the distribution of numbers and power, problems could arise between insiders and outsiders. Such problems may find their expression in the fiduciary responsibility of the directors towards the shareholders and include:

- Do the directors and senior managers give greater consideration to the interests of the twenty large shareholders than they do to the interests of the hundreds of thousands of small shareholders?
- Does the diversity (or lack thereof) of age, educational qualifications, ethnic background, experience and gender, in the directors have any impact on their response to stakeholder expectations?
- Are the interests of shareholders of greater importance than the need to service debt – given that the debt of the companies included in Table 5. 2 is greater than the residual equity belonging to shareholders?
- Are the interests of the insiders (senior executives, other employees and debt providers) of greater import than are the interests of the shareholders?
- How do the interests of other 'outsiders' such as suppliers, customers and the general community rate against the interests of the 'insiders'?

The above questions raise matters of great import in corporate governance and some of them have been explored by Demsetz and Villalonga (2001). In a study based on a subset (223 companies) of a 1985 survey of ownership characteristics in 511 American companies, they explore issues associated with ownership, insider information, executive compensation (including stock options) and corporate performance. Particularly, they attempt to determine the impact of different forms of ownership (executive shareholdings and concentrated and diverse institutional and non-institutional shareholdings) on firm performance (Demsetz & Villalonga 2001, p. 217). Their principal finding is that, where shareholdings are based on market influences (such as trading on a competitive stock exchange), there is no systematic relationship between ownership structure and enterprise performance (Demsetz & Villalonga 2001, p. 209).

This section of the thesis identifies the parties with an interest in corporate governance and any impact that different ownership structures might have on that topic. The next section identifies some of the components of corporate governance.

5.3.3 Forms of corporate governance

The typical form of corporate governance in Australia is a board of directors (elected by the shareholders) and a management committee led by a CEO (or managing director) appointed by the directors. This arrangement meets the requirement of both the Commonwealth *Corporations Act 2001* (Parliament of Australia 2001) and Principal/Agent Theory. However, a singular board of directors is not the uniform approach in all legal jurisdictions. As pointed out in Section 2.4.4, many German companies have a mandatory two tier board structure – a supervisory board and an executive board. Could such an approach be adopted in Australia? The Australian Institute of Company Directors (AICD) does not support such an approach. AICD has warned that 'while corporate collapses create the temptation to recommend immediate changes to established structures to resolve perceived problems, there is no evidence to support to suggest that a move to 'two tiered' boards would have produced a different outcome (AICD 2017, Policy and Advocacy).

Shi (2007, p. 198) suggests that a supervisory/executive board structure may not be possible in Australia – mainly because the (Commonwealth) *Corporations Act 2001* (Parliament of Australia 2001, sec 201A (2) allows for the creation of public companies with a minimum of three directors. Such a small number of directors would not allow for the separation of supervisory and executive functions (at the board level) in any credible manner. Apart from the above comment, the AICD has not expressed an opinion on the value of a supervisory or executive board split. It has, however, published a paper discussing the advantages of an advisory board structure (AICD 2009). The suggested role of an advisory board is not decision making, but is limited to: (i) providing an independent source of information and advice to the owners/directors on strategic issues confronting a business; and (ii) creating a learning forum. Dimma (2000, p.2) suggests that advisory boards are more common in private companies. He also suggests that a board structure that features a regular board comprised (as far as is legally possible) of internal directors and an advisory board comprised of external members operating concurrently is undesirable as it would not serve minority shareholders at all well. This could certainly apply in all of the ASX 100 companies (as at 30 June 2016) as the twenty larger shareholders often control more than 50 percent of the ordinary shares on issue (see Appendix 4). Any implications posed by a split board structure are discussed in Chapter 8.

5.3.4 Ethical aspects of corporate governance

Casson (2013, pp. 7-8) identifies five aspects of corporate governance that have an ethical component. These aspects are outlined in Table 5. 3 and are considered in the analyses undertaken in Chapter 7.

Table 5. 3 Ethical aspects of corporate governance

Ethical component	Description
Board Behaviours	The board members carry out their duties in a way that reflects ethical values such as integrity, respect, fairness and honesty.
Board structures and processes	Which facilitate ethical behaviours, avoid unethical ones (such as unmanaged conflicts of interest) and ensure proper accountability – e.g. appropriate board composition, committees, decision making methods.
The purpose, strategy and vision for the business	The board sets the purpose for the business and what the business stands for; its strategic decisions reflect the business's core values.
Values and standards	The board articulates and ensures the implementation of the standards of behaviour it expects for business practice, the way business will be done and its role in society (including ethics practice and CSR initiatives).
Structures and procedures for oversight and control	Mechanisms of delegation and control are conducive to ethical practice.

Source: Casson 2013, p. 8

5.3.5 A summary of Section 5.3

This section of the thesis identifies the three major issues arising from a review of the literature on corporate governance. They are: (i) the wide range and diversity of parties with an interest in corporate governance within the ASX 100 listed companies; (ii) the question as to whether or not society and business is well served by the singular approach to corporate governance adopted in Australia; and (iii) the ethics that underlie corporate ethics in Australia. These questions are addressed in the analysis reported in Chapter 7.

The next section summarises gaps in the literature relating to corporate governance. These gaps are relevant to achievement of the objectives given in Section 1.4.

5.4 Gaps in the literature relating to corporate governance

The purpose of this section of the thesis is to outline gaps in the literature relating to corporate ethics and corporate governance. These gaps then point towards both the need for and content of a more useful theory. They are:

- no methodology for determining the impact of ethical values and activities on corporate profitability is proposed;
- the requirement for Australian public, limited liability, companies to report on their ethical standards and programs is not all that onerous and carries no requirement for a discussion of corporate values and strategies or on programs for their implementation; and
- it still appears to be reasonably easy for a corporation to place the responsibility for unethical acts on its employees without penalty to the company (rather than to its shareholders).
- there is a vast (and confusing) literature on what corporate governance is but little on how ‘good’ corporate governance can be demonstrated;
- while there are many suggestions that boards of directors should be held responsible for failures in corporate governance, there is no requirement for such

responsibility in either the ‘hard’ or ‘soft’ law relating to corporations in Australia;

- no mechanism by which corporate governance standards and processes can be definitely linked to profitability is proposed; and
- there is little in the literature that relates the satisfaction of long term stakeholder expectations to corporate governance in Australia.

5.5 Contribution to the research objectives

The work reported is this chapter meets the objectives described in Section 5.1. It also contributes to the Research Objectives identified in Section 1.4 in that it identifies gaps in the literature relating to Corporate Ethics and Corporate Governance. These gaps indicate where future research into these topics could be undertaken.

5.6 A summary of the chapter

Chapter 5 explores the literature relating to corporate ethics and corporate governance. Of particular importance may be the link between the two concepts and these links are explored in Table 5.3.

Although the ASX Corporate Governance Council’s *Corporate Governance Principles and Recommendations* (ASX Corporate Governance Council 2014) suggest that companies listed on the ASX include a report on their observance of the principles in each annual report, compliance with this suggestion is not mandatory. The Guidelines make no mention of a requirement to report on the standard of ethics training and implementation within the companies but do suggest that a code of conduct be developed and implemented. The ways that the ASX 100 companies (as at 30 June 2016) respond to these recommendations form part of the base for the analyses reported in Chapters 7 and 8.

Chapter 6 now develops the methodology by which the research into the utility of the recognised TOTF in explaining the creation, existence and operation of the ASX 100 companies (as at 30 June 2016 proceeds.

CHAPTER 6 METHODOLOGY

6.1 Introduction to this chapter

Chapters 3, 4 and 5 identify twenty one existing TOTF and elements of the social contract between society, government and business, corporate ethics and corporate governance that might drive changes to (or the replacement or enhancement of) these theories. Chapter 6 now identifies the philosophy, strategies and research techniques that support the development of this thesis.

The objectives of this chapter of the thesis are:

- to present the conceptual model upon which the research is based;
- to identify the philosophy, methodology and research strategies and techniques appropriate to research against the Research Question posed in Section 1.3;
- to identify the data collection and analytical techniques used to produce meaningful findings against the contributions to theory and to practice outlined in Chapter 1; and
- to outline the data collected and its sources.

Figure 6.1 outlines the structure of this chapter and connects it to both Chapter 5 and Chapter 7.

Chapter 5 Literature review – Corporate ethics and Corporate governance	Content:	• The social contract • Corporate ethics • Corporate governance • Theories of the firm • Summary of gaps in the literature
Chapter 6 **Methodology**	Content:	• Section 6.1 introduces the chapter; • Section 6.2 presents the conceptual model on which the research is based; • Section 6.3 develops the philosophical base for the research program; • Section 6.4 outlines the research methods used; • Section 6.5 outlines the data collected for analysis in Chapters 7 and 8; • Section 6.6 establishes the criteria used to rate the utility of TOTF; and • Section 6.7 provides a summary of the chapter.
Chapter 7 Theories of the firm and the ASX 100 companies	Content:	• Companies to be used in the research • Company data to be used to confirm a fit against existing TOTF • Gaps in the fit against existing TOTF that indicate the need for enhancement of or change to existing TOTF

Figure 6.1: The structure of Chapter 6 and its connection to Chapters 5 and 7

6.2 The conceptual model behind the research

Chapters 3, 4 and 5 outline the TOTF and the three concepts that drive the research behind this thesis. They are: (i) existing TOTF; (ii) the social contract between society, government and business; (iii) corporate ethics; and (iv) corporate governance. The link between these concepts is outlined in Section 3.1 and the literature reviewed so as to develop an understanding of them is discussed in Sections 3.2 to 3.5 inclusive. The proposition behind the analysis in Chapter 7 is that, if present TOTF have a limited utility in explaining the formation, existence and activities of companies in Australia, then a more useful theory might be developed from a consideration of changes occurring in the concepts and theories identified. This model is depicted in Figure 6.2.

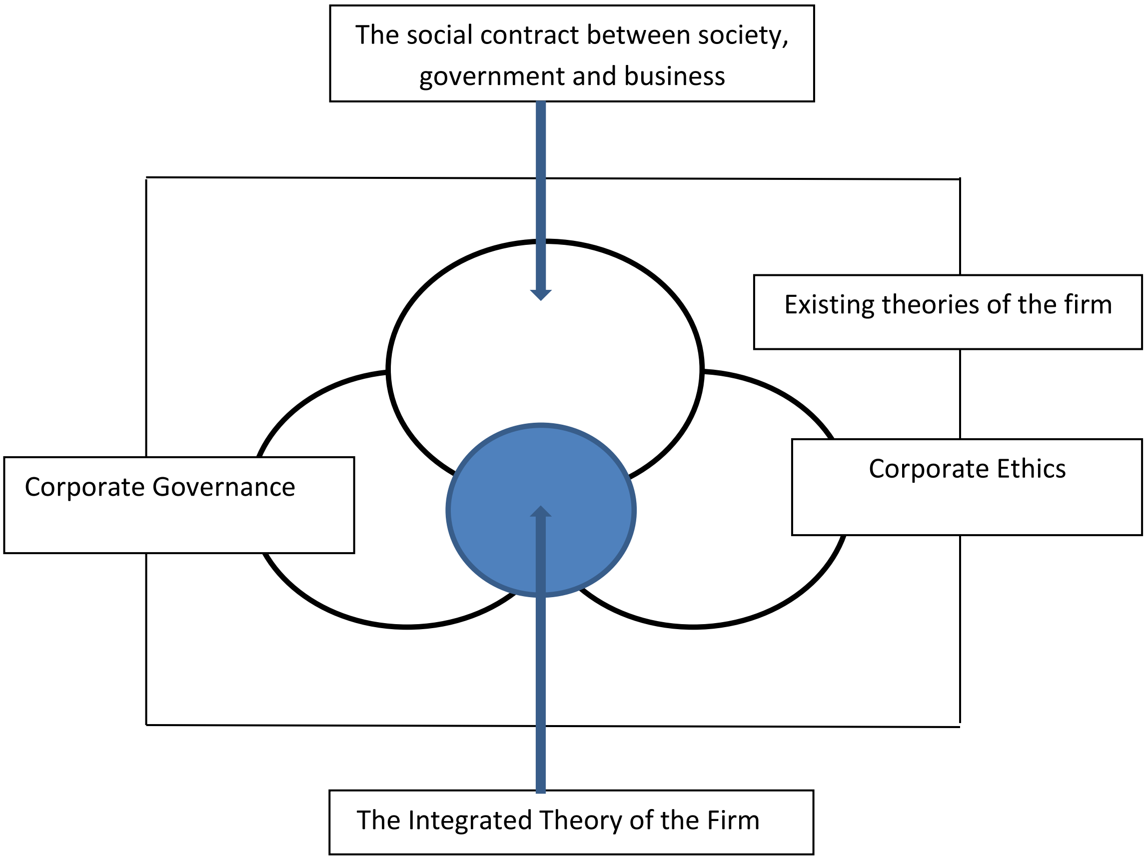

Figure 6.2: A model of the links between the concepts and theories that drive research into the public companies analysed in Chapter 7

6.3 The research philosophy

My approach to the research and analysis behind this thesis is based on (and coloured by) more than fifty years' experience as a line manager, senior executive, director and managing director of companies in both the private and public sectors of the Australian economy. This experience includes the creation, maintenance and operation of companies in the materials, utility and engineering services segments of the GICS used by the ASX. It also includes significant experience in government industry policy formulation and in tertiary education. The 'world view' of company creation, existence and operation that I have formulated is built on the following understandings:

- companies are real (even if only legal) entities and exist regardless of the perception and understandings of any researcher;
- companies are not created and exist (nor are they operated) according to any mathematical rules or models and any exploration of these aspects of company life falls into the realm of social research;
- there are many existing TOTF that can be tested in order to explore their utility in describing the creation, existence and operation of companies;
- other researchers have already suggested what an ideal TOTF might address; and
- the findings of research into the utility of existing TOTF and the contents of such a theory as suggested by others could be used to construct a more useful TOTF.

This 'world view is important in that it guides the selection of the philosophical paradigms against which the research is undertaken.

There are several different ways of describing philosophical paradigms but Healy and Perry (2000, pp. 118-126) suggest an approach that considers positivism, critical theory, constructivism and realism as bases for a research philosophy. From a basic understanding of these concepts, each could be used as a base for the research behind this thesis. However, the approaches adopted are realism and constructivism.

Healy and Perry (2000, p. 122) suggest that 'Realism is 'real' but only imperfectly and probabilistically apprehensible' and that it is useful for research problems that deal with 'complex social science phenomena involving reflective people'. This understanding is supported by the Oxford Dictionary (oxforddictionaries.com n.d., realism) definition of Realism as including:

- the doctrine that matter as the object of perception has real existence and is neither reducible to universal mind or spirit nor dependent on a perceiving agent;
- the attitude or practice of accepting a situation as it is and being prepared to accept it accordingly; and
- the doctrine that universals have an objective or absolute existence.

There is a view that realism may have a mathematical base and may not be applicable to social research – such as this thesis. Proponents of this view generally claim that 'Mathematical realism is the view that the truths of mathematics are objective, which is to say that they are true independently of any human activities, beliefs or capacities.' (Blanchette 1998). To the present researcher, this is merely another way of stating the characteristics outlined above and not a reason not to use realism in the context of this thesis. Another argument that is more relevant to the research behind this thesis is that that some researchers maintain that moral values are 'objective' and must be viewed in the light of human feelings and attitudes (Craig 1998). This assertion is not challenged and the discussion on ethics in Chapter 5 is based on whether or not companies can be 'moral persons' and not on whether or not any moral values that they exhibit are 'objective'.

The 'Realism' approach would accept companies as being real (despite how an observer might perceive them) and suggests that their ethics and performance be accepted for what they are. As the research behind this thesis is based on reality (the companies listed in the ASX 100 index exist, their ethics are as outlined in the codes of conduct described in their annual reports and their financial performance and shareholder interests are as described in these reports also), the Realism paradigm is used in the approach adopted in Chapter 7.

Positivism seems attractive as its core elements (Oxford Bibliographies n.d.) stress:

- only social facts extending to and observable by scientific acts are studied;
- sociological inquiry should be objective and value neutral inquiry;
- the methods used should be reliable, verifiable and precise;
- theories should be abstract, generalizable statements with clearly defined concepts linked by their relationships; and
- the ultimate goal should be cumulative, objective knowledge of the social world, its properties and dynamics.

The attraction of the Positivist approach lies in each of these characteristics but it falls short of the requirement for a philosophical base for this thesis in that it is strongly based on quantitative analysis. Although there are many sets of financial data available to support analysis of Australian company performance, they are limited in their ability to explain the utility of existing TOTF and most of the data contained in the primary sources accessed for this thesis (company annual reports) is

qualitative in nature. However, the guidance provided by Positivism is useful in understanding existing TOTF and in developing a new theory.
At an initial glance, Critical Theory would also appear attractive. However, its primary aim can be stated as being 'to understand and help overcome the social structures through which people are dominated and oppressed' (Encyclopedia Britannica 22 August 2019). The 'helping understand social structures' part of the approach could certainly apply to the research behind this thesis but it is not intended to explore whether or not social structures such as companies are a means of 'dominating and oppressing' people. The definition of Critical Theory contained within the Encyclopedia Britannica (22 August 2019) also refers to not proposing a blind faith in scientific progress and offers the suggestion that scientific knowledge should not be pursued as an end in itself without reference to human emancipation. Because of these limits to its application, Critical Theory is also rejected.

Several of these philosophical approaches contribute significantly to the research into existing TOTF undertaken and the suggestion about the construction of theories also offers guidance that is considered in formulating the proposed integrated TOTF (Chapter 6). Miner (2003, p. 259) offers additional guidance on how a theory should be constructed:

> If one wishes to create a highly valid theory, which is also constructed with the purpose of enhanced usefulness in practice in mind, it would be best to look to motivation theories, often with a more limited domain, for an appropriate model.

Miner's (2003, p. 259) suggestion about usefulness is picked up in the discussion on how managerial based theories work and is used in the development of the new, integrated TOTF undertaken in Chapter 8. However, the real value in Miner's (2003, p. 259) suggestion relates to the construction of a theory.

Although links to the works of Plato and Aristotle can be drawn, Constructivism is mostly regarded as a new approach to learning and its philosophical roots can be found in the writings of Piaget (1972) and Bruner (1990). Based on these writings, Constructivism can be described as the idea that learning is the result of assimilation and accommodation -where learning refers to the development of knowledge and the determination of the meanings behind that knowledge. Cognitive Constructivism posits the view that all knowledge is constructed and that such construction depends on convention, human perception and social experience. A supporting view is that Constructivist theory suggests that humans construct knowledge and meaning from their experience (University of Sydney n.d.). It is in this regard that my experience in managing and directing companies becomes an important contributor to this thesis.

While it can be claimed that any knowledge developed through a constructivist approach is only an individual view and is subject to challenge, it is the approach adopted in the construction of a new, integrated, TOTF in Chapter 8. That the formulation of such a TOTF can be challenged because of the bases (and experience) on which it is built is to be welcomed and Chapters 7 and 8 suggest ways by which others might accumulate additional data and so support or challenge the new theory.

6.4 Research methods

Miner (1984) reported on a study into the validity and usefulness of several organisational behaviour theories and twenty years later repeated the study with an enlarged group of seventy-three organisational behaviour theories (Miner, 2003). The theories analysed in the second study were recognised by a survey of knowledgeable scholars and were based on the following criteria (Miner 2003, p. 251):

- the authors of the theories considered had produced substantial theoretical work;
- the theoretical work was identified as being within the field of organisational behaviour studies; and
- the theory is recognised as being significant within the field of organisational behaviour.

These theories were then rated as to importance, validity and usefulness, on a five point scale, by the same group of scholars and a series of tables produced to show the rankings of the theories (Miner 2003, pp. 252-259). These tables included several matrices that explored usefulness and validity and then the applicability of the usefulness/validity matrix in theory formulation (Miner 2003, pp. 258-9). This approach has been adopted in the research behind this thesis. However, there are several lessons contained in the above study that should be applied to any research strategies considered. These lessons (Miner 2003, pp. 268-269) include:

- while it may be easy to find a large number of qualified persons to select the theories to be studied and then to rate them, the standards applied by individual judges within the group may vary from those of other judges;
- the approach outlined above may not be any better than a thorough literature review;
- the conclusions reached, although developed from a quantitative base, may be biased in that they are based on the interpretation of just one person (as are the findings of most research); and
- the comment that the study took ten years to assemble, complete and report in a book form.

Data for the research behind this thesis could be collected by surveys, interviews, observations, discussion groups and archival research. However, after an examination of the usefulness of each of these techniques, archival research was selected as this technique would reach a consistent set of data (material published in refereed academic journals and the annual reports of the ASX 100 companies). It could also be shown to rely on data that could be equally easily accessed by other researchers. The data required for analysis against the TOTF recognised by literature reviews would be both qualitative (text based data about ethics, corporate governance, sustainability and stakeholder engagement) and quantitative (data about shareholder composition and length of shareholding, financial performance, company group composition, natural resource access and international activities). Because of these requirements, a mixed research methodology was adopted.

A mixture of qualitative and quantitative methods is supported by Cassell and Symon (1994) and Whyte, Greenwood and Lazes (1991). It is also strongly advocated by Patton (1990, p. 39):

> A paradigm of choices rejects methodological orthodoxy in favour of methodological appropriateness as the primary criterion for judging methodological quality. … The paradigm of choices recognises that different methods are appropriate for different situations.

The strategies and techniques used in the research behind this thesis are, therefore, consistent with the philosophy described in Section 4.3. They are also dependent on the Research Question (Section 1.3) and on its objectives (Section 1.4). These strategies and techniques are described in Table 6.1.

Table 6.1: The Research Question, data sources and research methods

The Research Question	Objectives and Data Sources	Research Methods
What is the content of an integrated theory of the firm that: (i) addresses the shortcomings of existing theories as recognised by Hart (1989), Foss et al. (2004) and Radin (2004); and that (ii) provides a base for the continuing understanding of a company as it evolves?	**Objective 1** To identify gaps in the literature that explains the twenty one theories of the firm identified in Section 1.2. **Data sources:** Research against this objective draws on academic journals, books and papers obtained from the USQ library (and other university libraries). Examples of the journals reviewed are the *Australian Journal of Management* and the *Journal of Cleaner Production.*	The research method used is archival research using the data sources suggested in the previous column. Academic papers and books related to each of the identified twenty one TOTF are used to recognise the characteristics of each theory and any gaps suggested by other researchers. The characteristics and gaps are separately compiled into tables and these tables then compared to produce a summary of gaps in the literature relating to all TOTF.
	Objective 2 To identify gaps in the literature relating to the social contract between society, government and business, corporate ethics and corporate governance that might suggest research that could lead to the development of a comprehensive and integrated theory of the firm. **Data sources:** Research against this objective draws on academic journals, books and papers obtained from the USQ library. Examples of the journals reviewed are the *Journal of Business Ethics*, the *Columbia Journal of World Business* and the *Harvard Business Review.*	The research method applied is archival research using the data sources suggested in the previous column. Academic papers and books related to the four topics identified in the previous column are used to recognise the characteristics of the subjects and any gaps identified by other researchers. These items are then compiled into tables and used to guide the research reported in Chapter 5. Because the four topics are evolving bodies of research, meetings of business related committees and other institutional organisations associated with the Parliament of Australia are also scanned for relevant input. Such organisations include the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services industry established in Australia in 2017.

The Research Question	Objectives and Data Sources	Research Methods
	Objective 3 To develop a study that uses Australian company data to explore the utility of existing theories of the firm. **Data sources:** Research against this objective draws on the Annual Reports, for 2006-07 to 2015-16, of all companies listed in the ASX 100 index as at 30 June 2016. Newspapers (such as the *Australian Financial Review*) and academic journals (such as *Critical Perspectives in Accounting* and the *Australian Journal of Management*) were also used.	The companies in the ASX 100 index (as at 30 June 2016) are identified by archival research into ASX online documents. Some additional material (gross revenue and number of subsidiaries) is sought from company reports for 2016. This data is compiled as the basic list of companies in the research and is at Appendix 1. Material relating to shareholders, directors, board committees, executives, executive remuneration, CSR and ESD is obtained from annual reports for the years 2006-07 to 2015-16. Samples of this material are included at Appendices 3 to 6.
	Objective 4 To develop and test the utility of a new, integrated, theory of the firm that draws on the gaps in existing theories for its bases. **Data sources:** The analyses performed against Objective 3 provide the base for this work. The annual reports of the ASX 100 companies identified in Appendix 1 were used to obtain data used in analysis of the new theory. These data sources are those shown in Appendices 2 to 6.	The philosophical approach to this section of the thesis is based on Constructivism and the method used is archival research. Gaps in the literature relating to the twenty one TOTF identified against Objective 1 are used as the base for constructing the new theory. Relevant parts of the four topics recognised against Objective 2 are associated with the gaps in the literature referred to above and a new, integrated TOTF constructed. This new theory is then tested against the criteria used to analyse the utility of existing theories against Objective 3.
	Objective 5 To suggest tests and other research that could further illustrate the utility of the proposed new theory. **Data sources:** The archival research behind this objective was pursued using the same sources of data as were used for Objective 2.	The approach applied is again archival research. However, this time, the work is aimed at identifying: (i) gaps in the research undertaken by others; and (ii) suggestions by other researchers as to areas where additional research is warranted. These findings are then compared with the new, integrated TOTF suggested in Section 1.3 so as to ensure that the new theory addresses as many gaps in the previous work as is possible.

6.5 Supporting data used in the study

The analyses undertaken in Chapters 7 and 8 are based on the published annual reports of the 100 larger companies listed on the ASX (the ASX 100 index displayed in Appendix 1). Although there were more than 2.1 million registered businesses operating in Australia as at 30 June 2016, these companies were chosen for the research behind this thesis because:

- they are as close to the list of companies analysed by Wheelwright (1957) and Welch (2003) as it is possible to select (due to the passage of time);
- only those companies listed on the ASX are required to publish annual reports that contain at least some of the data required to analyse conformation with the characteristics of the twenty one TOTF selected for analysis; and
- the size of the ASX 100 companies (described by their market capitalisation as at 30 June 2016) makes it possible to compare them against companies listed on stock exchanges in other countries.

Academic books and papers (located from USQ and other university library searches, publishing company, topic and author searches and from lists of reference in accessed texts) relating to the twenty one TOTF recognised in Section 1.2 were examined manually and the key characteristics of each theory identified. Examples of these characteristics are: Real Entity Theory concentrates on the recognition and empowerment of companies created by law in individual jurisdictions; Shareholder Theory emphasises the place of shareholders in company considerations and actions; and Managerial Discretion Theory places emphasis on the discretion of managers in the allocation of company resources. This approach is consistent with content analysis (Krippendorff 2004; Neuendorf 2002) in that it examines a variety of sources to determine the presence of certain words. A table of these characteristics was constructed and then used to identify material in the annual reports of the ASX 100 companies (initially for the financial year 2015-16) that could be used to explore the applicability of the TOTF. Content analysis is not relevant to the search of ASX 100 company annual reports as those reports were only used to provide data against the key characteristics of the TOTF already recognised and were not examined for the frequency of occurrence of these data sets or for any of the other possible outcomes of content analysis.

The ten year period 2007 to 2016 (inclusive) is used as it gives data for financial analyses that includes the time before the Global Financial Crisis of 2008 as well as for the GFC and for a period that illustrates how the ASX 100 companies may have recovered from that crisis. Annual reports for the ASX 100 companies were used as the principal source of data as most of these reports also contained at least some discussion on corporate sustainability, environmental concerns, resource availability, community contributions and movements in shareholder numbers and size of holdings. Many companies also published separate sustainability reports but these were not researched to any extent as the material that they contained was only applicable to few of the TOTF (principally the Resource Based and Corporate Sustainability Theories). Where possible, the annual reports were accessed online, but many of the older reports (including CSL before 2010, NAB for 2007-12 and LNK, HSO and PTM for most of the years before 2010) were not examinable in their online format and were obtained as hard copies from the companies through their shareholder relations staff.

The material accessed against each of the twenty one TOTF identified for the thesis was read in detail and relevant key words (including shareholder information, revenue and profitability, corporate governance, codes of conduct, directors and senior management teams, resources (human and otherwise) and countries of trade) were highlighted. The identified data was then assembled into time series tables as is shown in the appendices. Not all of the data sought was readily available or easily accessed. Information on human resources was one of the harder sets of data to access. Not all companies included this data in their annual reports and, where it was included, its location varied from the Director's Reports to Notes to the Financial Tables and to comments on the inside front or back covers.

Section 1.2 identifies twenty one existing TOTF and allocates them to one of eight categories. This section of the thesis establishes the data sets (based on the annual reports of the ASX 100 companies for the 2016 financial year) that are later used to demonstrate the utility of these TOTF. Because of the bulk of data collected for the analysis, the nominated appendices include only examples of the data rather than a complete set of data on each of the ASX 100 companies (as at 30 June 2016) for each of the TOTF.

The data sets collected and used in the research are:

- Corporate Entity theories

These theories describe the legal base for business entities. They are centred on government legislation and the legal characteristics of the business entity are derived from that legislation. In Australia, the principal, relevant, legislation is the *Corporations Act 2001* (Parliament of Australia 2001). To be in the ASX 100 index (Appendix 1), a company must be incorporated under the *Corporations Act 2001*. Appendix 1 therefore provides the base data for determining the utility of this group of theories.

- The Neo-classical Theory of the Firm

This theory presents the Neo-classical firm as being one in which ownership and management is not separated. Data that illustrates the ownership of ASX 100 companies is presented in Appendices 2, 3 and 4. Each ASX 100 company presents data on the size of its managerial/senior executive team in its 2016 Annual Report and some details on managerial team size are included in Appendices 2 and 7.

- Other Economics Based Theories of the Firm

These theories draw on the Neo-classical TOTF as their foundation but extend to include transaction costs, contract theory and resource based theories. The annual reports published by the ASX 100 companies are of limited use in exploring the utility of these theories because: (i) they contain no data that supports the identification of transaction costs; (ii) they contain no details of contracts entered into by the companies except for executive remuneration; and (iii) the only companies that provide any information on natural resource stocks are the mining and energy companies. All companies provide some information on the diverse human resources available through their directors and senior executives and this data is presented in Appendix 7.

- Behavioural Based Theories of the Firm

The Behavioural Based TOTF attempt to compensate for the narrow, economics based view expressed in the Neo-classical and similar TOTF. They are based more on how decisions are made and on how enterprises learn about their internal and external environments. They do, therefore, examine the human capital of a company and how incentives are used to motivate its people. Two data sets are collected to enable consideration of the utility of this theory in understanding the creation, existence and operation of the ASX 100 companies. The first data set identifies the owners, directors and senior executives of the ASX 100 companies and an example of this data is given in Appendix 2. The second data set (Appendix 6) contains information on how the senior executives of the ASX 100 companies are remunerated and offered incentives. These data sets are used to explore the utility of Principal/Agent and Stewardship TOTF. Data used to explore the utility of the Revenue/Profit/Growth Maximisation TOTF is contained in Appendix 5. However, the 2016 Annual Reports of the ASX 100 companies contain no data that allows exploration of the utility of either the Managerial Discretion or the Managerial Capitalism TOTF.

- Stakeholder Theories of the Firm

There are two theories in this group. The dominant one is Shareholder Theory and the secondary one is Stakeholder Theory. Each company in the ASX 100 index includes details of the twenty larger shareholders on its shareholder register in each annual report as well as a summary of all shareholders grouped according to the volume of their shares. Appendix 3 identifies the three larger shareholders in each ASX 100 company as at 30 June 2016 and the percentage of shares held by the Top 3, Top 5, Top 10 and Top 20 shareholders. Appendix 4 illustrates the movement in the percentage of shares held by the five larger shareholders over the period 30 June 2007 to 30 June 2016. These two appendices provide a base for comparison with Shareholder Theory as well as providing data that helps to illustrate the extent of the problems highlighted by Principal/Agent Theory. Some of the ASX 100 companies provide data about corporate social responsibility and/or community engagement activities in their 2016 Annual Report. However, the number of companies that provide this data is small and no attempt is made to create an appendix to summarize this data. Rather, a brief presentation of it is made against Stakeholder Theory.

- Theories relating to the Growth of the Firm

There are two theories in this group. They are the Theory of the Growth of the Firm and the Theory of the Multinational Firm. Data relating to the growth of the ASX 100 index companies (as measured by revenue growth) is contained in Appendix 5. Growth is often represented by an increase in annual turnover, but it could also be represented by number of employees and number of subsidiaries - however not all companies report this data. Even where it is reported, the change in number is sometimes small and is often confusing. An example of this confusion arises when the total number of subsidiaries increases, but the total number of employees decreases because some of the companies acquired have fewer employees than do some of those companies shed. Because of this difficulty, no attempt is made to collect this data. Data relating to the Theory of the Multinational Firm is a little easier to collect as many ASX 100 companies publish both the number of subsidiaries and the countries in which those subsidiaries trade. The number of subsidiaries listed for some ASX 100 companies is illustrated in Appendix 1 and an example of the countries in which one of them trades is given in Table 7.5.

- Institutional Theory of the Firm

No data that would support a comparison between New Institutional Theory and the creation, existence and operation of the ASX100 companies is published in their 2016 Annual Reports and, therefore, no such data collection is presented as an appendix. A considerable array of data on the interaction between these companies and institutions (such as the courts of law, banks and political parties) is available in newspapers and general media reports. However, these are not the primary sources used for the research behind this thesis and are not, therefore, collected and analysed. This analysis could be undertaken at another time.

- Contemporary Theories of the Firm

The two theories in this group are the Evolutionary Theory of the Firm and the Sustainability Oriented Theory of the Firm. Evolutionary theory examines the bases on which firms grow and change and some evidence of this evolution could be found in the number of subsidiaries and the array of raw materials that each ASX 100 company possesses. However, data on changes in these areas is not published in the 2016 Annual Report of any ASX 100 company. For some companies, such as New Hope Corporation Ltd (included in the ASX 200 index but not in the ASX 100 index), it is possible to trace the development of new technology (such as coal gasification) that allows the company to evolve from being a coal mining, transportation and pastoral based company into a diversified manufacturing one through a series of annual reports. However, such links have not been found for any of the companies shown in Appendix 1.

The Sustainability Oriented Theory of the Firm has several bases and it is possible to trace enterprise components that contribute to overall sustainability through the sustainability reports published by many ASX 100 companies. However, the general trend is to make reference to sustainability issues in the annual report and to publish a separate sustainability report. Such reports are usually extensive and it would be difficult to summarise them within the scope of this thesis. Consequently, such a summary is not attempted. One data set that is reasonably easy to obtain on many ASX 100 companies is the period over which they have been listed on the ASX (as against how many years it is since their creation). However, such a compilation is fraught with many difficulties – not the least of which is the frequency with which companies are listed and then delisted. Consequently, no attempt is made to compile such a data set.

6.6 The criteria used to establish the utility of existing TOTF

The Research Question (Section 1.3) draws on the work of Hart (1989), Miner (2003), Foss et al. (2004) and Radin (2004) to recognise criteria by which TOTF might be evaluated. From this background, the following criteria for analysing the utility of existing TOTF have been deduced:

1. Why does the company exist?
2. Why has the company adopted its present legal structure?
3. How does the company relate to its shareholders?
4. How is the personality of the company determined?
5. Why are the boundaries between the company and its markets where they are?
6. Why is the company structured the way that it is?
7. What drives business strategy?
8. What generates business productivity?

9. What motivates corporate behaviour?
10. What are the company's obligations to shareholders and other groups?
11. What tests does the theory suggest for determining its utility in helping to understand the creation, existence and operation of the company?

Data to support the comparison of these criteria with existing TOTF could be drawn from sources such as newspaper articles, industry journals company press releases, company annual reports and company archives. Each of these potential sources has both strengths and weaknesses. Their major weakness is that they mostly (and only very briefly) cover one aspect of company activities. Company archives would appear to be a reliable and extensive source of data about all aspects of company activities and access to this source was tested during the preliminary research behind this thesis. This preliminary research quickly established three major weaknesses in such an approach. They are: (i) the central offices of the 100 companies in the ASX 100 index are scattered widely throughout Australia and accessing the data held by them would be both very time consuming and expensive; (ii) very little of the data available is indexed in a way that would facilitate research; and (iii) only a few of the ten companies approached during the preliminary research were willing to open their archives to un-sponsored research. Even if such data had been easily accessible it may not have been equally accessible to other researchers trying to replicate and test the findings contained in this thesis. For these reasons, the primary data source used in the research behind this thesis is the published (and freely and readily available) annual reports of the ASX 100 companies. The only difficulty found in accessing these reports was that not all reports for the period 2007 to 2016 were available on the company web site and several had to be obtained by direct contact with a company. Even this data source is extensive in scope. Many of the annual reports accessed are more than 200 pages in length and these reports have been researched for each of the ASX 100 companies for 2016. The financial and shareholder tables of the reports have also been accessed for each of the years 2006-07 to 2015-16. Table 6.2 outlines the specific data bases used to obtain the data required to support the analyses undertaken in Chapters 7 and 8.

Table 6.2: The research criteria and the data sources

The Research Criteria	The Data Sources
Why does the company exist?	2016 Annual Reports Individual company archives
Why has the company adopted its present legal structure?	ASX listing requirements 2016 Annual Reports
How does the company relate to its shareholders?	Shareholder Theory Annual Reports 2007 to 2016 inclusive
How is the personality of the company determined?	Literature on the social contract Literature on corporate ethics and corporate governance 2016 Annual Report section on corporate governance
Why are the boundaries between the company and its markets where they are?	2016 Annual Report sections on resource and subsidiary enterprise location
Why is the company structured the way that it is?	2016 Annual Report data on subsidiary enterprises
What drives business strategy?	2016 Annual Report section on sustainability and/or separate Sustainability Report
What generates business productivity?	2016 Annual Reports
What motivates corporate behaviour?	Literature on the social contract, corporate ethics and governance 2016 Annual Report section on corporate governance
What are the company's obligations to shareholders and other groups?	Shareholder and Stakeholder theories 2016 Annual Report sections on community relationships and/or corporate social responsibility
What tests does the theory suggest for determining its utility in helping to understand the creation, existence and operation of the company?	Literature relating to the twenty one recognised TOTF

The recognition of questions used to rate the utility of the TOTF is only the starting point in establishing their usefulness in helping understand the creation, existence and operation of companies. The next step is to create a weighting scale that identifies how well the theories meet each criterion. Many approaches to such scales exist. The approach adopted in this thesis is to mirror the approach outlined by Miner (2003, p. 259).

A five point scale has been adopted. It is structured as follows:

0 The theory does not meet the criterion at all.

1 The criterion supports a very limited understanding of the theory.

2 The criterion supports a limited understanding of the theory.

3 The criterion supports a reasonable level of understanding of the theory.

4 The criterion supports a full understanding of the theory.

These analytical criteria and weighting scale are the bases for determining the utility of existing and proposed TOTF in Chapter 7 and 8.

6.7 A summary of the chapter

Chapter 6 develops the philosophical base for the research undertaken. It is a mixture of Realism and Constructivism. The sources of data and the content of the data collected by archival research are identified in Table 6. 1 - these sources are mostly academic journals and company annual reports. Examples of the data collected are presented in Appendices 2 to 7 inclusive. The data is both qualitative and quantitative in nature. The data collected is not used to make comparisons between the performance of one company and others but to demonstrate how the characteristics of companies listed in the ASX 100 index (as at 30 June 2016) illustrate the utility of existing TOTF. Such data as is available could easily be subjected to statistical analysis but, given the small number of companies in most sections of the GICS used by the ASX, little data of value for comparison of performance by companies would be gained. Such data as could be easily obtained would not contribute to an understanding of the utility that the twenty one recognised TOTF have in understanding company creation, existence and operation and is not attempted.

The links between the theories and concepts explored in Chapters 3, 4 and 5 support the creation of a conceptual model upon which the research and formulation of a new, integrated TOTF are based. The model demonstrates how the existing twenty one TOTF and material relevant to the social contract between society, government and business, corporate ethics and corporate governance can be linked to present a new, integrated, TOTF. This conceptual model is presented in Figure 6.2. This approach has been used to undertake the research into TOTF reported in Chapter 3 and to assemble the data contained in Appendices 1-7. Chapter 7 shows how this material can be used to demonstrate the utility of existing TOTF in helping understand the creation, existence and operation of the companies identified in Appendix 1.

CHAPTER 7 THEORIES OF THE FIRM AND THE ASX 100 COMPANIES

7.1 Introduction to this chapter

The Research Question behind this thesis is:

> What is the content of a theory of the firm that: (i) addresses the shortcomings in existing TOTF recognised by Hart (1989), Miner (2003), Foss et al. (2004) and Radin (2004); and that (ii) provides a base for a continuing understanding of a company as it evolves?

The work of the authors identified above recognises several theoretical gaps and shortcomings. The purposes of the analysis reported in this chapter of the thesis are: (i) to use publicly available data to determine whether or not those theoretical shortcomings are real; and (ii), if so, do they limit the utility of existing TOTF in helping to understand the creation, existence and operation of the companies in the ASX 100 index. If such limits are recognised, they can then be used to develop a more useful theory of the firm that addresses the Research Question.

The objectives of this chapter of the thesis are:

- to identify the companies used in the analysis and some of their characteristics;
- to categorise those companies according to the General Industry Classification System (GICS) used by the ASX;
- to identify the larger shareholders in each company and to illustrate movements in their shareholdings over the period 2007 to 2016;
- to outline the financial characteristics of the companies during the period 2006-7 to 2015-6 that may have induced shareholders to change their shareholdings;
- to recognise the diversity in resources available to the companies through their boards of directors and executive teams; and
- to determine the utility of existing TOTF in helping to understand the creation, existence and operation of the ASX 100 companies.

These objectives address the Research Question (Section 1.3) in that they provide data that can be used to address the issues recognised by the researchers identified in that question.

Figure 7.1 illustrates where this chapter fits into the overall structure of the thesis.

Chapter 6 Methodology	Content:	• The form of research to be undertaken • The research philosophy • Research strategies and techniques • Data sources to be utilized • Data collection and analysis • The conceptual model
Chapter 7 Theories of the firm and the ASX 100 companies	Content:	• Section 7.1 introduces the chapter; • Section 7.2 discusses the composition of the ASX 100 index that is relevant to this thesis; • Section 7.3 identifies the data used in the analysis; • Section 7.4 uses data from the 2016 Annual Reports of the ASX 100 companies to establish the utility of twenty one existing TOTF; • Section 7.5 provides a summary of the chapter.
Chapter 8 A new, integrated, theory of the firm	Content:	• A new, integrated, theory of the firm • Confirmation of the utility of the new, integrated, TOTF • An examination of the predictive capacity of the new, integrated, TOTF • Tests by which others might explore the utility of the new, integrated, TOTF

FIGURE 7.1: The structure of Chapter 7 and its connection to Chapters 6 and 8

7.2 The composition of the ASX 100 index

There were approximately 2 200 limited liability companies listed on the ASX at 30 June 2016 (psi.com.au n.d.). These companies can be grouped into different indices according to the purpose being served. The three more common indices are; (i) the ASX All Ordinaries Index (all companies); (ii) the ASX 100 Index; and (iii) the ASX 200 Index. The ASX 100 Index identifies the larger one hundred companies (by market capitalisation) and is the company identifier used in Appendix 1. The names of the companies, their ASX code, their position in the ASX 100 index, their market capitalisation and the number of their identified subsidiaries (where available) is shown in Appendix 1. Throughout this thesis, the companies are identified by their ASX code: for example, the Commonwealth Bank of Australia Limited is referred to as CBA and Santos Limited is referred to as STO (Numbers 1 and 50 respectively in the ASX 100 index as at 30 June 2016).

The data in Appendix 1 serves two purposes: (i) it provides a base for identifying the companies used in the research; and (ii) it provides a base for some comparison between Australian public companies and similar business entities in other legal jurisdictions. Such a link is important, as it may suggest that any TOTF relevant to Australian companies could be applicable to similar companies in those jurisdictions. The appendix also establishes a link with two other major studies of Australian companies. Wheelwright (1957) did not use the ASX 100 index, but his study of ownership and control in Australian companies was based on 102 of the larger public companies incorporated in Australia. A comparison between the companies in Wheelwright's study and the ASX 100 companies is possible but it would not contribute to the objectives of this thesis and is not attempted. Welch (2003) explored the link between ownership and performance in Australian listed companies, but based her work on the analysis of contributions by others rather than on original analysis. The major difficulty that would underlie any attempted comparison with these studies is that many of the companies in them are no longer listed on the ASX.

7.3 Using data from ASX 100 companies to establish the utility of existing theories of the firm

This section of the thesis uses the material outlined in Section 7.2 to enable a comparison between the data available on each of the ASX 100 companies recognised in Appendix 1 and the characteristics of a useful TOTF given in Section 6.6. Such a comparison will establish the utility of the existing theories in helping understand the creation, existence and operation of the companies recognised in Appendix 1.

7.3.1 Establishing the utility of the Corporate Entity TOTF

There are three theories that make up this group. They are Artificial Entity Theory, Aggregate Entity Theory and Real Entity Theory. These theories are described in Section 3.2.1. As discussed in Sections 3.2.1.1 and 3.2.1.2, there are no companies in the ASX 100 index (as at 30 June 2016) that are presently based on either Artificial Entity or Aggregate Entity theories and the analysis reported in this section of the thesis is based only on Real Entity Theory. It should be noted that Real Entity Theory contains no tests by which its utility in helping understand the creation, existence and operation of the ASX 100 companies can be determined. It does, however, suggest one major test and that is if the company exists as a legal entity then the theory has demonstrated its usefulness. The key points of the theory used to determine its utility in helping understand the ASX 100 companies are:

- the company is an actual being;
- the company is incorporated within the legal and civic laws of a particular state;
- the company is integrated within the fabric of society;
- the company acts through its employees, managers and appointed agents;
- the company can be accused of certain crimes and be judged at law; and
- the company has responsibility ensuring that its employees comply with the law of the land.

The criteria used in determining the utility of the theory are those identified in Section 6.6. The ratings for determining the utility of the theory against each criterion are the five points scale also described in Section 6.6.

7.3.1.1 Assessing utility against Criterion 1 – Why does the company exist?

None of the companies contained in the ASX 100 index (as at 30 June 2016) gives a reason as to why the company exists as a business entity in its 2016 Annual Report. For some companies, such as WBC (Number 2 in the ASX 100 index as at 30 June 2016), the reason for existence can be found in other, historical, documents (see Section 2.3.1). Real Entity Theory, therefore, appears to be of no assistance in helping to understand this aspect of the creation, existence and operation of the ASX

100 companies. However, by drawing on an understanding of a public company, as described within the (Commonwealth) *Corporations Act 2001* (Parliament of Australia 2001), it can be seen that Real Entity Theory makes a significant contribution to an understanding of the reasons for the existence of ASX 100 companies as public companies – and not as any other possible business form. The *Act* allows many individual (and institutional) investors to subscribe to the capital of each company and so creates the potential for each such investor to receive a distribution of the profits made by the company without having to be involved in the day to day operations of the company. This understanding of the legislation ensures that Real Entity Theory supports a full understanding of the reasons for the creation, existence and operation of each ASX 100 company and it is rated at 4 on the adopted scale.

7.3.1.2 Assessing utility against Criterion 2 - Why has the company adopted its present legal structure?

There are both 'hard' and 'soft' laws that govern the creation, existence and operation of companies in Australia. The principal 'hard' law is the (Commonwealth) *Corporations Act 2001* (Parliament of Australia 2001) and the principal 'soft' law (for companies intending to list on the ASX) is the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* (ASX 2014). Both these documents reflect much of the social contract that can be said to exist between Australian society, government and business. Such a link can be used to demonstrate how companies are incorporated within the fabric of society.

All of the companies in the ASX 100 index are incorporated under a 'hard' law (the Commonwealth *Corporations Act 2001*) prevailing in Australia. The principal reasons for such incorporation are (i) the *Act* allows many individuals to subscribe capital to and to be shareholders in a public, limited liability company; (ii) the *Act* limits the liability of each shareholder to the extent of any unpaid shareholding; and (iii) the *Act* provides for the shareholders to appoint managers to act on their behalf in the day to day activities of the company. Real Entity Theory, therefore, provides an acceptable rationale for the ASX 100 companies identified in Appendix 1 to have adopted their present legal structure. Where the theory is less useful is in explaining why some of the ASX 100 companies have changed from an earlier legal structure to their present form.

Section 3.2.1.1 of this thesis identifies companies on the ASX 100 index that began their existence as Artificial Entity companies but are now Real Entity companies. None of these companies, in their 2016 Annual Report, explains the reason for this change – but it is possible to search company archives and to discover the reasons for such changes. However, such research is beyond the scope of this thesis and is not attempted. Several companies, such as AMP (Number 20 on the ASX 100 index as at 30 June 2016) began their life as 'mutual' or Aggregate Entity companies and later changed to Real Entity companies. The reason for this change is not explained in the 2016 Annual Report but it is, as with the Artificial Entity companies identified in Section 3.2.1.1, discoverable by archival research that is outside the scope of this research because of the time and financial constraints of a PhD thesis.

Real Entity Theory, therefore, supports a reasonable level of understanding of this aspect of the life of ASX 100 companies and is rated at 3 on the adopted scale.

7.3.1.3 Assessing utility against Criterion 3 - How does the firm relate to its shareholders?

In Australia, the relationships between ASX 100 companies and their shareholders are described in both 'soft' and 'hard' law. The references in the principal 'soft' law are Principles 5 and 6 in the ASX *Corporate Governance Principles and Recommendations* (ASX 2014) and those in 'hard' law are found in Sections 120 to 260 of the (Commonwealth) *Corporations Act 2001* (Parliament of Australia 2001).

ASX Principle 5 (which draws on ASX Listing Rule 3.1 (ASX 2004, p. 24)) states that 'A listed entity should make timely and balanced disclosure of all matters concerning it that a reasonable person would expect to have a material effect on the price or value of its securities.' Principle 6 requires that a listed entity should ' …

respect the rights of its security holders by providing them with appropriate information and facilities to allow them to exercise those rights effectively' (ASX 2004, p. 25). Perhaps one of the more important sentences in the ASX (2014, p.17) document is the warning that 'Investors expect, and the law requires, the board of a listed entity to act in the best interests of the entity and its security holders generally.'. Just what regard listed ASX 100 companies may have for the voluntary *ASX Corporate Governance Principles and Recommendations* (ASX 2004) is demonstrated by comments attributed to Mr David Murray (a former Chief Executive of CBA and then Chairman of AMP) when he said that he 'would not be guided by the ASX corporate governance principles where they either weaken accountability **or distract the company to less important issues'** (emphasis added) (Davies 10 August 2018). Compliance with these two ASX principles (and the warning) would certainly help ensure that a company was incorporated within the fabric of the society within which it existed.

The *Corporations Act 2001* (Parliament of Australia 2001) is more explicit in the requirements that it places on corporation/shareholder relationships. Section 2.5.1 of this thesis establishes the broad range of the provisions of the *Act* in relation to public companies – however, it is worth repeating here those provisions that particularly affect the relationship between a company and its shareholders. They are:

- s120 – definition of and relations between members, directors and the company secretary;
- s134 – the approach to internal management of the company;
- s136 – the constitution of a company;
- s198A – the powers of the board of directors;
- s203 – the ways by which directors can be removed from office;
- s250N – the requirement for a public company to hold an annual general meeting; and
- s254T – the requirement for dividends to be paid out of profits.

Failure to meet the *Corporations Act 2001* requirements would: (i) demonstrate that the company did not ensure that its employees observe the laws of the land: and (ii) mean that the company could be accused of crimes and its performance judged at law. Failure to report against the ASX (2014) principles could result in the listing of an ASX 100 company being suspended. Real Entity Theory, therefore, supports a full understanding of the relationships between a company and its shareholders and is rated at 4 on the scale adopted.

7.3.1.4 Assessing utility against Criterion 4 - How is the personality of the company determined?

This section of the thesis recognises the argument raised in Section 3.4.2.1 that a company, being an artificial person and not a real person, cannot be considered to be a moral being. However, the analysis now undertaken considers the companies on the ASX 100 index to be evolutionary firms of the nature described by Frederick (2004) and to have a moraliser/valuator function. This supposition gives a company moralising and emotive drivers as well as an economising one (Frederick 2004, p. 148). This supposition then allows companies to be considered to possess values, morals and ethics – even though these items might be considered to be extensions of the values, morals and ethics possessed by the real beings who act as agents for the company.

The 'hard' law on which Australian companies are based (the Commonwealth *Corporations Act 2001*) does not mention values, morals or ethics. The major reference to them is found in the principal 'soft' law surrounding ASX listed companies - the *Corporate Governance Principles and Recommendations* produced by the ASX Corporate Governance Council in 2014 (ASX 2014). Principle 3 requires all companies listed on the ASX to have a code of conduct for its directors, senior executives and employees and to disclose that code or a summary of it (ASX 2014, p. 19). The 2016 Annual Report for almost all companies in the ASX 100 index either summarises its code of conduct or makes reference to where it can be found on the company's web site. The exceptions to this disclosure process are those companies that report to the ASX using reports prepared against USA regulations. Real Entity Theory, therefore, supports a full understanding of the personality of ASX 100 companies (it demonstrates how the company acts through its agents and employees) and is rated at 4 on the adopted scale.

7.3.1.5 Assessing utility against Criterion 5 - Why are the boundaries between the company and its markets where they are?

Unlike Neo-classical and Transaction Cost theories and the Theory of the Multinational Firm, Real Entity Theory gives no reasons as to why a company should produce a particular product or as to why it should engage in any particular market. Real Entity Theory does not require a company to be profit oriented and the ‘hard’ law of the (Commonwealth) *Corporations Act 2001* merely requires that any dividends declared by the directors be paid out of profits (Parliament of Australia 2001, s254T). Real Entity Theory, therefore, is of no use in helping understand why the boundaries between a company and its markets are where they are. The theory does not address the criterion at all and is, consequently, rated at zero on the adopted scale.

7.3.1.6 Assessing utility against Criterion 6 - Why is the company structured the way that it is?

All of the ASX 100 companies identified in Appendix 1 provide financial data, in their 2016 Annual Report, on a ‘consolidated’ basis. This means that they have ‘consolidated’ data on various products, divisions and corporate entities and it is not possible to match revenue against costs for any of their individual activities. Appendix 1 of this thesis provides some data about the number of subsidiaries that many of the companies control. Where companies report the number of their subsidiaries, they usually list the names of those subsidiaries – many of which are proprietary companies which are not listed on the ASX. The ‘soft’ law of the ASX *Corporate Governance Principles and Recommendations* (ASX 2014, p. 26) suggests that ‘Investors will also find it helpful if a listed entity includes, in an appropriate area of its website, … a description of how the entity is structured.’. None of the ASX 100 companies contains any guidance, in its 2016 Annual Report, or advice on where information on its structure might be found (for example: a reference to a particular part of its web site) – apart from a listing of the subsidiary companies.

Similarly, the *Corporations Act 2001* contains little guidance as to how companies might be structured. The major guidance is in the form of commentary on the forms of business entities that can be registered under the *Act*. However, by allowing companies to own ‘property’, the *Act* does create a mechanism for them to own shares in other companies (Parliament of Australia 2001, sec 1.5.1) If companies do own other companies and appoint directors to the board of their subsidiaries, the *Act* does make provision for those directors to represent the interests of those who appoint them (lexology.com n.d.)

Real Entity Theory is, therefore, of very limited utility in helping understand this aspect of the creation, operation and existence of the ASX 100 companies and is rated at 1 on the adopted scale.

7.3.1.7 Assessing utility against Criterion 7 - What drives business strategy?

After a study of acquisition and diversification in thirty-three large American companies over the period 1950 to 1986, Porter (1987) concluded that there were two forms of corporate strategy. They are: (i) corporate strategy that is aimed at determining what business the corporation should be in; and (ii) competitive strategy that is aimed at creating a competitive advantage for each business unit within the corporation (Porter 1987, p. 1) Neither the (Commonwealth) *Corporations Act 2001* (Parliament of Australia 2001) nor the *ASX Corporate Governance Principles and Guidelines* (ASX 2014) makes any reference to corporate strategy and it is left to annual company reports to provide evidence of the creation and drivers behind business strategy. Similarly, Baxt (2002), in his seminal work on the duties and responsibilities of directors and officers (in Australian companies), gives no recognition to strategy formulation and implementation. It could be inferred that Baxt’s recognition of the duties of directors, including the duties to act in the best interest of the company and to act with care and diligence (Baxt 2004, p. 35), might include strategic considerations, but this is a long bow and is not investigated here.

Porter (1987, p. 20), however, provides three tests that must be fulfilled if corporate strategy is to create shareholder value. These tests are: (i) the structural attractiveness of the business opportunity; (ii) the cost of entry into the opportunity must not capitalise future profits; and (iii) the new business must gain competitive advantage from its links to the corporation (or vice versa). Although these links (as with corporate values and ethics) could drive corporate strategy, they do not proceed from either the 'hard' or 'soft' law surrounding companies in Australia. It must be assumed, therefore, that Real Entity Theory does not help understand the drivers of corporate strategy in the ASX 100 companies. It does not address the criterion at all and is rated at 0 on the adopted scale.

7.3.1.8 Assessing utility against Criterion 8 - What generates business productivity?

Neither the *Corporations Act 2001* nor the ASX *Corporate Governance Principles and Recommendations* makes any mention of enterprise productivity. Real Entity Theory is, therefore, of no use in helping understand what drives enterprise productivity and is rated at 0 on the adopted scale.

7.3.1.9 Assessing utility against Criterion 9 - What motivates corporate behaviour?

The development of a corporate strategic advantage could lead to a long term, sustainable advantage and this could be an objective of many company shareholders, directors and officers. This objective, by itself, should be sufficient to motivate corporate behaviour. However, while there have been many efforts to develop a link between corporate social responsibility and corporate sustainability (Miron et al. 2011) and between ethical behaviour and competitive advantage (see Section 5.2.2.5) none of these attempts has produced evidence of a direct cause.

It could also be suggested that the requirement for a company to cause its directors, officers, employees and agents to act in accord with the law should be a strong driver of corporate behaviour – but this appears to not be the case. Evidence submitted to the Royal Commission on Misconduct in the Banking, Insurance and Financial Services Industry (the Financial subset of the GICS used to group companies in the ASX 100 index) suggests that this has not been the case and it is expected that there could be criminal charges laid against CBA, NAB, AMP and IFL (numbers 1,4,20 and 98 in the ASX 100 index as at 30 June 2016) (Danckert, Yates & Williams 2 August 2018). Some of the activities that are leading to these charges began in 2015 (Yeates & Danckert 24 November 2018) and so they fall within the time frame (2007 to 2016) on which this thesis is based.

There have been proceedings at law (and large fines) against major Australian companies (including the CBA (Doran & Janda 3 June 2018) and NAB (see Section 3.2.2 on p. 48)) in past years, but these also do not appear to have been sufficient to prevent major lapses in corporate behaviour. Even when public disclosure and proceedings at law are likely, they do not appear to be enough to cause immediate change in corporate behaviour. The Chairman of NAB (Number 4 in the ASX 100 index) has estimated that it could take a decade to change the NAB's culture (Hutchens 26 November 2018). The link between Real Entity Theory (with its emphasis on incorporation according to the legal and civic laws of a society) has been established but it is, obviously, not strong enough to drive acceptable corporate behaviour. The theory only supports a limited understanding of this aspect of the life of ASX 100 companies is, therefore, rated at 2 on the adopted scale.

The ASX *Corporate Governance Principles and Recommendations* (2014 Principle 3) requires all ASX listed companies to develop and make available a code of conduct for its directors, executives and other employees. As indicated in the example of the CBA in Appendix 2, all ASX 100 companies are required to report on the availability of such a code. However, as is amply illustrated by the misconduct outlined above, the mere existence of such a code is not enough to prevent corporate misbehaviour.

7.3.1.10 Assessing utility against Criterion 10 - What are the company's obligations to shareholders and to other groups?

Section 7.3.1.3 identifies how companies might establish and maintain effective relationships with its shareholders. While one important aspect of this relationship relates to the distribution of profits, the issue of new shares and (potentially) share buyback, the (Australian) *Corporations Act 2001* (Parliament of Australia 2001) does not mandate the distribution of profits to shareholders. Indeed, company boards of directors might see the distribution of profits as limiting the ability of the company to fund expansion from internal sources. The only requirement that the *Act* places on boards is that dividends must be paid out of profits (Parliament of Australia 2001, s254T).

Keeping in mind the requirement that companies be incorporated within the society in which they operate, it is worthwhile considering here attempts to change corporate laws and the social contract need for a company to be a good corporate citizen. These considerations have been examined in Section 4.2.5 of this thesis and the analysis is not repeated here. It is sufficient, for this analysis, to re-iterate the finding of the (Commonwealth) Parliamentary Committee on Corporations and Financial Services (Parliament of Australia 2006) that there is nothing in the *Corporations Act 2001* that prevents company boards of directors from considering the needs of stakeholders other than shareholders. This would particularly apply where meeting those needs might contribute to the long term sustainability of the company and so increase the wealth of the shareholders.

Many ASX 100 companies include in their 2016 Annual Report a section on community engagement (sometimes referred to as corporate social responsibility). Although the actions referred to usually cover only a small section of the communities surrounding the company, the level of funding associated with the actions was usually mentioned. Such companies include (but are not limited to) CBA, FMG, WOW and BKL (refer to Section 4.2.5.2).

Although indirect in nature, the ‘hard’ law governing ASX 100 companies in Australia does provide some guidance on the relationship between companies and their stakeholders other than shareholders. This relationship is analysed more fully in the analysis of Stakeholder Theory reported in Section 7.4.5. Real Entity Theory provides only a limited understanding of the relationship between the ASX 100 index companies (as at 30 June 2016) and their stakeholders and is rated at 2 on the adopted scale.

7.3.1.11 Assessing utility against Criterion 11 - What tests does the theory suggest for determining its utility in helping to understand the creation, existence and operation of the company?

Although tests for determining the utility of Real Entity Theory can be deduced from the data outlined in Sections 7.3.1.1 to 7.3.1.10 inclusive, the theory itself does not suggest explicit tests except as described in Section 7.3.1. Real Entity Theory, therefore, is only of very limited use in recognising tests by which its usefulness in explaining the creation, existence and operation of ASX 100 companies can be determined. It is, therefore, rated at 1 on the adopted scale.

7.3.1.12 An overall assessment of the utility of Corporate Entity Theories in helping understand the creation, existence and operation of the ASX 100 companies

An overall rating of the utility of Corporate Entity Theories in helping understand the creation, existence and operation of ASX 100 companies is developed in Table 7.1. This table lists the ratings given to each criterion in Sections 7.3.1.1 to 7.3.1.11 inclusive and these individual ratings are then summed to give an overall rating.

Table 7.1: An overall rating of the utility of Corporate Entity TOTF in helping to understand the creation, existence and operation of ASX 100 companies (as at 30 June 2016)

CRITERIA	1	2	3	4	5	6	7	8	9	10	11	TOTAL
Artificial Entity Theory - Rating	0	0	0	0	0	0	0	0	0	0	0	0
Aggregate Entity Theory - Rating	0	0	0	0	0	0	0	0	0	0	0	0
Real Entity Theory - Rating	4	3	4	4	0	1	0	0	2	2	1	21

As discussed earlier, there are no companies that can be described against either Artificial Entity or Aggregate Entity Theories in the ASX 100 index as at 30 June

2016. These theories are, therefore, of no value in helping to understand the creation, existence and operation of these companies. The overall rating of Real Entity Theory (21 out of a possible score of 44) suggests that it also is of reasonably limited value in helping understand the creation, existence and operation of the ASX 100 companies. The data in Table 7.1 is added to similar data from the analysis of other TOTF in Table 7.17 at the end of this chapter. This latter table is then used to identify gaps in the utility of existing TOTF in explaining the creation, existence and operation of ASX 100 companies. These gaps later guide the creation of an integrated theory of the firm.

7.3.2 Assessing the utility of the Neo-classical Theory of the Firm

As described in **Section 3.2.2** of this thesis, the Neo-classical Theory of the Firm is considered to have six bases as follows (economicsdiscussion.net n.d.):

- an entrepreneur (who is assumed to have unlimited information) is the owner of the firm and there is no division between ownership and management;
- the firm has the single goal of maximising profit;
- the goal is attained at the point where marginal cost equals marginal revenue;
- the world is one of certainty;
- the ability of other firms to enter the market may vary according to the market model adopted; and
- the firm acts within a time horizon that varies with factors including the capital intensity of production, the position of the product in its life cycle and the rate of technological innovation.

The firm's 'Black Box' or production function – the information, intellectual property and processes that give the firm a competitive advantage – is a major characteristic of the Neo-classical TOTF recognised by Kantarelis (2007, p. 45).

These characteristics of the Neo-classical TOTF are now used in an assessment of its utility in understanding the creation, existence and operation of the ASX 100 companies.

7.3.2.1 Assessing utility against Criterion 1: Why does the company exist?

The Neo-Classical TOTF considers that the firm is owned by an entrepreneur who possesses all the information necessary to manage the affairs of the entity. It also considers that there is no division between the owner of the firm and the management of the firm. If these criteria applied, in Australia, the business entity would be either a sole trader or a single shareholder/single director proprietary limited company and would not be eligible for listing on the ASX. None of the ASX 100 companies (as at 30 June 2016) meets this criterion. This is because none of those companies has a single shareholder/owner. Appendices 3 and 4 show that all of the ASX 100 companies have many shareholders (over 1 000 000 in the case of Telstra (Number 4 in the ASX 100 index as at 30 June 2016)). Appendix 3 also shows that, in many instances, the larger five shareholders (mostly nominee companies) own more than fifty percent of the shares on issue. However, some companies have a substantial shareholder who owns at least five percent of the shares on issue (Parliament of Australia 2001, Definitions). Table 7.2 lists the substantial shareholders in a selection of the ASX 100 companies. The companies in Table 7.2 are representative of the GICS segment to which they belong.

Table 7.2: Substantial shareholders in a random selection of ASX 100 companies

ASX 100 NUMBER/ COMPANY NAME	SUBSTANTIAL SHAREHOLDER	PERCENT SHARES HELD
13. WPL	Shell Australia Holdings Pty Ltd	13.58
23. RHC	Paul Ramsay Foundation Pty Ltd	32.16
32. OSH	International Petroleum Investment Coy	12.91
	NPCP Investments	9.81
	Capital Group Companies	7.81
33. APA	UniSuper	13.09
39. SHL	Veritas Group	6.9
	Black Rock Investment Group	6.06
40. CTX	Westpac Banking Corporation	5.33
	Lazard Asset Management	7.21
	Black Rock Investment Group	6.09
50. STO	ENN Ecological Holdings Co Ltd	10.32
51. REA	News Ltd	56.06
53. COH	Baille Gifford And Co	10.5
	Hyperion Asset Management Ltd	5.0
56. SPK	Bank of New York	7.17
	Black Rock Investment Group	6.34

Source: Data in the above table was obtained from the shareholder information page in the 2016 Annual Report for each company named.

Although none of these substantial shareholders has the power to cause a company to act in any particular manner (except in the case of REA/News Ltd), they each could have sufficient influence to cause management to listen to their views. This is particularly so when it is realised that only about 58% of eligible shares were voted on resolutions at ASX 100 company annual general meetings in 2006 (Parliamentary Joint Committee on Corporations and Financial Services 2008, para 3.5). This statement becomes even more challenging when the major finding from Appendix 3 is considered – that the ten larger shareholders in the ASX 100 companies often hold more than 50% of the ordinary shares on issue.

In one company (REA Ltd – Number 51 in the ASX 100 index as at 30 June 2016), the entrepreneur/founder of the company does hold a substantial number of shares and can be regarded as the 'owner' of the company. In two other companies, individual entrepreneurs hold a substantial number of shares – but not enough to cause the companies to act at their bidding. These companies and the shareholdings of their owner/founder are: (i) RHC (Number 23 in the ASX 100 index as at 30 June 2016) and the Paul Ramsay Foundation Ltd (32.16%) and (ii) HVN (Number 68 in the ASX 100 index as at 30 June 2016) and Mr Gerald Harvey (29.83%) and Mr Christopher Brown (16.48%). Whilst some of these shareholders are on the board of directors of the company, there is a distance between them and the day to day management of the company.

The Neo-classical TOTF is, therefore, of no assistance in explaining why any of the ASX 100 companies exists as a company and not in any other form. It does not address the criterion at all and is given a rating of 0 in the adopted scale.

7.3.2.2 Assessing utility against Criterion 2: Why has the company adopted its present legal structure?

There is nothing in the characteristics of the Neo-classical TOTF that either requires or suggests that a business enterprise should adopt any particular legal structure. However, these characteristics do specify that the entrepreneur is the owner of the firm and that there is no division between ownership and management. Although these characteristics would not completely preclude such a firm from being listed on the ASX, there are no companies in the ASX 100 index as at 30 June 2016 that exhibit them. The Neo-classical TOTF is, therefore, of no assistance in helping understand this aspect of the creation, existence and operation of the ASX 100 companies. It does not meet the criterion at all and is given a rating of 0 in the adopted scale.

7.3.2.3 Assessing utility against Criterion 3: How does the company relate to its shareholders?

Given that the Neo-classical firm has only one owner, there should be no difficulties in the enterprise relating to its shareholders. However, none of the ASX 100 companies meets this ownership criteria (see Appendices 3 and 4) and the Neo-classical TOTF is, therefore, of no assistance in helping understand this aspect of the creation, existence and operation of the ASX 100 companies. It does not meet the criterion at all and is given a rating of 0 on the adopted scale

7.3.2.4 Assessing utility against Criterion 4: How is the personality of the company determined?

The Neo-classical TOTF suggests that the firm has the single goal of maximising profits and that this is achieved where the marginal cost of producing the next unit of product equals the marginal revenue gained from selling that unit of production. Such a singular goal could impose stringent conditions on the relationships between the enterprise and its suppliers, customers, employees and the community around it. However, as there are no companies in the ASX 100 index that meet the characteristics of the Neo-classical TOTF, this aspect of the theory offers but little assistance in helping understand this aspect of the creation, existence and operation of the ASX 100 companies. Nor is it possible to determine these characteristics, in the ASX 100 companies, from the data that they provide in their 2016 Annual Reports. Accordingly, the theory only supports a very limited understanding of the criterion and is given a rating of 1 on the adopted scale.

7.3.2.5 Assessing utility against Criterion 5: Why are the boundaries between the company and its markets where they are?

There is one characteristic in the Neo-classical TOTF that may reflect market conditions. This is that the ability of other firms to enter the market may depend on the market model adopted. In a free market economy, such competition may arise where other firms do not see the barriers to entry into the market as being prohibitive. However, in a state controlled market, the entry of potentially competitive enterprises may simply be prohibited. The Australian market place is, essentially, part of a free market economy and entrepreneurial firms must simply rely on their market share, costs of production and intellectual property to create barriers against competition by other entrepreneurs.

The existence of a 'black box' that contains the production function (including intellectual property) is another characteristic in the Neo-classical TOTF (Kantarelis 2007, p. 45). None of the ASX 100 companies identified in Appendix 1 discusses its intellectual property (patents, trademarks, designs, copyright material, corporate knowledge or proprietary processes) in its 2016 Annual Report. This would appear to limit the utility of the Neo-classical TOTF in helping understand the creation, existence and operation of these companies. However, the fact that the companies do not disclose data that would enable comparison against the theory is a reflection on the companies and not a total shortcoming in the theory. It does mean, however, that the Neo-classical TOTF is of very limited utility in understanding this aspect of the creation, existence and operation of the ASX 100 companies as at 30 June 2016. It is given a rating of 1 on the adopted scale.

7.3.2.6 Assessing utility against Criterion 6: Why is the firm structured the way that it is?

All of the ASX 100 companies are consolidated entities and are structured around either product segments (such as banking, insurance, superannuation and financial advice for the major financial companies or mining products such as coal, copper, lead and silver for the mining companies) or geographic regions. Some maintain an internal divisional structure while many others have many separate subsidiaries (such as SEK (Number 64 in the ASX 100 index) – which reports having 22 subsidiaries). The Neo-classical Theory offers no assistance in helping understand why these companies are structured the way that they are – other than the possibility that such structures allow the company to make better use of the intellectual property contained within its ‘black box’ or production function. Such intellectual property could include technological innovations – on which internal divisions or subsidiaries might be based – but none of the ASX 100 companies includes such information in its 2016 Annual Report. The Neo-classical TOTF, therefore offers only a very limited understanding of the reasons that the ASX 100 companies are structured the way that they are. Accordingly, it is given a rating of 1 on the adopted scale.

7.3.2.7 Assessing utility against Criterion 7: What drives business strategy?

The Neo-classical TOTF suggests three tests as to what drives business strategy. They are: (i) the firm has the single goal of maximising profit; (ii) maximum profit is derived at the point where marginal cost equals marginal revenue; and (iii) the essence of the firm is its ‘black box’ (or production function) that contains (and uses) the firm’s intellectual property to derive the maximum profit. Having regard for the operation of companies, profit can be represented in three ways. There is the operating profit derived from the trading activities of the company, the gross profit resulting from all activities and the net profit reported after provisions for tax have been made (NPAT). For the purposes of this thesis, NPAT is the form of profit now discussed – particularly the form of NPAT attributable to shareholders.

The data collected for each ASX 100 company and identified in the example (CBA – Number 1 in the ASX 100 index as at 30 June 2016) given in Appendix 2 identifies the NPAT derived for the 2016 Financial Year. However, this data reflects activities at a single point in time and does not support a deduction as to whether or not it is the maximum profit that could have been made. The data displayed in Appendix 5, however, shows NPAT for each year in a ten year period from 2007 to 2016. The NPAT attributable to shareholders for a selection of the ASX 100 companies is given in Table 7.3. The companies included in the table have been chosen for the GICS segment to which they belong rather than for their position on the ASX 100 index as at 30 June 2016. The four GICS sectors chosen include two of the larger such sectors in the ASX 100 index as at 30 June 2016. The table shows that: (i) neither the maximisation of revenue nor profit drives business strategy in the companies identified; or (ii) that if maximisation of revenue or profit is the driver of strategy, then those goals have not been met. This is because the companies have not always: (i) maintained increasing revenues; (ii) made increasing profits; (iii) or maintained their NPAT as a constant (or increasing) share of revenue. The companies chosen are representative of the GICS segment to which they belong.

Table 7.3: A comparison of NPAT with gross revenue for a selection of ASX 100 companies over the period June 2007 to June 2016

GICS CODE	COY	ITEM	07	08	09	10	11	12	13	14	15	16
Financial	WBC	Revenue A$000m	10	12	17	17	17	18	19	20	22	21
		NPAT* A$000m	3	4	3	6	7	6	7	8	8	7
		NPAT as % revenue	30	33	18	35	41	33	37	40	36	33
Energy	ORG	Revenue A$000m	NA	NA	NA	8	10	13	15	15	14	12
		NPAT* A$000m	NA	NA	NA	0.6	0.7	0.9	0.8	0.7	0.7	0.4
		NPAT as % revenue	NA	NA	NA	.08	.07	,07	.05	.05	.05	.03
Materials	RIO	Revenue A$000m	36	57	43	59	65	56	55	50	37	35
		NPAT* A$000m	7	4	5	14	6	-3	4	7	-1	4
		NPAT as % revenue	19	7	10	24	9	0	9	14	0	11
Consumer Staples	WOW	Revenue A$000m	42	47	50	52	54	55	59	61	61	60
		NPAT* A$000m	1	2	2	2	2	2	2	2	2	-1
		NPAT as % revenue	.02	.04	.04	.04	.04	.04	.03	.03	.03	0

Source: The financial tables in the Annual Report for each company identified for the year nominated.

Notes to Table 7.3: (i) the financial data is rounded to the nearest relevant whole number; (ii) * is the NPAT atttributed to shareholders; and (iii) in the years where NPAT as a percent of Revenue is shown as 0, the company paid its dividends out of profits retained in previous years. NA means that the annual reports for the years examined were not available to the researcher at the time the thesis was written.

Only a few of the ASX 100 companies list their corporate strategies in their annual reports. One example of a company that does do this is BHP (Number 6 in the ASX 100 index as at 30 June 2016) – which identifies its overall strategy as being '… to own and operate large, profitable, low cost expandable upstream assets diversified by commodity, geography and market.' (BHP 2015, p. 12). Another is TLS (Number 5 in the ASX 100 index) – which recognises four strategic pillars: (i) Driving growth and creating long term shareholder value; (ii) Improving customer advocacy; (iii) driving value and growth from core business; and (iv) building new growth businesses (Telstra 2016, p. 3) This lack of published data on corporate strategies is the major reason that this theory rates only at 2 on the adopted scale.

7.3.2.8 Assessing utility against Criterion 8: What generates business productivity?

A major driver of productivity in any company is the intellectual property (patents, trademarks, designs, copyright material and proprietary processes) that resides in the firm's 'black box' (Kantarelis 2007, p. 45). The possession of such intellectual property may also act as a barrier against the entry of other firms into the company's market as well as providing a driver for productivity improvement. None of the ASX 100 companies provides information on its intellectual property and this limits the utility of the Neo-classical TOTF in understanding this aspect of ASX 100 company creation, existence and operation. Accordingly, the theory does not meet this criterion at all and is rated at zero on the adopted scale. However, it should be noted that some companies do publish data on their intellectual property (see the discussion on New Hope Limited on p. 82).

7.3.2.9 Assessing utility against Criterion 9: What motivates business behaviour?

The Neo-classical TOTF suggests three reasons that companies may behave the way that they do. These are:

- the firm has a single goal of maximising profit;
- the firm will act so as to reach the point where marginal cost equals marginal revenue; and
- the firm acts within a time horizon that varies with factors including the capital intensity of production, the position of the product in its lifecycle and the rate of technological innovation.

Appendix 5 contains data that supports estimation as to whether or not the companies in the ASX 100 index operate so as to maximise profit. Table 5.3 shows the NPAT attributed to shareholders reported by a selection of companies in the ASX 100 index (as at 30 June 2016) over the period June 2007 to June 2016. A profit is not always made and the level of profit varies over time – it is not always maximised in that the level of profit reported does not always increase either as an absolute amount or as a percentage of revenue.

The 2016 Annual Reports for the ASX 100 companies do not contain data that supports analysis against the other two criteria recognised above. The Neo-classical TOTF, therefore, only supports a limited understanding of the reasons that the ASX 100 companies are motivated to act the way that they do. It is, therefore, rated at 2 on the adopted scale.

7.3.2.10 Assessing utility against Criterion 10: What are the company's obligations to shareholders and other groups?

The Neo-classical TOTF assumes that the firm is owned and managed by a single entrepreneur. No company in the ASX 100 index (as at 30 June 2016) meets this criterion as they all have many thousands of shareholders and several companies recognise their social responsibility towards other groups. The Neo-classical TOTF is, therefore, of no value in assessing this aspect of the creation, existence and operation of the ASX 100 companies. It does not address the criterion at all and is, therefore, rated at 0 on the adopted scale.

7.3.2.11 Assessing utility against Criterion 11: What tests does the theory suggest for determining its utility in helping to understand the creation, existence and operation of the company?

The characteristics of the Neo-classical TOTF are listed in Section 7.3.2. These characteristics suggest several tests that would verify the utility of the theory in helping to understand the creation, existence and operation of business enterprises. In a more general analysis, these characteristics and tests would be very useful. Despite there being no companies in the ASX 100 index that exhibit the ownership and management characteristics prescribed by the theory, it is of some assistance in describing the creation, existence and operation of these companies. This assistance arises from the last two characteristics described in Section 7.3.2. The matters of market entry, product lifecycle, capital intensity of production and rate of technological innovation could particularly apply to ASX 100 companies in the Energy, Industrials and Materials sub-divisions of the GICS used by the ASX. Such tests would include: (i) the unity of ownership and management; (ii) whether or not the company's sole goal is to maximise profit; and (iii) whether or not production is centred on the point where marginal cost meets marginal revenue.

None of the ASX 100 companies reports on these matters in its 2016 Annual Report and so any tests developed against this theory cannot be applied. This aspect of the Neo-classical TOTF has potential but, because of the difficulty in locating data for analysis, cannot be applied against the ASX 100 index companies as at 30 June 2016. The theory, therefore, does not meet the criterion at all and is rated at 0 on the adopted scale.

7.3.2.12 An overall rating of the utility of the Neo-classical TOTF in helping to understand the creation, existence and operation of ASX 100 companies

An overall rating of the Neo-classical TOTF in helping understand the creation, existence and operation of the ASX 100 companies as at 30 June 2016 is given in Table 7.4. This table lists the ratings given to each criterion in Sections 7.3.2.1 to 7.3.2.11 and these individual ratings are then summed to give an overall rating.

Table 7.4: An overall rating of the utility of the Neo-classical Theory of the Firm in helping to understand the creation, existence and operation of ASX 100 companies

CRITERIA	1	2	3	4	5	6	7	8	9	10	11	TOTAL
Neo-classical TOTF - Rating	0	0	0	1	1	1	2	0	2	0	0	7

Despite its concentration on ownership and management characteristics that are not found in ASX 100 companies, this theory (with only an overall rating of 7 out of a possible 44) does offer some assistance in helping to understand their creation, existence and operation. However, for the purposes of this thesis, this assistance is limited in its utility mostly because: (i) the companies do not have the single ownership/management structure described by the theory; and (ii) the annual reports of the companies do not provide the information needed to support comparison between company and theory.

7.3.3 Assessing the utility of Other Economics Based Theories

As identified in Section 1.2 of this thesis, there are five theories in this group. The dominant one is the Transaction Cost theory based on the work of Ronald Coase in 1937. This work is also the base for the other four theories. The utility of these theories in understanding the creation, existence and operation of the ASX 100 companies identified in Appendix 1 is now examined.

7.3.3.1 Assessing utility against Criterion 1: Why does the company exist?

At first glance, it would appear that this group of theories offers no explanation as to why a business entity would incorporate as a company - as against creation and existence in some other, legal, form. This may be the case in regard to Transaction Cost, Contract, Team Production and Natural Resource Based theories but it is not the case with the Resource Base Theory proposed by Barney (1991) and further explored by Lozano et al. (2015). There is nothing unique about the ability of a business enterprise to produce goods/services more cheaply in-house than it is to obtain them by external contract, to enter into contracts, to use team work as a basis for its goods/service production or to own natural resources that may deliver a competitive advantage that means such activities can only be undertaken by a company. However, only companies (in Australia) are required to have boards of directors and to adopt a corporate governance model. All ASX 100 companies report (in their 2016 Annual Report) on both the composition of their boards of directors (including their diversity, qualifications and experience) and on their corporate governance processes. This latter data is a requirement of the ASX *Corporate Governance Principles and Recommendations* (ASX 2014). An example of the composition of a board of directors in an ASX 100 company (the CBA) (and of its diversity and qualifications) is given in Appendix 2. The 2016 Annual Report for the CBA (Number 1 in the ASX 100 index as at 30 June 2016) also details the range of experience and place of residence for each director. This data gives a limited, but useful, view of the diverse range of human resources available to the company through its board of directors. Many companies also report the number of their employees and some provide data on the gender composition of their workforce and management structure

This data offers two advantages for persons seeking to understand the creation, existence and operation of the ASX 100 companies. The first advantage is that it provides an example of the (possibly) unique and non-substitutable skills (including managerial, financial, technical and marketing expertise) available to a company through its board of directors and senior management. The second advantage is that those skills and experience may give the company a competitive advantage in the market place. There is no reason that any business enterprise could not assemble such a body of qualifications and experience similar to the board of directors of a company, but it is a requirement of public companies listed on the ASX. Resource Based Theory, therefore, supports a reasonable understanding why a business might exist as a company – rather than as any other legal form. Although Resource Based Theory is rated at 3 against this aspect of ASX 100 company life, the other four theories do not address the criterion at all and are rated at 0 on the adopted scale.

7.3.3.2 Assessing utility against Criterion 2: Why has the company adopted its present legal structure?

All companies identified in Appendix 1 are public, limited liability, companies listed on the ASX. Transaction Cost Theory suggests that the companies may have adopted this structure so as to minimise the costs of doing business. However, all Australian companies incur annual registration fees as well as costs associated with auditing and reporting. For companies such as CSL (with 52 subsidiaries) and SUN (with 37 subsidiaries) (Numbers 7 and 18 respectively in the ASX 100 index (as at 30 June 2016) as shown in Appendix 1) such costs could be considerable. However, no ASX 100 company identifies such costs in its 2016 Annual Report and neither Transaction Cost Theory nor any of the other theories in this group is of more than limited usefulness in helping understand why ASX 100 companies are structured the way that they are.

Not all companies in the ASX 100 index have always been public, limited liability, companies listed on the ASX. There are several companies that started life as Commonwealth or State owned business enterprises and that are now listed on the ASX. These companies include CBA, CSL, SUN, AGL and AZJ (Numbers 1, 7, 18, 26 and 36 in the ASX 100 index as at 30 June 2016 and shown in Appendix 1). Most of these companies underwent a change in their legal structure as a result of a philosophical change in the relevant Commonwealth or State Government. Part of the reason for this change is that the relevant government believed that it may have been possible for private enterprise to deliver the associated services more cheaply than they were being delivered under Government ownership. This reason could be seen to draw on Transaction Cost Theory but there is nothing in the other economics based TOTF to suggest a reason for this change. Another possible reason behind the change in legal structure can be found in Resource Based Theory – which suggests that a board of directors (which these companies now have) may provide either unique or non-substitutable resources that could help build a competitive advantage. Because the 2016 Annual Reports for the companies identified do not state the reasons for their change of legal structure, this group of TOTF support only a limited understanding this aspect of the creation, existence and operation of the ASX 100 companies. This data may be found through a search of company archives, reports of parliamentary debates and newspaper reports, but the time and cost required by such research is beyond that available during the preparation of a PhD thesis. Transaction Cost theory is, therefore, rated at 2 on the adopted scale but the other four theories do not address the criterion at all and are each rated at 0.

7.3.3.3 Assessing utility against Criterion 3: How does the company relate to its shareholders?

Real Entity Theory provides a comprehensive understanding of the relationship between a company and its shareholders (see Section 7.2.1.3). However, an understanding of Transaction Cost Theory suggests that, because of the costs incurred in maintaining such a relationship, any public company might attempt to minimise such activities. For public, limited liability, companies in Australia, many of these costs (such as those associated with an annual general meeting) cannot be avoided as they are mandated by the (Commonwealth) *Corporations Act 2001* (Parliament of Australia 2001, sec 250N).

Of the other four theories in this group (Contract Theory, Team Production Theory, Resource Based Theory and Natural Resource Based Theory), only the Resource Based Theory offers any contribution to understanding this aspect of the creation, existence and operation of ASX 100 companies. However, even this contribution is reasonably limited and obscure – for it requires the company's shareholders to be regarded as a valuable (and perhaps inimitable) resource. This view could be supported by the possibility that existing shareholders are a source of additional capital when new shares are issued. However, the link remains disputable as there is no obligation on existing shareholders to increase their holding when new shares are issued. They could merely ignore the issue of such shares or sell existing shares so as to avoid any possible reduction in the value of their holding. Transaction Cost and the Resource Based theories offer only a very limited understanding of the criterion but the other theories in the group do not address the criterion at all. Transaction Cost and the Resource Based theories are each rated at 1 on the adopted scale and each of the other theories at 0.

7.3.3.4 Assessing utility against Criterion 4: How is the personality of the company determined?

All of the five theories in this group make some contribution to understanding this aspect of the creation, existence and operation of the ASX 100 companies. The greatest (but still very limited) contribution is made by Contract Theory and arises because contracts are the almost uniform way by which senior executives are attracted and retained in all ASX 100 companies. As these executives are the means by which the personality of the company will be developed, expressed and maintained, the contracts by which they are recruited and remunerated (see Appendix 6) are important contributions to the personality of the company. Resource Based Theory also makes a reasonable contribution in this aspect of company operation as it regards all directors, executives, other employees and contractors as valuable resources whose activities express the personality of the company. The contribution made by Natural Resource Based Theory is much more indirect and arises only because the existence of an adequate (and, possibly, rare, inimitable and non-substitutable) set of resources (see the example of RIO in Table 7.5) leads to sustainable development. Sustainable development, in turn, contributes to a view (for all members of a company) that they could have a long term future with the company and so forms a base for the projection of a strong and positive personality. Transaction Cost Theory makes a similar contribution as it could assure all members of the company that they hold, in-house, the necessary resources, skills, processes and intellectual property required to hold a competitive (and possibly) sustainable advantage. Resource Based theory supports a limited understanding of the criterion and is, therefore, rated at 2 on the adopted scale. Each of the other four theories offers very limited support for the criterion and they are rated at 1 on the adopted scale.

7.3.3.5 Assessing utility against Criterion 5: Why are the boundaries between the company and its markets where they are?

It could appear that none of the Other Economics Based TOTF contributes to an understanding of why the boundaries between the ASX 100 companies and their markets are where they are. However, Transaction Cost Theory, Contract Theory, Resource Based Theory and Natural Resource Based Theory all make some contribution.

Transaction Cost Theory makes a significant contribution for two reasons. The first is that being able to produce goods or services in-house at a competitive cost may mean that a company can expand out of its local market into either (or both) a national or international market. The second reason is that the competitive position of one company in the market may raise barriers to entry that other companies are unable to overcome. The data in Appendix 1 identifies a number of ASX 100 companies (as at 30 June 2016) with many subsidiary companies (many of which are international) – however, none of these companies supplies details (in its 2016 Annual Report) that would allow analysis of the reasons behind its international expansion. Contract Theory also makes a contribution in that the contracts between the company and its executives create means by which the financial, marketing and production skills needed to either expand in an existing market place or move into an entirely new marketplace are attracted and maintained. Each of the ASX 100 companies gives details, in each annual report, of the qualifications, skills and experience held by each director and senior executive (see Appendix 7). However, no company relates just how these valuable resources position it in any marketplace. Team Production Theory makes a contribution in much the same way as does Contract Theory. Any greater contribution cannot be established as the data supplied in the 2016 Annual Report for each of the ASX 100 companies provides no details of teams within the company other than of its directors and senior executives.

Both Resource Based Theory and Natural Resource Based Theory make greater contributions. It would appear that Natural Resource Based Theory makes the greater contribution of the two, but this may be because natural resources (coal, silver, copper, oil and natural gas) are easier to measure and define than are the contributions made by people, machinery and intellectual property. All of the ASX 100 companies (as at 30 June 2016) in the Materials (Mining) and Energy sectors of the GICS used by the ASX report on the resources held, their location and extent. This data makes it easy to understand both the limits to their marketplace and their approach to product stewardship, pollution prevention and sustainable development. Table 7.5 gives a brief overview of the resources available to RIO (Number 16 in the ASX 100 index as at 30 June 2016). RIO is chosen as the example for use in this table because: (i) it is in the GICS Materials (Mining) sector; and (ii) the company details a greater range of resources than do many similar companies (such as NCM (Number 22 in the ASX 100 index as at 30 June 2016).

Table 7.5: The natural resources available to Rio Tinto Ltd (Number 16 in the ASX 100 index)

ASX Number and Name	GICS Sector	Natural Resource	Location of Resource	Resource (Mt) 2015	2016
16. RIO	Materials	Bauxite	Australia (Gove)	145	147
			Australia (Weipa)	219	209
			Brazil	76	61
			Guinea	346	372
			Development areas	1 382	1 409
		Coal	Australia		
			- Halls Creek	165	159
			- Hunter Valley	629	616
			- Kestrel Coal	106	94
			- Mt Thorley	13	12
			- Warkworth	217	206
			Development areas	474	NA
		Copper	Chile	8 351	8 418
			Indonesia	2 103	2 059
			Mongolia	986	951
			USA	690	668
			Development areas	499	499
		Diamonds	Australia	35	29
			Canada	19	16

Source: RIO 2016 Annual Report, pp. 223-9

Note: (i) similar data is available for the company’s iron ore, molybdenum, silver, titanium dioxide, uranium and zircon resources: (ii) Mt = million tonnes

The contribution made by Resource Based Theory is relatively easier to assess as all of the ASX 100 companies identifies the plant, equipment and stocks of finished goods available to them in their 2016 Annual Report (usually in the Financial Report (Balance Sheet) tables or in the Explanatory Notes attached to the reports). Some companies identify the extent of the human resource available to them (for example; ANZ has 46 544 people and TLS has 33 000 people) but none of them give details of the diversity within their staff or of their qualifications, skills and experience except for the boards of directors (see Appendix 7) and senior executives. The contribution made by Resource Based Theory to understanding the creation, existence and operation of this aspect of the ASX 100 companies (as at 30 June 2016) is, therefore, limited.

Because of these factors, utility of the theories in this group in helping understand the creation, existence and operation of the ASX 100 companies is rated variably. Both Transaction Cost and the Resource Based theories do support a reasonable understanding of the criterion and are rated at 3 on the adopted scale, Contract and Natural Resource Based theories only support a limited understanding and are rated at 2 while Team Production theory only supports a very limited understanding and is rated at 1.

7.3.3.6 Assessing utility against Criterion 6: Why is the company structured the way that it is?

All of the ASX 100 companies are consolidated entities that conduct their business affairs through multiple internal divisions or external subsidiaries (see Appendix 1 for an overview of the number of subsidiaries within some of the ASX 100 companies). Transaction Cost and its offshoots Resource Based and Natural Resource Based TOTF do suggest some reasons that the ASX 100 companies might be structured the way that they are, but neither Contract Theory nor Team Production Theory offer any such reasons. These latter two theories, therefore, have no utility in describing why the companies are structured the way that they are.

The discussion in Section 3.2.3.1 identifies many costs that can be recognised as being transaction costs (that is, the costs of doing business). Such costs include production costs, costs associated with preparing, implementing and monitoring contracts, legal and information related costs as well as planning for the future and maintaining property rights (see Table 3.1). The sole reason that Transaction Cost hose companies do not include, in the financial pages or in the associated explanatory notes in their 2016 Annual Reports, data that would support identification of such costs. However, if this data was available, it would contribute significantly to understanding why the ASX 100 companies are structured the way that they are.

Both Resource Based and Natural Resource Based TOTF offer some grounds on which the structure of a company might be examined. The Resource Based TOTF could suggest that the divisional and/or corporate structure of the consolidated company (all ASX 100 companies) might be based on the availability of physical (plant and equipment), human (skills) or intellectual property (patents, trademarks and copyright materials) resources. The Natural Resource Based TOTF might suggest that the location of raw materials (including coal, iron ore and water) is a driver for company structure. While ASX companies in the Materials, Energy and Utilities sectors of the GICS used by the ASX do give great details of the location and extent of their raw materials (see Table 7.5 for an example of this data) in their 2016 Annual Report, none of the ASX 100 companies gives any details of the contents of the 'black box' (see Figure 3.2) that might drive their corporate structure. Natural Resource Based TOTF, therefore, does offer some assistance in understanding the structure of the ASX 100 companies, but the Resource Based TOTF, because of the very limited availability of relevant data, offers very little assistance.

Because of the lack of easily available data outlined above, Transaction Cost, Contract and Team Production theories do not address the criterion at all and are rated at 0 on the adopted scale. The greater contribution made by both Resource Based and Natural Resource Based theories support a limited understanding of the criterion and are rated at 2 each.

7.3.3.7 Assessing Utility against Criterion 7: What drives business strategy?

After a preliminary examination, it could appear that none of the five TOTF in this group provides any assistance in helping understand the corporate strategies of the ASX 100 companies (as at 30 June 2016). The principal reason for reaching such a conclusion is that none of the companies publishes, in its 2016 Annual Report, data that enables comparison against the characteristics of the theories in more than a very limited way. For instance: it could be assumed that the corporate structure (the number of internal divisions or external subsidiaries (see Appendix 1)) of each company reflects the costs of doing business (the transaction costs of the business) but no 2016 Annual Report provides data that would support such a conclusion. A similar conclusion can be reached after trying to find data that supports a comparison of announced corporate strategies with any of the other four theories. This is despite the fact that some companies do outline their business strategies in their annual reports.

It could be assumed that published data, on both the human and physical resources of a company, would enable comparison against Resource Based and Natural Resource Based TOTF. However, this is not easily done as not all ASX 100 companies publish this data. Some comparison can, however, be made in the instance of both BHP and TLS (Numbers 5 and 6 in Appendix 1).

The strategic pillars that drive TLS are: (i) driving growth and creating long term shareholder value; (ii) improving customer advocacy, (iii) driving value and growth from core business; and (iv) building new growth businesses (Telstra 2016, p. 3). Detailed data on the strategies of TLS (Number 5 in the ASX 100 index as at 30 June 2016) is available in the 2016 Annual Report – as is the number of their employees and the remuneration policies in regard to their senior executives. Appendix 6 shows the executive remuneration policies of the company and Appendix 7 shows the particular skills available to the company through its board members. This data is interesting, but it is not possible to link such resource availability data to strategy development and implementation.

Similarly, the strategic driver for BHP is '… to own and operate large, profitable, low cost, expandable, upstream assets diversified by commodity, geography and market' (BHP 2015, p. 12). The BHP annual report for 2016 shows that BHP has operations in many countries – including Algeria, Australia, Brazil, Columbia, Mexico, Pakistan, Trinidad and Tobago, the UK and the USA. The commodities mined include coal, copper, iron ore, magnesium, nickel and oil and gas. The activities undertaken include mining, refining, smelting and marketing (BHP 2016, pp. 231-250). This data shows just how well the activities of the company fit with its corporate strategy. Other data in Appendix 1 shows that BHP had 70 subsidiary companies in 2016 and it could be assumed that these subsidiaries also met the criteria contained within the corporate strategy identified above. However, a perfect fit between corporate strategy and subsidiary performance may not always to be the case. One of the natural resource groups identified in the company's 2016 Annual Report (BHP 2016, pp. 245-248) is unconventional natural gas – a major, potential, source of which is the company's North American Shale Fields. The company reported a reduction in the possible extent of this resource of 337 Million Barrels of Oil Equivalent in its 2016 Annual Report (BHP 2016, p. 245) and this announcement caused immediate concern amongst its investors. After having spent A$25 billion in acquiring the shale oil leases (in 2011) and a total of A$50 billion in their acquisition and development, BHP announced, in 2017, that it would sell those leases as soon as possible (Letts 23 August 2017). This followed a reduction in the potential resource represented by the leases of 337 million barrels of oil equivalent in the company's 2016 Annual Report (BHP 2016, p. 245).

The fact that these examples show that some major ASX 100 companies have not always been able to match their resource base and performance to their strategic plans does not detract from the value of the theories on which the analysis is based. Both the Resource Based and Natural Resource Based TOTF do, therefore, support a reasonable understanding of what drives the corporate strategies pursued by the ASX 100 companies and these two theories are rated at 3 each on the adopted scale. The other three theories do not address the criterion at all and are each rated at 0.

7.3.3.8 Assessing utility against Criterion 8: What generates company productivity?

Transaction Cost Theory suggests a strong reason that could drive an improvement in company productivity. This is that undertaking activities in-house may be less resource expensive than purchasing the output of these activities from other suppliers. Such a reason could be a driver for activities being undertaken by the number of subsidiaries identified in Appendix 1 and by internal divisions of companies in other organisations. However, no ASX 100 company (as at 30 June 2016) offers data that would support the drawing of such a link in its 2016 Annual Report. Similarly, Contract Theory suggests that it may be possible for external suppliers to deliver the required goods and/or services at a lower price than that at which they could be supplied by internal activities. Team Production Theory suggests that a company could have, within the various ‘team’ groupings within its structure, aggregated skills and experiences that could enable it to improve productivity. Both the Resource Based and Natural Resource Theories also suggest strong reasons for drivers of company productivity. These resources may be either tangible (plant, equipment, a stock of finished goods) or intangible (skilled labour, team skills, intellectual property) (Barney 1991, pp. 106-7; Lozano et al. 2015, p. 435).

However, the utility of these theories in explaining the creation, existence and operation of ASX 100 companies is limited by the fact that these companies provide very little data, in their 2016 Annual Reports, that can be compared against the identified characteristics of the theories. These annual reports:

- provide no data that enables a comparison against Transaction Cost Theory;
- provide very limited data that supports a comparison with Contract Theory (in many cases, the ASX 100 companies only provide data about the contracts with (and remuneration of) their directors and management teams- see Appendix 7);
- provide no data about ‘teams’ other than their directors and senior managers (see Appendix 1 for the example of the CBA (Number 1 in the ASX 100 index).
- all ASX 100 companies provide great detail about the age, nationality, qualifications and experience of their directors and senior managers (see

Appendix 3) (This data enables quite a reasonable comparison with the Resource Based Theory.); and

- only the Mining (part of the Materials GICS classification on the ASX) and Resource companies (such as RIO and OSH (Numbers 16 and 32 in the ASX 100 index as at 30 June 2016 respectively)) provide data on their natural resources (including coal, copper, gold, silver and natural gas) that facilitates comparison with Natural Resource Theory.

Because of these limitations on data availability, the utility of these theories in describing this aspect of the creation, existence and operation of the ASX 100 companies is rated as follows: Transaction Cost Theory does not address the criterion and is rated at 0, Contract Theory supports only a very limited understanding and is rated at 1; Team Production Theory supports a limited understanding and is rated at 2. Resource Based Theory also offers only a very limited understanding of the criterion and is rated at 1, while Natural Resource Based Theory offers a better, but still limited, understanding of the theory and is rated at 2.

It could, however, be that future changes to the *Corporations Act 2001* (Parliament of Australia 2001) might require greater disclosure against the contracts that the ASX 100 companies hold with their suppliers and sub-contractors. Such requirements have already been introduced in both the UK and France. Modifications to the UK *Companies Act 2006* require companies registered in that jurisdiction to provide information on contractual and other arrangements essential to the company's business (Parliament of the UK 2006). Similar legislation, introduced in France in 2017, requires the largest French companies to publish annual reports that include the names of suppliers and sub-contractors with whom they have an established commercial relationship (European Coalition for Corporate Justice February 2017). Publication of these details, by the ASX 100 companies, would allow a much more extensive analysis of the utility of both Contract and Resource Based Theories in understanding the productivity improvement aspects of the existence and operations of these companies.

7.3.3.9 Assessing utility against Criterion 9: What motivates business behaviour?

Each of the five TOTF in this group appears to make a significant contribution towards understanding what motivates business behaviour in the ASX 100 companies. However, the contribution made by both Transaction Cost and Team Production Theories cannot be analysed in any detail as none of the ASX 100 companies provides, in its 2016 Annual Report, data that would enable such an analysis to be made.

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The contribution made by Contract Theory is more easily assessed – but only in a limited form. This is because data relating to milestone achievement and rewards is only made available for senior executives in the ASX 100 companies. Appendix 6 gives outline details of the performance criteria against which executive remuneration in some ASX 100 companies is calculated. One of the more important pieces of data in Appendix 6 is that relating to the criteria against which executive performance is calculated. By establishing these performance criteria, the named companies have created the drivers that will motivate self-interested executives and so drive business behaviour towards standards set by the business owners through their elected representatives (the board of directors).

Team Production Theory offers almost no assistance in understanding this aspect of the creation, existence and operation of the ASX 100 companies. This is because the only teams recognised in the 2016 Annual reports are the board of directors and the senior executive team. However, the data presented about these teams is about the individual members and not about the function of the teams and their contribution towards the achievement of corporate objectives. There is certainly no data presented that supports any analysis relating team performance to corporate behaviour.

Both the Resource Based and Natural Resource TOTF could offer a significant level of assistance in helping understand corporate behaviour. This is because a corporation might behave in a way that protects and develops its rare and unique resources. However, except for the incentive packages provided to directors and senior executives (see Appendix 6), the 2016 annual reports of the ASX 100 companies provide no data that would support such analysis (The examples of performance criteria given in the companies shown in Appendix 6 make no mention of asset protection.). Both these theories are, therefore, of no assistance in helping understand this aspect of the creation, existence and operation of the ASX 100 companies. Because of these limitations in data availability, all of the theories, except for Contract Theory do not address the criterion at all and are rated at 0 on the adopted scale in regard to this aspect of the creation, existence and operation of the ASX 100 companies. Contract theory offers only a very limited understanding of the criterion and is rated at 1.

7.3.3.10 Assessing utility against Criterion 10: What are the company's obligations to shareholders and other groups?

There is nothing in Team Production or Contract theories to suggest any link between the company and its shareholders. There is, however, such a link suggested by Transaction Cost and Resource Based Theories. Although not mentioned in the Transaction Cost literature, the costs of managing shareholders are both large and unavoidable (Commonwealth of Australia 2001, s250N). These costs include the preparation and distribution of annual reports (usually on the basis of one per shareholder), the preparation for and holding of an annual general meeting and the work occasioned (in Australia) by the rejection of the company's remuneration report – if that occurs. Transaction Cost Theory, therefore, makes a significant contribution to understanding this aspect of the creation, existence and operation of ASX 100 companies. Resource Based Theory requires consideration of all aspects of the resources available to a company and such consideration must include the needs of shareholders. Table 7.6 gives details of the number of individual shareholders in a selection of the ASX 100 companies. The companies in the table have been chosen so as to demonstrate the wide range in the number of shareholders in the ASX 100 companies as at 30 June 2016.

Table 7.6: The number of individual shareholders in a selection of the ASX 100 companies as given in the 2016 Annual Report

GICS Sector	ASX number and name	Number of shareholders
Financials	12. MQG	44 282
Materials	17.AMC	73 594
Health care	23. RHC	53 224
Industrials	28. CIM	31 932
Consumer staples	48. TWE	61 494
Consumer discretionary	41. CWN	67 085
Energy	40. CTX	32 296
Telecommunication services	8.TLS	1 394 146
Utilities	77. SKI	19 318
Information technology	89. CAR	18 086

Source: the Shareholder Information page in the 2016 Annual Report for the company named.

The number of these shareholders raises two very important questions. They are: (i) how does a company interact with its shareholders in order to establish (and then rank) their values and needs; and (ii) how is the cost of such an exercise kept within reasonable limits? No attempt is made to answer these questions here, but they do have important ramifications for the utility of both Transaction Cost and Resource Based TOTF.

These considerations apply to internal stakeholders (such as shareholders) but they do not address the company's relations with other stakeholders and it is in this regard that the utility of both theories is questioned. None of the ASX 100 companies identifies any of their stakeholders other than their shareholders, directors and senior executives and, in the instance of those companies that do publish information on the beneficiaries of their CSR programs, a very limited range of persons who are affected by their business activities are recognised. This lack of readily available data limits the utility of both Transaction Cost and Resource Based TOTF. Because of the limitations imposed by the lack of useful data in ASX 100 company annual reports for 2016, Transaction Cost, Team Production and Natural Resource Based theories do not address the criterion at all and are rated at 0 in describing this aspect of the creation, existence and operation of the ASX 100 companies. Contract and Resource

Based theories are somewhat more useful, but still offer limited understanding of the criterion and are rated at 2 on the adopted scale.

7.3.3.11 Assessing utility against Criterion 11: What tests does the theory suggest for determining its utility in helping to understand the creation, existence and operation of the company?

Each of the theories in this group suggests tests as to how its utility in understanding the creation, existence and operation of the ASX 100 companies can be determined. However, because each of the theories requires data that is not often supplied in company annual reports, the suggested tests are not easy to apply.

Transaction Cost Theory identifies a wide range of enterprise costs that could be examined within its limits (Table 3.1). The test suggested by these costs is whether or not the ASX 100 company 2016 Annual Report contains data that could be used to measure transaction costs in any of the companies. This is not the case and the test cannot be applied. A test that could easily be applied against Contract Theory is whether or not the ASX100 company 2016 annual reports supply data about contracts entered into by the company. All ASX 100 companies provide extensive detail about the remuneration packages made available to their senior executives and as to how performance against set criteria is measured. Examples of this data are supplied in Appendix 6. Some companies include their directors in such disclosure, but these are the only occasions on which data about company contracts are made available. There is, therefore, only very limited data available that could provide a test of Contract Theory.

A similar test could be applied to Team Production Theory. Again, there is only very limited data provided about ‘teams’ within the ASX 100 companies. In all instances, the only data provided is about the size, qualifications, experience and diversity (age and nationality) of the director and senior executive teams and this data supports only a very limited test of the theory.

Resource Based Theory, because of the extensive nature of its coverage, suggests many tests by which its utility in explaining the creation, existence and operation of ASX 100 companies could be explored. Natural Resource Theory suggests a major data set by which its utility could be tested and this is the reporting of natural resources available to the company. All of the Materials/Mining and Resource companies in the ASX 100 index do report such information and the test is easy to apply. As these two GICS groups form only a small segment of the ASX 100 index, the test offers only a limited understanding of the overall utility of the theory.

Each of the theories in this group does suggest some tests by which its utility in explaining the creation, existence and operation of the ASX 100 companies could be tested. However, the data that might enable such tests to be applied is seldom supplied in the 2016 Annual Reports of these companies and the utility of the theories cannot be extensively explored. Consequently, they are rated, on the adopted scale, as follows: Transaction Cost Theory (which fails to address the criterion at all) is rated at 0 and each of the other four theories (which offer only a very limited understanding of the criterion) at 1.

7.3.3.12 An overall rating of the utility of the Other Economics Based Theories of the Firm in helping to understand the creation, existence and operation of ASX 100 companies.

A rating of the utility of each of the five Other Economics Based TOTF in helping understand the creation, existence and operation of the ASX 100 companies is established at the end of each of the Sections 7.3.3.1 to 7.3.3.11 inclusive. Table 7.7 gives a summary of the individual scores and concludes Section 7.3.3 with a short, summary statement about the utility of the theories as a group.

Table 7.7: A summary of the utility rating scores given to each of the Other Economics Based TOTF

CRITERIA	1	2	3	4	5	6	7	8	9	10	11	TOTAL
Transaction Cost Theory – Rating	0	2	1	1	3	0	0	0	0	0	0	7
Contract Theory - Rating	0	0	0	1	2	0	0	1	1	2	1	8
Team Production Theory - Rating	0	0	0	1	1	0	0	2	0	0	1	5
Resource Based Theory - Rating	3	0	1	2	3	2	3	1	0	2	1	18
Natural Resource Based Theory - Rating	0	0	0	1	3	2	3	2	0	0	1	12

The above rating scores are out of a possible total of 44. Only the two resource based theories are given better than a very low score. The major reason for the low score of all Other Economics Based TOTF is that the 2016 Annual Reports for the ASX 100 companies do not provide data that supports more than a limited comparison against the theories.

7.3.4 Establishing the utility of behavioural theories of the firm

As identified in Section 3.2.3, there are five theories in this group. They are: (i) Principal/Agent Theory; (ii) Revenue Maximisation Theory; (iii) Managerial Discretion Theory, (iv) Managerial Capitalism Theory; and (v) Stewardship Theory.

7.3.4.1 Assessing utility against Criterion 1 - Why does the company exist?

None of the theories in this group addresses the reasons that a business entity might come into being or that a business entity might operate as a company as against any other form of business organisation. The five theories do not address the criterion at all and their utility in helping understand this aspect of the creation, existence and operation of the ASX 100 companies is rated at 0 on the adopted scale.

7.3.4.2 Assessing utility against Criterion 2 – Why has the company adopted its present legal structure?

Each of the companies in the ASX 100 index as at 30 June 2016 is a consolidated entity - mostly operating internationally and with many internal divisions or subsidiaries (see Appendix 1 for the number of subsidiaries reported by some ASX 100 companies). On an initial investigation (and using the characteristics of the theories presented in Section 3.2.3), it is hard to see how any of the Behavioural Based TOTF helps understand this aspect of the creation, existence and operation of the ASX 100 companies.

However, each of the theories does contribute to such an understanding. Principal/Agent theory makes a contribution in that it draws on the link whereby the owners of companies (usually through the appointed directors) develop strategies and then direct their (executive) agents to implement those strategies. The principals then monitor the performance of their agents and reward them according to the outcomes of their actions.

The actions of executive agents in such matters are illustrated by the strategies adopted within BHP and TLS (Numbers 5 and 6 in the ASX 100 index as at 30 June 2016) and the outcomes reflected in their subsidiary enterprise structure. The strategies adopted by TLS include: (i) driving growth and creating long term shareholder value; (ii) improving customer advocacy: and (iii) driving value and growth from core business and building new growth businesses (Telstra 2016). TLS has 48 subsidiary enterprises – all of which operate in the company's core business area of telecommunications. There is thus a direct link between the strategies driven by the principals and the actions of the agents in building a multi-enterprise structure. Appendix 6 shows the executive remuneration policies of the company – this data is interesting as it demonstrates the link between performance outcomes directed by strategy and remuneration.

Similarly, a strategic driver for BHP is '… to own and operate large, profitable, low cost, expandable, upstream assets diversified by commodity, geography and market'

(BHP 2015, p. 12). The BHP annual report for 2016 shows that BHP has 70 subsidiary operations in many countries – including Algeria, Australia, Brazil, Columbia, Mexico, Pakistan, Trinidad and Tobago, the UK and the USA. Principal/Agent theory supports a full understanding of this aspect of company creation, existence and operation and is rated at 4 on the adopted scale. The data contained in Appendix 5 demonstrates that revenue is not always increased each year and so Revenue Maximisation theory only offers a limited understanding of the criteria and is, therefore, only rated at 2 on the adopted scale.

The 2016 Annual Reports for the ASX 100 companies (as at 30 June 2016) provide no data against which the contribution of either Managerial Discretion or Managerial Capitalism theory to this aspect of company creation, existence or operation can be assessed. They do not address the criterion at all and are, therefore, rated at 0 on the adopted scale.

The major difficulty in assessing any contribution that Stewardship theory may make to understanding this aspect of the creation, existence and operation of companies lies in that the 2016 Annual Reports for the ASX 100 companies provide no material against which the performance of executive managers as stewards, rather than as agents, can be assessed. Lacking such data, it is assumed that the directors of those companies could regard their executive officers as stewards. If this was to happen, this aspect of Stewardship theory would offer a full understanding of the criterion and is, therefore, rated at 4 on the adopted scale – the same rating given to Principal/Agent theory.

7.3.4.3 Assessing utility against Criterion 3 – How does the company relate to its shareholders?

In all ASX 100 companies, the relationship between shareholders and the companies is the same. The companies are legal entities able to own property that is not attributable to the shareholders and are able to offer shareholders a reward (dividends) for the money that they invest in the company without requiring that they (the shareholders) become involved in the day to day operation of the companies. A very important part of the relationship between the company and its owners is the setting of strategy (through the actions of the directors) and the delegation of authority, to the appointed managers, to implement that strategy. The directors then (through their Remuneration Committees) reward the appointed agents for their part in advancing shareholder intentions as expressed in corporate values and strategies. Because there is no material in ASX 100 company 2016 Annual Reports that supports an analysis of any contribution by Revenue Maximisation, Managerial Discretion or Managerial Capitalism theories to this aspect of company creation, existence or operation, it cannot be determined whether or not they make a different contribution to the other theories. It is, therefore, assumed that they all support a full understanding of the criterion and all five theories are rated at 4 on the adopted scale.

7.3.4.4 Assessing utility against Criterion 4 – How is the personality of the company determined?

Each of the five theories in this group could offer some assistance in helping understand how the personality of the ASX 100 companies is determined and displayed. However, although each of the companies has produced a code of conduct (as required by the ASX *Corporate Governance Principles and Recommendations* (ASX 2014, Section 3), very few of document the values on which the codes are based. This lack of data makes it impossible to understand the bases on which corporate personality might be based. It could be that the personality of a company reflects the values (and hence personality) of its directors and/or executive managers and some knowledge of these persons can be gleaned from Appendices 2 and 7. However, such knowledge as may be obtained is very limited in scope and is inadequate as a base to understand their personality.

None of the Behavioural Based TOTF, therefore, addresses the criterion at all. They are, therefore of no use in helping understand this aspect of the creation, existence and operation of the ASX 100 companies, and each theory is rated at 0 on the adopted scale.

7.3.4.5 Assessing utility against Criterion 5 – Why are the boundaries between the company and its markets where they are.

None of the five Behavioural Based TOTF offers any explanation as to why the boundaries between a company and its markets are where they are. This is despite the suggestion in Revenue Maximisation Theory that managers should act so as to increase product demand and in Managerial Capitalism Theory that managers would prefer to maximise the growth of the firm so as to maximise their own benefits. These two considerations cannot be explored using the data sets behind this thesis as the ASX 100 company Annual Reports for 2016 do not contain data that would support such analysis. Each of the five Behavioural Based TOTF fails to address the criterion at all and they are of no utility in helping understand this aspect of the creation, existence and operation of the ASX 100 companies. They are, therefore, rated at 0 on the adopted scale.

7.3.4.6 Assessing utility against Criterion 6 – Why is the company structured the way that it is?

All of the ASX 100 companies trade as consolidated entities and Appendix 1 shows the number of subsidiary companies that some of them hold. This data on subsidiaries is taken from the 2016 Annual Report for each company, but those reports give no detail of the internal structure of the companies. Principal/Agent Theory offers no guidance on why such structures might exist and is, therefore, rated at 0 on the adopted scale. Each of the other four theories in this group does offer some understanding as to why such organisational structures might exist and these understandings are now explored.

The work of Baumol (1959) relating to revenue maximising firms offers no suggestions as to the reasons that a business entity might be structured in any particular way, but the work of Marris (1964) does. Marris (1964) argues that the growth of a firm depends on the planning and decision making skills of managers, on R & D expenditure and on the levels of profit retained to finance growth. Appendix 5 contains data that would support determination of the rate of growth of companies in the ASX 100 index (in terms of growth in annual earnings) and of the level of profits (NPAT) retained after the distribution of dividends to shareholders. Appendix 7 gives some information about the level of skills (in terms of formal qualifications) available to companies through their board of directors. However, there is no data in the ASX 100 company 2016 Annual Reports that supports determination of the number of subsidiary structures created against the timing of revenue growth and profit retention. The contribution of Revenue Maximisation Theory to understanding this aspect of the creation, existence and operation of the ASX 100 companies is, therefore, very limited and it is only rated at 1 on the adopted scale.

Managerial Discretion Theory would appear to offer an interesting insight into reasons for the structure of the ASX 100 companies. This insight could arise from its suggestion that, once an ‘adequate’ level of profit is made available to investors, managers may then have the discretion to invest in matters that might improve the utility of the firm to the managers. Unfortunately, there is no data in any of the ASX 100 company annual reports for the period 2007 to 2016 to suggest what their shareholders might consider to be an ‘adequate’ return and after the attainment of which managers might have the discretion to invest in the growth of the company. Managerial Discretion Theory fails to address the criterion at all and is, therefore, rated at 0 on the adopted scale.

Chand’s (n.d.) understanding of Managerial Capitalism Theory suggests that firms could grow continuously through diversification (or by creating new products) but there is no data in the ASX 100 company annual reports for 2016 that supports analysis of such a contention. The data in Appendix 5 suggests that ASX 100 company (as at 30 June 2016) growth (in terms of both annual revenue and NPAT) is not always continuous. It is also impossible (on data contained in these reports) to develop any link between growth, such as that displayed in Appendix 5, and the number of subsidiaries that the companies have. Accordingly, the contribution of this theory in helping understand this aspect of the creation, existence and operation of the ASX 100 companies is very limited and is rated at 1 on the adopted scale.

The utility of Stewardship Theory depends on being able to recognise differences between managers acting as agents or as stewards. Unfortunately, it is impossible to recognise such differences using data contained in the 2016 Annual Reports of the ASX 100 companies. Stewardship Theory fails to address the criterion at all. Its utility in helping understand this aspect of the creation, existence and operation of the ASX 100 companies is, therefore, rated at 0 on the adopted scale.

7.3.4.7 Assessing utility against Criterion 7 – What drives company strategy?

There is little in any of the five TOTF in this group that suggests matters that might drive corporate strategy. It is possible to surmise that managers, operating under the concepts behind either Principal/Agent Theory or Stewardship Theory might implement the strategies devised by the owners (shareholders) of their companies. Such an understanding immediately leads to the questions raised in Section 3.2.4.1 but there is little data in the 2016 Annual Reports of the ASX 100 companies to suggest what the preferred strategies of shareholders might be, let alone how those strategies might be conveyed to their managers or how the principals might monitor the managers' performance or encourage them to act in the principals' best interest. Appendix 6 gives an outline of the remuneration and incentive packages available to ASX 100 company (as at 30 June 2016) managers and suggests some standards by which such performance might be monitored. However, the standards set (such as Total Shareholder Return and strength of current year balance sheets) are not tied to shareholder determined strategies. Because of this very limited contribution towards understanding this aspect of the creation, existence and operation of the ASX 100 companies, each of these theories is only rated at 1 on the adopted scale.

It could be assumed that Revenue Maximisation, Managerial Capitalisation and Growth Maximisation theories all make a significant contribution towards understanding the drivers of company strategy. However, their actual contribution is quite small – mainly because the concepts behind them (revenue maximisation, adequate returns to shareholders and constant rates of company growth and costs) are not quantifiable. For instance, what is the maximum revenue obtainable by a company? Although the data contained in Appendix 5 illustrates changes in annual revenue and NPAT over the years 2007 to 2016, there is not always growth in either revenue or profit. Similarly, although annual dividends paid to shareholders are shown in Appendix 5, there is little evidence in the ASX 100 company 2016 Annual Reports to suggest that these returns are ‘adequate’. The only evidence that these returns might be ‘adequate’ is contained in Appendix 4. The data in this appendix shows that the larger five shareholders in each ASX 100 company have mostly increased the aggregate of their shareholdings in each company over the period 2007 to 2016. Such a movement would suggest that these shareholders have found the level of return on their invested funds to be ‘adequate’. There is, however, no corroboration of this assumption available. The contribution of each of these theories towards understanding this aspect of the creation, existence and operation of the ASX 100 companies is very limited and they can only be rated at 1 on the adopted scale.

7.3.4.8 Assessing utility against Criterion 8 – What generates company productivity?

Apart from the suggestion that input prices of the factors supporting enterprise activities are constant and that all major costs are assumed to grow at the same rate in Managerial Capitalism Theory, there is nothing in the Behavioural Based TOTF to suggest any link with corporate levels of productivity. The consolidated financial data provided in all ASX 100 company Annual Reports for 2016 does not allow the determination of individual item costs and so no comparison against Managerial Capitalism Theory can be made. Because of this lack of usable data, the five Behavioural Based TOTF make no contribution to understanding what drives productivity in these companies. They each fail to address the criterion and each theory is, therefore, rated at 0 on the adopted scale.

7.3.4.9 Assessing utility against Criterion 9 – What motivates company behaviour?

After an initial exploration of the characteristics of each of the five Behavioural Based TOTF, it would appear that each theory could make some contribution towards understanding what motivates company behaviour. It would appear that:

- under Principal/Agent theory, managers would behave according to standards laid down by company owners (the shareholders);
- under Revenue Maximisation Theory, managers would behave (act) so as to obtain the maximum possible revenue for their principals;
- under Managerial Discretion Theory, managers would at least use their discretion to ensure that their principals received an 'adequate' return on their funds invested;
- under Managerial Capitalism Theory, managers would at least act so as to achieve a balanced rate of growth that would meet their principals' needs; and
- under Stewardship Theory, managers (acting as stewards) would behave so as to produce superior returns for their principals.

However, these standards (maximum possible returns, adequate returns and superior returns) are impossible to quantify as no ASX 100 company set of shareholders (as at 30 June 2016) has provided guidance as to what they expect of these standards. Accordingly, the data in Appendices 4, 5 and 6 offers little assistance in helping understand the contribution of these theories to what motivates company behaviour. All five theories only offer a very limited understanding of the criterion and are, therefore, only rated at 1 on the adopted scale.

7.3.4.10 Assessing utility against Criterion 10 – What are the company's obligations to shareholders and to other groups?

All five Behavioural Based TOTF make some contribution towards understanding the obligations of a company (as expressed through the actions of its managers) towards the shareholders. These obligations are expressed as follows:

- under Principal/Agent Theory, the managers are agents of the principals (shareholders) as far as the day to day management of the company is concerned;
- under Revenue Maximisation Theory, managers are obliged to exercise their planning and decision making skills to increase product demand and to achieve an agreed minimum level of profit for their principals;
- under Managerial Discretion Theory, the managers are constrained in their actions by the need to ensure that the shareholders receive an adequate return on their investment;
- under Managerial Capitalism Theory, managers are obliged to ensure that their company grows at a constant rate (through product and geographical diversification) and to maintain input prices at a constant level, and
- under Stewardship Theory, managers are expected to be motivated towards superior performance.

Unfortunately, all of these obligations/requirements (except for Principal/Agent Theory) are based on requirements that cannot be explored using data contained in the 2016 Annual reports of the ASX 100 companies. However, even the requirement of managers to act as agents for their principals (the shareholders) under Principal/Agent Theory has problems. The major problem being that, as shown in Appendix 6, managers are often offered remuneration packages that include access to share ownership. This then raises the question as to how managers can avoid a conflict of interest in representing the interests of the principals when they are themselves principals?

Despite what seems to be a significant potential for these five Behavioural Based TOTF in helping understand the obligations of a company towards its shareholders, the actual contribution is quite small. This is because the ASX 100 company Annual Reports for 2016 do not contain the data needed to make a better analysis. None of the theories offers any suggestion as to what the relationship between a company and its other stakeholders might be. The usefulness of the five Behavioural Based TOTF in helping understand this aspect of the creation, existence and operation of the ASX 100 companies is, therefore, very limited and each is only rated at 1 on the adopted scale. Similarly, none of the five Behavioural Based TOTF offers any suggestions as to what the company's obligations to other stakeholders might be.

7.3.4.11 Assessing utility against Criterion 11 – What tests does the theory suggest for determining its utility in helping to understand the creation, existence and operation of the company?

None of the five Behavioural Based TOTF on which this section of the thesis is based contains any tests by which its usefulness in helping understand the creation, existence and operation of the ASX 100 companies could be tested. Although the characteristics of each theory have been used in the material examined in Sections 7.4.1.1 to 7.4.4.10, many of these characteristics cannot be explored in any depth because the annual reports of the ASX 100 companies on which this research is based do not contain any data that would support such analysis. None of these theories addresses the criterion at all and they are, therefore, each rated at 0 on the adopted scale.

7.3.4.12 An overall assessment of the utility of the behavioural theories in helping understand the creation, existence and operation of the ASX 100 companies

Sections 7.3.4.1 to 7.3.4.11 assess the utility of characteristics of the five Behavioural Based TOTF recognised in Section 3.2.4.1 of this thesis. Table 7.8 summarises these ratings and gives an overall rating of the utility of each theory in helping understand the creation, existence and operation of the ASX 100 companies.

TABLE 7.8: An overall rating of the utility of the Behavioural Based TOTF in helping to understand the creation, existence and operation of ASX 100 companies

CRITERIA	1	2	3	4	5	6	7	8	9	10	11	TOTAL
Principal/Agent theory – rating	0	4	4	0	0	0	1	0	1	1	0	11
Revenue maximisation theory – rating	0	2	4	0	0	1	1	0	1	1	0	10
Managerial discretion theory – rating	0	0	4	0	0	0	1	0	1	1	0	7
Managerial capitalism theory – rating	0	0	4	0	0	1	1	0	1	1	0	8
Stewardship theory – rating	0	4	0	0	0	0	1	0	1	1	0	7

The maximum possible score for any theory in the above table is 44. None of the theories is rated more highly than 11 (25 percent of the possible maximum score) and all Behavioural Based TOTF are, therefore, deemed to be of limited utility in helping understand the creation, existence and operation of the ASX 100 companies.

7.3.5 Establishing the utility of stakeholder theories of the firm

As discussed in Section 3.2.5 of this thesis, there are two theories in this group. They are the Stakeholder TOTF and the Shareholder TOTF. While shareholders are only one of the many stakeholder groups associated with any company, the two theories are treated separately in this thesis. The rationale for this separation is the pre-eminence given to shareholders by the (Commonwealth) *Companies Act 2001* (Parliament of Australia 2001).

7.3.5.1 Assessing utility against Criterion 1 - Why does the company exist?

It may appear that Stakeholder Theory makes no contribution to an understanding of this aspect of the creation, existence and operation of the ASX 100 companies, but such an understanding is incorrect. The implicit social contract between society, government and business accords business a ‘right’ to fashion itself as a company - even though such entities are no longer seen as merely being legal devices by which the business transactions of individuals can be carried out (Berle & Means 1932).

Within Australia, this ‘right’ is embedded in law through the *Corporations Act 2001* (Parliament of Australia 2001). This delegation of power from society fits very well at the top of the ladder of stakeholder engagement and management formulated by Friedman and Miles (2006, p. 162) and exactly meets their description of ‘majority representation of stakeholders in decision making’. Appendices 3 and 4 show that many stakeholders back their decision to delegate the power to incorporate by also becoming shareholders in companies that their delegation of power has permitted to come into existence. Table 7.6 gives examples of the number of stakeholders who have followed their delegation of the power to incorporate by becoming shareholders in a selection of the ASX 100 companies. This powerful link between stakeholders and companies formed through their delegation of power enables Stakeholder Theory to support a full understanding of the criterion and to be rated at 4 on the adopted scale.

Shareholder Theory is a subset of Stakeholder Theory and draws its link between shareholders and companies in the same way. This link remains dominant – although Friedman (1962) disagrees. His views that shareholder primacy is only an abstract economic theory and that shareholders lack the legal authority to control either directors or executives do not detract from the utility of Shareholder Theory in understanding this aspect of the creation, existence and operation of the ASX 100 companies. Accordingly, this aspect of Shareholder Theory is also rated at 4 on the adopted scale.

7.3.5.2 Assessing utility against Criterion 2 – Why has the company adopted its present legal structure?

The legal structure of all ASX 100 companies is that of a consolidated entity and Appendix 1 gives examples of companies where the consolidated entity is based on a parent company and many subsidiary companies. The (Commonwealth) *Companies*

Act 2001 (Parliament of Australia 2001) is silent on the ability of corporations to form subsidiary bodies and it cannot be said that Australian society has delegated a specific power to companies to form subsidiary companies. Similarly, there is no data in any ASX 100 company Annual Report for 2016 that suggests that any such company has sought approval from its shareholders for the formation of subsidiary companies or internal divisions. Consequently, neither Stakeholder Theory nor Shareholder Theory addresses the criterion at all. Both theories offer no utility in helping understand this aspect of the creation, existence and operation of the ASX 100 companies and each theory is, therefore, rated at 0 on the adopted scale.

7.3.5.3 Assessing utility against Criterion 3 – How does the company relate to its shareholders?

The powers of incorporation (as delegated by society in Australia and made law by the *Corporations Act 2001* (Parliament of Australia 2001) create quite specific relationships between companies and their shareholders (see Section 2.3.1 of this thesis). Thus both Stakeholder Theory (as the means by which the link between society and companies in Australia is understood) and Shareholder Theory (as the descriptor of such specific links support a full understanding of this aspect of the creation, existence and operation of the ASX 100 companies. Appendices 3 and 4 provide detail on the number and size of such links. Each theory is, therefore, rated at 4 on the adopted scale for it utility in this aspect of corporate life in Australia.

7.3.5.4 Assessing utility against Criterion 4 – How is the personality of the company determined?

It is reasonable to assume that the personality of a company is dictated by its owners. However, in the case of the ASX 100 companies, the owners are either far too numerous (see the examples given in Table 7.6) to be able to make individual contributions to company culture or are removed from the day to day management of the company and are not able to directly influence culture. However, in the case of WBC (Number 2 in the ASX 100 index as at 30 June 2016– see Appendix 1), such barriers have not proven a barrier to shareholders attempting to exert influence over company culture (and hence personality). The need for a change in the culture (and hence personality) of WBC was highlighted by external stakeholders – initially by customers and then by institutions such as the Royal Commission of Inquiry into Misconduct in the Banking, Superannuation, Insurance and Financial Services Industry, AUSTRAC, the APRA and ASIC.

It is not surprising that the shareholders in WBC have been stirred to action by misconduct within the company. Westpac has been accused of more than twenty-three million breaches of Australia's anti-money laundering and terrorism laws that involved the bank in illegal transactions valued at more than A$11 billion during the period November 2013 to September 2018 (Butler 20 November 2019). If found guilty of the charges, Westpac faces fines of between A$391 trillion and A$483 trillion (Butler 20 November 2019). As this money will have to be found from profits that would otherwise have been available to shareholders, it is not surprising that shareholders are concerned about the financial impact of executive and employee culture on their shareholdings and future earnings. On the day that the charges against the company were made known to the Australian public, through articles in newspapers, the shares of the company fell 2.15 percent in value during trading on the ASX. The pain associated with company culture and personality was not only felt by shareholders. On 26 November 2019, WBC announced that its CEO would leave the company on 2 December 2019 (Hall 26 November 2019).

The impacts of these stakeholders (AUSTRAC, APRA, ASIC) on WBC corporate culture is not forecast in WBC's 2016 Annual Report (although it is alluded to in the 2018 Annual Report) and such documentation is, therefore, of limited use in helping understand what drives the personality of such companies. It would appear that both Stakeholder and Shareholder theories offer only a limited understanding of this aspect of the creation, existence and operation of ASX 100 companies and each theory is only rated at 2 on the adopted scale. This rating reinforces by the understanding that only a very small number of the ASX 100 companies have been subjected to the public scrutiny that brings evidence of such corporate culture to light.

7.3.5.5 Assessing utility against Criterion 5 – Why are the boundaries between the company and its markets where they are?

Decisions on market identification and penetration are internal company decisions and are referred to neither shareholders nor external stakeholders for ratification. The only data that ASX 100 companies present, in their 2016 Annual Report, about market location is mostly presented in the form shown in Table 7.5. Because such data is limited to materials (mining) and resource companies, it is of limited value in understanding the contribution of either Stakeholder Theory or Shareholder Theory to this aspect of the creation, existence and operation of the ASX 100 companies. While it might be thought that national governments and interested stakeholders in countries where the resources are located could place limitations on access to and development of such international resources, no ASX 100 company Annual Report for 2016 provides evidence of such interaction (steps 6, 7, 8 and 9 in Table 3.9) Both theories, therefore, offer only a limited understanding of the criterion and are only rated at 1 on the adopted scale.

7.3.5.6 Assessing utility against Criterion 6 – Why is the company structured the way that it is?

No ASX100 company provides data, in its 2016 Annual Report, that discusses the rationale behind the existing company structure. As there is no material that can be compared with or contrasted against the characteristics of either theory in this group, each theory fails to address the criterion at all and is rated at 0 on the adopted scale.

7.3.5.7 Assessing utility against Criterion 7 – What drives company strategy?

It could be assumed that both shareholders and stakeholders who have a '… high, frequent level of impact on, interest in or influence' (Xstrata 2007, pp. 16-19) might be able to influence the strategies developed and implemented in any company. However, not many ASX 100 companies reveal their strategies in their annual reports and it is impossible to use this data source to develop any connection between the strategic desires of shareholders and other stakeholders and company strategies.

There are several external stakeholders (such as the courts of law, Royal Commissions and government departments) that might be able to influence strategy in any company. However, no data on such influence is obtainable from the 2016 Annual Reports of the ASX 100 companies.

It may be that the findings of the Royal Commission of Inquiry into Misconduct in the Banking, Insurance, Superannuation and Financial Services Industries and its recommendation that the responsibility for prosecuting ‘corporate criminals’ be transferred from individual State and Territory Supreme, District and County Courts to the Federal Court system do later influence the strategies of companies (and particularly of banks, superannuation and insurance companies) (Attorney-General’s Department 10 April 2019). However, there is no evidence of any such impact in the 2016 Annual Report of any ASX 100 company researched for this thesis. This may be a future field of research that better demonstrates the impact of Stakeholder Theory on companies. At present, neither Stakeholder Theory nor Shareholder Theory offers any utility in helping understand this aspect of the creation, existence and operation of the ASX 100 companies and, consequently. Both theories fail to address the criterion and are rated at 0 on the adopted scale.

7.3.5.8 Assessing utility against Criterion 8 – What generates company productivity?

Increases in the productive use of resources (be they capital, materials or human resources) could arise from the intellectual property held in the ‘black box’ that is at the centre of any business (Kantarelis 2007, p. 45). However, the only stakeholders who have access to this ‘black box’ (and who might be able to influence the use of these resources) are the directors of the business/company, its managers and its other employees. Appendix 2 give an indication of the numbers of directors and senior executives in the ASX 100 companies and Table 2.3 gives an indication of the number of employees in Australian businesses. However, no ASX 100 company, in its 2016 Annual Report, gives any data on the intellectual property that might reside in its ‘black box’ or on the strategies that its directors, managers or other employees might use in deploying its intellectual property. Neither Stakeholder Theory nor

Shareholder Theory is, therefore, of any use in helping understand this aspect of the creation, existence and operation of the ASX 100 companies. Both theories fail to address the criteria and each theory is rated at 0 on the adopted scale.

7.3.5.9 Assessing utility against Criterion 9 – What motivates company behaviour?

Friedman (1970, p. 1) maintains that shareholders are the owners of a company and that corporate executives are merely their agents. This would suggest that the executives would manage the company so that its behaviour reflects the values and desires (including desirable approaches to wealth creation) of the shareholders. For this to occur, companies would need to actively seek to understand the needs of their shareholders. Given the number of individual shareholders in the ASX 100 companies (see Table 5.6), such an approach could be both time and resource expensive and no such company reports on the undertaking of such an approach in its 2016 Annual Report.

Despite this apparent lack of understanding of shareholder needs, executive remuneration packages in the ASX 100 companies are often linked to the satisfaction of shareholder needs. Data shown in Appendix 6 illustrates this link through the following remuneration policy objectives:

- CBA - … to align remuneration policy with shareholder interests;
- WBC - …to link pay to shareholder interests;
- QAN - … remuneration outcomes that are aligned with the creation of shareholder value;
- ABC - … robust performance measures linked to … long term total shareholder value; and
- DLX - … aligning executive and stakeholder interests.

One part of shareholder interests would be the creation of wealth through the regular payment of dividends and through increasing share value. Appendix 5 demonstrates how these interests have driven company behaviour – in that regular dividends have been paid each year during the period 2007 to 2016 and in that share values have generally risen over the years from 2010 to 2016.

Although none of the companies in the above example explains what their shareholder values are, Shareholder Theory makes a significant contribution towards understanding this aspect of the creation, existence and operation of the ASX 100 companies. It, therefore, offers a full understanding of the criterion and is rated at 4 on the adopted scale. No ASX 100 company either explains what the values of their stakeholders (other than shareholders) are or demonstrates how other stakeholder values have driven their behaviour. Stakeholder Theory, therefore, fails to address the criterion at all and is rated at 0 on the adopted scale.

7.3.5.10 Assessing utility against Criterion 10 – What are the company's obligations to shareholders and to other groups?

The obligations of a company to its shareholders are well established. Friedman (1970, p. 1) maintains that shareholders are the owners of the company and are entitled to the residual monies remaining after all the debts of the company have been satisfied. Farrer (2010, p. 87) expands this concept by maintaining that corporate executives are employees of a company and that their primary responsibility is to:

> … conduct the business in accordance with their (the owners') desires, which generally will be to make as much money as possible while conforming with the rules of society, both those embodied in law and those embodied in ethical customs.

Fisher (1930), however, places some limits on the responsibility of corporate executives towards shareholders when he maintains that the firm does not need to consult with each shareholder before making a decision to invest. Perhaps the Commonwealth *Corporations Act 2001* (Parliament of Australia 2001, Section 254T) has the defining input to this relationship when it stipulates that dividends paid to shareholders must only be paid from profits.

Appendix 5 gives examples to the profits attributable to shareholders and the dividends paid to them for a number of the ASX 100 companies (as at 30 June 2016) during the period 2007 to 2016. The Shareholder TOTF, therefore, supports a full understanding of the application of the criterion and is rated at 4 on the adopted scale.

Stakeholder Theory is not specific in defining the relationship between a company and its stakeholders other than shareholders. Wu (2012, p. 160) maintains that an enterprise should ‘acknowledge the needs of its multiple stakeholders and collaborate with them to generate value’. Sarker (2001) maintains this loose affiliation between a company and its stakeholders when he suggests that regulation of stakeholder and company interaction is not an answer to the difficulties that exist and that there is a need for a strategic stakeholder model that involves all parties on a continuous basis. This approach is close to Steps 9 (Collaboration) and 10 (Partnership) proposed by Friedman and Miles (2006, p. 162) (refer to Table 3.4). However, no ASX 100 company gives any data (in its 2016 Annual Report) that enables an understanding of its relationship with its other stakeholders and the utility of Stakeholder Theory in helping understand this aspect of their creation, existence and operation is limited. It is, therefore, only rated at 2 on the adopted scale.

5.3.5.11 Assessing utility against Criterion 11 – What tests does the theory suggest for determining its utility in helping to understand the creation, existence and operation of the company?

Neither theory in this group contains any tests by which its utility in helping understand the creation, existence and operation of the ASX 100 companies can be assessed. Indeed, Weiss (n.d., p. 9) suggests that the theory might be too limited and its foundation too weak to be either valid or useful. However, as is demonstrated in Sections 7.3.5.1 to 7.3.5.10 of this thesis, there are tests that can be applied against individual elements of the theories. The theories do, therefore, offer a limited understanding of this criterion and each is rated at 2 on the adopted scale.

7.3.5.12 An overall assessment of the utility of the behavioural theories in helping understand the creation, existence and operation and operation of the ASX 100 companies

Sections 7.3.5.1 to 7.3.5.11 outline an assessment of both Stakeholder Theory and Shareholder Theory against the criteria established in Section 4.5 of this thesis. The ratings developed in these sections are now summarised in Table 7.9 so as to give an overall rating of the utility of the theories in helping understand the creation, existence and operation of the ASX 100 companies.

TABLE 7.9: An overall rating of the utility of the Stakeholder Theories of the Firm in helping to understand the creation, existence and operation of ASX 100 companies

CRITERIA	1	2	3	4	5	6	7	8	9	10	11	TOTAL
Stakeholder theory – rating	4	0	4	2	1	0	0	0	0	2	2	15
Shareholder theory – rating	4	0	4	2	1	0	0	0	4	4	2	21

The total rating given to each of the two theories in thus group suggests that they are reasonably useful in helping understand the creation, existence and operation of the ASX 100 companies.

7.3.6 Establishing the utility of theories relating to the growth of the firm

As identified in Section 3.2.7 of this thesis, there are two theories in this group. They are the Theory of the Growth of the Firm and the Theory of the Multinational Firm. The utility of these theories in helping understand the creation, existence and operation of the ASX 100 companies is now examined.

7.3.6.1 Assessing utility against Criterion 1 - Why does the company exist?

There is nothing in either the Theory of the Growth of the Firm (Section 3.7.2.1) or the Theory of the Multinational Firm (Section 3.7.2.2) to suggest any reason that a business entity should exist as a company rather than any other form. Both theories do contain outlines of requirements for growth that might make the company form of enterprise more useful (such as the retention of capital, the availability of managerial entrepreneurism and the ability to form corporate groups), but the theories do not lay out any claim that the company form of enterprise is the only form suitable for growth. The data contained in Appendix 1 illustrates the multi-enterprise form of many ASX 100 companies (as at 30 June 2016), but the data does not explain why the companies have adopted that form. The two theories fail to address this criterion at all and each is, therefore, rated at 0 on the adopted scale.

7.3.6.2 Assessing utility against Criterion 2 – Why has the company adopted its present legal structure?

All of the ASX 100 companies are consolidated entities and Appendix 1 illustrates the multi-enterprise structure of some of them. Many of the subsidiaries identified in Appendix 1 operate in the international market and the parent companies can be considered as being multinational enterprises. Table 7.5 recognises the countries in which one (RIO) of these multinational Australian enterprises operates. The Theory of the Growth of the Firm offers no suggestion as to why this legal structure should have been adopted and fails to address this criterion at all. It is, therefore, rated at 0 on the adopted scale. The Theory of the Multinational Firm offers only very limited assistance in understanding this form of legal structure. The theory does suggest what makes a multinational enterprise (such as ownership of certain percentages of a foreign company) (Section 3.2.7.2), but does not suggest why ASX 100 companies should be driven to adopt this form of ownership) other than what can be deduced from Transaction Cost Theory. In this way, the Theory of Multinational Enterprises does offer a very limited utility in describing the creation, existence and operation of the ASX 100 companies (as at 30 June 2016) and is allocated a rating of 1 on the adopted scale.

7.3.6.3 Assessing utility against Criterion 3 – How does the company relate to its shareholders?

While both theories in this group allude to a dependence on managerial skills, neither gives any recognition to the shareholders in a business enterprise. Both theories therefore fail to address this criterion and make no contribution to understanding the creation, existence and operation of the ASX 100 companies. Each is rated at 0 on the adopted scale.

7.3.6.4 Assessing utility against Criterion 4 – How is the personality of the company determined?

Neither theory in this group mentions a specific characteristic by which the personality of a firm might be determined, but each makes some contribution as to characteristics that might influence the personality of a company. These contributions are:

- The Theory of the Growth of the Firm: (i) managers will have the desire to increase total long run profit; (ii) firms will want to expand as fast as they can; and (iii) the growth of the firm depends on the availability of managerial entrepreneurism, skills and experience.
- The Theory of Multinational Enterprises: (i) a multinational enterprise is one that owns or controls value adding activities in two or more countries; (ii) such an enterprise will exhibit specific factors relating to product and market structure, geographical or social characteristics; and (iii) market imperfections relating to product differentiation, unavailability of capital, technology or managerial skills may exist.

Although some of the ASX 100 companies have grown to a considerable size (see the number of subsidiary businesses outlined in Appendix 1) and do operate in international marketplaces, none of them provides, in their 2016 Annual Report, data that would enable comparison against the characteristics identified above. Each theory, therefore, only supports a very limited understanding of this aspect of the creation, existence and operation of the ASX 100 companies. Each theory is rated at 1 on the adopted scale.

7.3.6.5 Assessing utility against Criterion 5 – Why are the boundaries between the company and its markets where they are?

Both the theories in this group appear to be quite useful in helping understand this aspect of the creation, existence and operation of companies. This utility comes from the following characteristics:

- The Theory of the Growth of the Firm: (i) a firm will want to expand as rapidly as it can in order to take advantage of opportunities that they find to be profitable; and (ii) there may be both internal (underutilised pools of resources) or external (changes in demand or technological innovation) inducements that encourage expansion.
- The Theory of the Multinational Enterprise: (i) there may be industry, region, nation or firm specific factors that encourage international expansion; (ii) there may be product or price differentiation, technology or capital advantages, economies of scale or government inducements that encourage international growth.

However, no ASX 100 company includes, in its 2016 Annual Report, data that could support exploration of these characteristics. Accordingly, the utility of each of these theories in helping understand this aspect of the creation, existence and operation of the ASX 100 companies is very limited and each theory is, therefore, rated at 1 on the adopted scale.

7.3.6.6 Assessing utility against Criterion 6 – Why is the company structured the way that it is?

The Theory of the Growth of the Firm makes no suggestion as to why firms should be structured in any particular manner. It is, therefore of no usefulness in helping understand this aspect of the creation, existence and operation of the ASX 100 companies. It fails to address the criterion and is rated at 0 on the adopted scale.

The Theory of the Multinational Firm makes two suggestions as to why a company might be structured the way that it is. The first is that the enterprise might control value adding resources that lead to the production of tangible goods (or of intangible services) in another country and the second is that there might be product or price differentiation, the availability of technology, managerial skills, economies of scale or government inducements that lead to international diversification. Appendix 1 gives an outline of the number of subsidiary businesses that many ASX 100 companies have and Table 7.5 gives an indication of the physical resources that one of these companies holds in other countries. This data is taken from the subsidiary name and country of operation lists given in the ancillary information pages of the company annual reports for 2016. The theory, therefore, offers a limited understanding of this aspect of the creation, existence and operation of the ASX 100 companies and is rated at 2 on the adopted scale.

7.3.6.7 Assessing utility against Criterion 7 – What drives company strategy?

Neither theory in this group makes any direct mention of company strategy. However, each theory does make an indirect contribution as follows:

- The Theory of the Growth of the Firm: (i) a desire to increase long run profit is the goal of those running the firm; (ii) there is a need to build managerial skills and experience in entrepreneurship so as to overcome the Penrose Restraint (Devine et al. 2019); and (iii) a firm should not attempt to expand more quickly than its managers can acquire the skills and experience required for the effective operation of the expanded group.
- The Theory of the Multinational Firm: (i) an enterprise could set out to develop firm, industry or nation specific factors that could give it a strategic advantage; (ii) an enterprise could have brand, product or price advantages; (iii) a firm could have technology that gives it a strategic advantage; and (iv) an enterprise could develop economies of scale that give it a strategic advantage.

None of the ASX 100 companies provides data, in its 2016 Annual Report, that supports exploration of these characteristics and both theories, therefore, offer very limited understanding of this aspect of the creation, existence and operation of these companies. Accordingly, both theories are rated at 1 on the adopted scale.

7.3.6.8 Assessing utility against Criterion 8 – What generates company productivity?

Neither the Theory of the Growth of the Firm or the Theory of Multinational Firm provides any guidance on what generates productivity within an enterprise. They both fail to address this issue at all and their usefulness in helping understand this aspect of the creation, existence and operation of the ASX 100 companies is, therefore, rated at 0 on the adopted scale.

7.3.6.9 Assessing utility against Criterion 9 – What motivates company behaviour?

Both theories in this group suggest characteristics that might motivate company behaviour as follows:

- The Theory of the Growth of the Firm: (i) a desire to increase total long run profit; (ii) the availability of managerial entrepreneurism, skills and experience; (iii) the availability of underutilised resources; (iv) changes in the market place; and (v) the need to maintain effective operations within the group.
- The Theory of Multinational Firm: (i) managerial experience; (ii) political relationships between the home nation and potential export nations; (iii) product differentiation, pricing and marketing skills; and (iv) special knowledge arising from research and development activities.

None of the ASX 100 companies provides data, in its 2016 Annual Report, that would allow exploration of these characteristics. The usefulness of the theories in helping understand this aspect of the creation, existence and operation of these companies is, therefore, very limited and each of them is rated at 1 on the adopted scale.

7.3.6.10 Assessing utility against Criterion 10 – What are the company's obligations to shareholders and to other groups?

The Theory of the Growth of the Firm makes only an indirect reference to shareholders in that it suggests that growth could be influenced by the availability of opportunity and capital. This reference is indirect in that capital need not come from shareholders (it could come from debt). The theory, therefore, fails to address the criterion and is of no use in helping understand this aspect of the creation, existence and operation of the ASX 100 companies. It is rated at 0 on the adopted scale. The only reference to shareholders in the Theory of the Multinational firm is equally indirect (in that the reference is to access to a capital market) and this makes the theory very limited in its usefulness in explaining this aspect of the creation, existence and operation of the ASX 100 companies. It fails to address the criterion and is also rated at 0 on the adopted scale,

7.3.6.11 Assessing utility against Criterion 11 – What tests does the theory suggest for determining its utility in helping to understand the creation, existence and operation of the company?

Neither of the two theories in this group contains any test by which its utility in helping understand the creation, existence and operation of the ASX 100 companies might be explored. Despite this lack of direct reference, many characteristics of each theory that do offer this utility have been recognised in Sections 5.3.6.1 to 5.3.6.10 This recognition means that both theories do offer a limited understanding of the application of the criterion and each is, therefore, rated at 2 on the adopted scale.

7.3.6.12 An overall assessment of the utility of theories relating to the growth of the firm in helping understand the creation, existence and operation and operation of the ASX 100 companies

Sections 7.3.6.1 to 7.3.6.11 explore the utility of the two theories in this group in helping understand the creation, existence and operation of the ASX companies. The ratings developed are now summarised in Table 7.10.

Table 7.10: An overall rating of the utility of the theories relating to the growth of the firm in helping to understand the creation, existence and operation of ASX 100 companies

CRITERIA	1	2	3	4	5	6	7	8	9	10	11	TOTAL
The theory of the growth of the firm – rating	0	0	0	1	1	0	1	0	1	0	2	6
The theory of the multinational firm – rating	0	1	0	1	1	2	1	0	1	0	2	9

Both theories in this group are of very limited usefulness in helping understand the creation, existence and operation of the ASX 100 companies. This is not because the theories have no characteristics that might be explored, but because the companies listed in Appendix 1 do not supply data, in their 2016 Annual Report, that would support such an exploration. The ratings given in Table 7.10 are added to Table 7.17 so as to allow a comparison with the assessed utility of other TOTF.

7.3.7 Establishing the utility of institutional theories of the firm

As discussed in Section 3.2.6, there is only one theory in this group and that is the New Institutional Theory of the Firm. It differs from all other theories in that it concentrates on the impact of the institutions that societies create to guide their governance on companies. Because of this link, New Institutional Theory is more subject to changes in the social contract between society, government and business. An example of such change arises from the interim report of the Royal Commission of Inquiry into Misconduct in the Banking, Insurance, Superannuation and Financial Services Industries that has recently been held in Australia. A recommendation in that report is that the responsibility for prosecuting 'corporate criminals' be transferred from individual State and Territory Supreme, District and County Courts to the Federal Court system. The Federal courts are to be expanded to cater for the increased work load and the move is expected to result in more uniform penalties being applied against transgressors (Attorney-General's Department 10 April 2019).

This move will reduce the array of legal institutions that companies may face if they breach the social contract that binds them to community expectations of behaviour. It will also probably result in more uniform penalties being applied against breeches of the law.

7.3.7.1 Assessing utility against Criterion 1 - Why does the company exist?

Unlike many of the other TOTF examined in this thesis, New Institutional Theory offers several explanations as to the reason that a business entity might exist as a company and not in any other legal form. The major reason is that the most important public institution in Australia (the Commonwealth Parliament) has created legislation (the (Commonwealth) *Corporations Act 2001*) that allows individual investors to band together to pursue their business interests as a singular, legal entity (a company) and that gives to the various members of the company rights, duties and responsibilities as outlined in Section 2.3.1 of this thesis. The second reason is that that Parliament has created several other institutions (such as the various Commonwealth courts of law, ASIC and other financial regulatory institutions that facilitate the operation of companies and that protect the rights of the members of those companies). Perhaps an important variation on this second reason is that the courts of law also provide a means by which companies can protect both their physical and intellectual property. New Institutional Theory, therefore, supports a full understanding of this aspect of the creation, existence and operation of the ASX 100 companies and is, therefore, rated at 4 on the adopted scale.

7.3.7.2 Assessing utility against Criterion 2 – Why has the company adopted its present legal structure?

All of the ASX 100 companies are consolidated entities (relying on either internal operating divisions or subsidiary companies for their corporate structure). However, none of the institutions on which companies rely (the Commonwealth Parliament, the courts of law, regulators such as ASIC, the financial and insurance entities or the stock exchange) specifies any form for the structure of such a consolidated enterprise. New Institutional Theory, therefore, does not address this criterion at all and is rated at 0 on the adopted scale.

7.3.7.3 Assessing utility against Criterion 3 – How does the company relate to its shareholders?

Any links between ASX 100 companies and their shareholders are mostly indirect ones and the theory itself proposes no link. However, two institutions among the many that surround companies do describe the links that should exist. These institutions are the Commonwealth Parliament (through its *Corporations Act 2001*) and the ASX (through its *Corporate Governance Principles and Recommendations 2014* and through it *Listing Guidelines*). The rights of shareholders can also be described and protected through various Commonwealth, State and Territory courts of law. New Institutional Theory, therefore, supports a reasonable understanding of this aspect of the creation, existence and operation of the ASX 100 companies and is rated at 3 on the adopted scale.

7.3.7.4 Assessing utility against Criterion 4 – How is the personality of the company determined?

Scott (1995, p. 33) suggests that companies (as well as all other business entities) should comply with the 'cultural-cognitive, normative and regulative elements that, together with associated activities and resources, provide stability and meaning to social life'. In Australia, both 'hard' and 'soft' business related laws and regulations provide this guidance. The principal 'hard' law is the (Commonwealth) *Corporations Act 2001* (Parliament of Australia 2001) and this *Act* provides very strong guidance as to how a limited liability company should be governed and act. The principal requirements of a company are given in Section 2.3.1 of this thesis. They relate to corporate structure, governance and the relationship between the company and its owners. Observance of these requirements allows a company to be characterised as a law abiding and legally compliant business entity. Where a company fails to abide by this *Act*, it may be charged (and fined – if found guilty) for a breach of sections of the *Act* by the organisation/institution (ASIC) established for such purposes

(*Corporations Act 2001 sec s5B*) (Parliament of Australia 2001). Companies found to have breached the requirements of the *Corporations Act 2001* by the Royal Commission into Misconduct in the Banking, Superannuation, Insurance and Financial Services Industry are currently being pursued at law by ASIC.

Principle 3 of the *ASX Corporate Governance Principles and Guidelines* (ASX 2014) (the principal 'soft' law under which the ASX 100 companies operate) requires the companies listed in Appendix 1 to develop and make readily available to interested parties a code of conduct. As shown in the example of the CBA given in Appendix 2, all of the ASX 100 companies have developed such a code and disclose the existence of the code in their 2016 Annual Report and on their web site.

These two examples show that New Institutional Theory is very useful in determining the personality of ASX 100 companies as at 30 June 2016. For its contribution towards a full understanding this aspect of the creation, existence and operation of the ASX 100 companies, the theory is rated at 4 on the adopted scale.

7.3.7.5 Assessing utility against Criterion 5 – Why are the boundaries between the company and its markets where they are?

New Institutional Theory makes no suggestions as to why the boundaries between a company, its suppliers, competitors and customers are where they are. It, therefore, does not address the criterion at all and is no use in helping understand this aspect of the creation, existence and operation of the ASX 100 companies. It is rated at 0 on the adopted scale.

7.3.7.6 Assessing utility against Criterion 6 – Why is the company structured the way that it is?

All of the ASX 100 companies are structured as consolidated entities – mostly as multi-divisional structures in Australia but with many subsidiary companies in Australia and overseas. Appendix 1 gives some understanding of the number of subsidiary companies that each holding company has. The New Institutional TOTF makes only a limited contribution to understanding why ASX 100 companies might be structured the way that they are. This contribution arises from the concept that companies should be structured in a way that reflects ‘the design features and practices’ that are accepted as norms that underlie the creation and spread of organisational forms in Australia (Berthod 2018). All of the ASX 100 companies meet this criterion in that they are limited liability companies formed under the guidelines of the (Commonwealth) *Corporations Act 2001* (Parliament of Australia 2001). They also observe the requirements of the Listing Rules of the ASX and of the ASX’s *Corporate Governance Principles and Recommendations* (ASX 2014).

Because of the above compliances, New Institutional Theory is very useful in helping understand this aspect of the creation, existence and operation of the ASX 100 companies. The theory supports a full understanding of the criterion and is, therefore, rated at 4 on the adopted scale.

7.3.7.7 Assessing utility against Criterion 7 – What drives company strategy?

On a preliminary inspection, it would appear that New Institutional Theory has nothing to offer in helping understand this aspect of ASX 100 company creation, existence and operation. However, this is not the case as several Australian government departments provide extensive guidance for companies in many aspects of their life. One particularly relevant example can be found in the National Strategy for Ecologically Sustainable Development prepared by the Commonwealth Department of the Environment and Energy (DEE) in 1992. This National Strategy (and its supporting working papers) contained several hundred recommendations as to how government, business and communities could carry out development in a way that would not limit the options for sustainable development available to future generations of Australians (DEE 1992). The document specifically provides development guidelines for the agriculture, fisheries, forestry, manufacturing, mining, transport, tourism and energy sectors of the economy and was endorsed by the Council of Australian Governments (DEE 1992). Although this strategy document is now seventeen years old, none of the ASX 100 company annual reports for the years 2006-07 to 2015-16 examined by the research behind this thesis makes any reference to it.

This lack of reference is no reflection on the potential value of the detail provided by the document. However, the corporate profile for the CBA (the Number 1 company on the ASX 100 index) provided in Appendix 2 suggests that there may be other institutions that provide more current guidance. Data in the CBA 2016 Annual Report indicates that the CBA is the Number 1 Bank in the Global 100 Most Sustainable Corporation Index (CBA 2016, p. 3). The availability of such data in ASX 100 company annual reports suggests that New Institutional Theory is of some use in helping understand the creation, existence and operation of these companies. The theory, therefore, supports a limited understanding of the criterion and is rated at 2 on the adopted scale.

7.3.7.8 Assessing utility against Criterion 8 – What generates company productivity?

It would appear that at least one Commonwealth institution could play a major role in helping understand what generates company productivity. This institution is the Productivity Commission – established in 1998 (by an Act of the Commonwealth Parliament) as ‘the Australian Government’s independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians’ (Productivity Commission n.d., About page). In 2019, the Commission commenced seven new enquiries ranging from vocational education and training to indigenous evaluation strategies and national transport regulatory reform (Productivity Commission n.d., Current Enquiries). The investigation most relevant to this thesis is that into Resources Sector Regulation (see Appendix 1 for those ASX 100 companies likely to be affected by this enquiry). This enquiry was established on 6 August and will report by March 2020 (Productivity Commission n.d., Current Enquiries). Objective 5 of the enquiry requires the Commission to:

> Examine regulatory and non-regulatory examples of effective community engagement and benefit sharing practices, and establish best-practice examples of where mutually agreeable relationships were successfully developed between the resources sector and communities in which they operate – including with indigenous communities.

None of the ASX 100 company Annual Reports for 2016 gives details of involvement with previous Productivity Commission enquiries or data relating to the adoption of their findings.

Although New Institutional Theory has the potential to make a significant contribution to understanding this aspect of the creation, existence and operation of the ASX 100 companies, the lack of supporting data in their annual reports limits its utility considerably. The theory, therefore, only supports a very limited understanding of the criterion and is rated at 1 on the adopted scale.

7.3.7.9 Assessing utility against Criterion 9 – What motivates company behaviour?

Although New Institutional Theory makes no direct reference to company behaviour, there are several Australian institutions that make a significant contribution towards an understanding of this aspect of the creation, existence and operation of the ASX 100 companies. These institutions include: (i) the Commonwealth Parliament; (ii) the ASX; and (iii) the ASIC. The principal contribution from the Commonwealth Parliament is through the enactment and modification of law (such as the *Corporations Act 2001*) but other contributions include parliamentary enquiries (see Section 3.3.3) and the establishment of royal commissions of inquiry. Although the ASX motivates corporate behaviour through its listing rules, its major contribution is through its corporate governance principles and recommendations (ASX 2014). Similarly, ASIC is able to drive corporate behaviour through its ability to commence court cases against companies of whose behaviour it disapproves and through its power to deregister companies found guilty of misconduct.

Although the power of these institutions to drive changes in corporate behaviour is often amplified through newspaper reports and discussion articles, such publicity is very seldom (if ever) referred to in ASX 100 company (as at 30 June 2016) annual reports. The one institution with power to require the inclusion of material on corporate behaviour in every ASX 100 company annual report is the ASX (see Section 3.4.2.4 of this thesis). New Institutional Theory, therefore, offers only a limited understanding of us this aspect of the creation, existence and operation of the

ASX 100 companies and is rated at 2 on the adopted scale. This rating is applied solely because there is insufficient material provided in the company annual reports to warrant a higher rating.

7.3.7.10 Assessing utility against Criterion 10 – What are the company's obligations to shareholders and to other groups?

There are two Australian institutions that contribute to an understanding of this aspect of ASX 100 company creation, existence and operation. They are the Commonwealth Parliament and the Australian Shareholders Association (ASA). The Commonwealth Parliament contributes through its power to enact laws that govern companies and the ASA contributes through its education and representation of independent, individual, investors.

The major Commonwealth legislation that affects companies is the *Corporations Act 2001* (Parliament of Australia 2001). Section 2.3.1 of this thesis recognises those aspects of the *Corporations Act 2001* that have a major impact on the relationship between companies and their shareholders. They include the power of shareholders to appoint and dismiss directors and their right to receive dividends paid out of profits. That the right of shareholders to dismiss boards of directors is of concern to ASX 100 company directors is illustrated in the possibility that the shareholders in WBC (The Number 2 company in the ASX 100 index (see Appendix 1)) might exercise their power, under the 'two strikes rule', to call for the dismissal of the board of WBC at the December 2019 Annual General Meeting of the company (Butler 26 November 2019). These aspects of corporate law create a very strong obligation from a company towards its shareholders.

Appendices 3 and 4 illustrate the strong position that the twenty larger shareholders in the ASX 100 companies hold. By themselves, they could vote to dismiss any board of directors that they do not see acting in their interests. However, such voting power disenfranchises the smaller shareholders and these people must resort to independent institutions, such as the ASA to present their views on any corporate activity. The ASA (ASA n.d., Home Page) describes its role as follows:

> The ASA educates investors and stands up for shareholder rights. It is Australia's largest, independent, not for profit individual investor association. ASA is passionate about keeping the market fair for the everyday, independent investor, and has done so since 1960.

It would appear that both large and small investors have institutions that stand up for their rights. What is not at all clear, from the data in ASX 100 company annual reports, is how the companies react to these obligations.

Although the *Corporations Act 2001* (Parliament of Australia 2001) is quite clear about the relationship between companies and their shareholders, that *Act* is silent about any obligations that companies in Australia might have to other stakeholders. It is worthwhile, therefore, to recall the discussion in Section 3.3.3.1 of this thesis about the (Commonwealth) Parliamentary enquiry into the need for decision makers in companies to have regard for the interests of stakeholders (including communities) other than shareholders (Commonwealth of Australia 2006, Terms of Reference). After an extensive examination of the requirement for such a consideration, the (Commonwealth) Parliamentary Joint Committee on Corporations and Financial Services resolved that the Corporations Act 2001 permitted directors to have consideration for stakeholders other than shareholders and that no changes were needed to cause such consideration to be made (Commonwealth of Australia 2006).

It would appear, therefore, that the most important institution in Australia (the Commonwealth Parliament) has acted so as to cause company directors to consider their obligations to both shareholders and other stakeholders. What is not at all clear, from the data in ASX 100 company Annual Reports for 2016, is how these obligations (apart from paying dividends out of profits) are discharged. While New Institutional Theory appears to make a significant contribution to helping understand this aspect of ASX 100 company creation, existence and operation, there is little readily accessible data to support such a contention. The theory offers only limited understanding of the criterion and is only rated at 2 on the adopted scale.

7.3.7.11 Assessing utility against Criterion 11 – What tests does the theory suggest for determining its utility in helping to understand the creation, existence and operation of the company?

Although several parts of New Institutional Theory suggest tests by which its utility in helping understand the creation, existence and operation of the ASX 100 companies can be determined, these tests are derived from the theory rather than being clearly stated within it. The tests that can be derived and applied have been demonstrated in Sections 7.3.7.1 to 7.3.7.10 and the theory offers a reasonable level of understanding of this aspect of the creation, existence and operation of the ASX 100 companies and is, consequently, rated at 3 on the adopted scale.

7.3.7.12 An overall assessment of the utility of the New Institutional Theories in helping understand the creation, existence and operation of the ASX 100 companies

Sections 7.3.7.1 to 7.3.7.11 explore the utility of New Institutional Theory in helping understand the creation, existence and operation of the ASX 100 companies identified in Appendix 1. The ratings given against the assessment criteria developed in Section 6.5 of this thesis are summarised in Table 7.11.

TABLE 7.11: An overall rating of the utility of the Institutional Theory of the Firm in helping to understand the creation, existence and operation of ASX 100 companies

CRITERIA	1	2	3	4	5	6	7	8	9	10	11	TOTAL
New institutional theory – rating	4	0	3	4	0	4	2	1	2	2	3	25

Based on the ratings given in Table 7.11, New Institutional Theory is reasonably useful in helping understand the creation, existence and operation of the ASX 100 companies. The data in Table 7.11 is used in Table 7.17 to assess the comparative utility of the theory against the other TOTF explored in Chapter 7.

7.3.8 Establishing the utility of contemporary theories of the firm

As discussed in Section 3.2.8, there are two theories in this group. Both draw on several of the theories previously analysed, but each makes a different contribution to helping understand the creation, existence and operation of the ASX 100 companies. They are: (i) the Evolutionary TOTF; and (ii) the Corporate Sustainability TOTF.

7.3.8.1 Assessing utility against Criterion 1 - Why does the company exist?

Unlike most theories explored in Section 5.6, the Evolutionary TOTF does suggest a reason that a business might exist as a company. This reason is that the enterprise is a ‘knowledge processor’ and is able to convert knowledge (obtained from either internal or external sources) into procedures and products (Alosaimi 2016, Abstract). This reasoning could apply to all business forms as well as to companies but there is a specific reason that it does apply to companies. This reason is that companies, as separate legal entities, are able to develop intellectual property and to protect it at law. However, it is almost impossible to apply this understanding to the ASX 100 companies as none of them makes available, in their 2016 Annual Report, any data that supports analysis against the suggestion. Such data could include figures in the financial tables about research and development activities or comments in either the Chairman of the Board or CEO reports about how a knowledge development activity had generated a new product or a new process that had been applied and which had given the company a competitive advantage. The Evolutionary TOTF, therefore, offers only a very limited understanding of this aspect of the creation, existence and operation of the ASX 100 companies and is rated at 1 on the adopted scale.

The Sustainability Oriented TOTF offers a minor suggestion as to why a business might operate as a company (as against as any other form of business). The reason is that an Australian company, under the *Corporations Act 2001* (Parliament of Australia) can exist in perpetuity regardless of the lives of its owners and managers. The Corporate Sustainability TOTF also offers only a very limited understanding of this aspect of the creation, existence and operation of ASX 100 companies and is, therefore, rated at 1 on the adopted scale.

7.3.8.2 Assessing utility against Criterion 2 – Why has the company adopted its present legal structure?

Both theories in this group offer some explanation as to why any of the ASX 100 companies might have adopted their present legal structure (which is that of a consolidated business entity). Both an evolutionary firm and a sustainability oriented firm might 'learn', through their trading activities (or from market place intelligence), that their present structure is not competitive, that there are gaps in either their product range or their geographic coverage. Intelligence of this type could drive a company to change its structure by taking over competitor companies, by 'de-merging' from some companies that it has already acquired or by exiting a market in which it has not been able to develop a sustainable presence. The ASX 100 companies present several examples of organisational change for each of the drivers mentioned above. Three examples of this data are presented in Table 7.12

Table 7.12: Examples of organisational change in ASX 100 companies brought about by changes in product range or geographic coverage

Company	Change	Year of change	Type of change
CBA	Bought Ipswich Savings Bank (Australia)	1920	Acquisition of competitor
	Bought State Bank of Victoria (Australia)	1911	Acquisition of competitor
	Bought Prudential Corporation (Australia and New Zealand	2000	Increase in product range and acquisition of a competitor
NAB	Bought Clydesdale Bank in Scotland	1987	Increase in geographic coverage
	Closed offices in Atlanta, Chicago, Dallas, Houston and San Francisco USA	1991	Reduction in geographic coverage
	Bought MLC Ltd (Australia)	2000	Increase in product range
BHP	Sold its shale gas interests in the USA	2018	Reduction in product range

Sources: CBA – combank.com.au n.d.
NAB – wikipedia.org n.d. National Australia Bank
BHP – reuters.com 26 July 2018

Apart from the example of BHP, very little of the data in Table 7.12 can be found in the annual reports of the companies in the ASX 100 index. This demonstrates the limited utility of these primary sources of data (and the relative utility of secondary sources such as newspapers and web sites) in exploring the utility of TOTF in helping understand the creation, existence and operation of the ASX 100 companies.

These examples of organisational change are the reason that the utility of each of the two theories in this group in helping understand this aspect of the creation, existence and operation of the ASX 100 companies is rated at 2 on the adopted scale.

7.3.8.3 Assessing utility against Criterion 3 – How does the company relate to its shareholders?

Both the Evolutionary and Corporate Sustainability TOTF suggest several reasons that a company should relate to its shareholders. The prime reason is that if the company does not relate satisfactorily with its shareholders then those shareholders might become dissatisfied with their investment and withdraw their support for company activities. Other reasons include: (i) that the shareholders could be readily accessible sources of market and/or product information; (ii) that the shareholders could provide invaluable information on changes in community or environmental expectations that might impact on company operations; and (iii) that existing shareholders could be an inexpensive source of funds for growth and expansion. The data in Appendix 4, in that it shows increasing shareholdings by the five larger shareholders over the period 2006-07 to 2015-16, appears to demonstrate that the ASX 100 companies relate satisfactorily to their shareholders. One example of how an ASX 100 company has changed its approach because of a possible change in its relationship with a major shareholder is found in BHP’s divestment of its interests in shale oil development in the USA (reuters.com. 26 July 2018).

What neither theory does is explain how the company relates to its shareholders in any manner that expands on the understanding offered by either Real Entity or Stakeholder theories. Both theories, therefore, offer only a limited understanding of this aspect of the creation, existence and operation of the ASX 100 companies and they are rated at 2 on the adopted scale.

7.3.8.4 Assessing utility against Criterion 4 – How is the personality of the company determined?

Both theories in this group suggest that a company could learn about the impact of its ‘personality’ on either its market place or its sustainability and so change that ‘personality’ (Frederick 2004; Lozano et al. 2015). Lozano et al. (2015, p. 435) suggest a particular ‘personality’ that a company could adopt when they suggest that an evolutionary (and profitable) company could drive less profitable competitors out of business. However, although all ASX 100 companies report on profitability in their 2016 Annual Report (refer Appendix 5), none of them report any data that indicates that they have driven other companies out of business. It may be possible to learn of such actions (if they have occurred) from reports published by ASIC, but such reports are not a primary source of data for this thesis and this possibility is not explored.

The Sustainability Oriented TOTF suggests that a profit oriented firm in a constant state of evolution would seek to increase its competitive advantage and contribute to the evolution of more sustainable societies (Lozano et al. 2015, p. 440). Such competitive actions could also suggest a particular ‘personality’. However, there is little in the 2016 Annual Reports of the ASX 100 companies (as at 30 June 2016) to suggest how they might be making such a contribution. Some companies do outline the financial and other resource contributions that they make to communities but make no attempt to determine whether or not the communities are more sustainable because of their contribution.

Consequently, each theory offers only a very limited understanding of this aspect of the creation, existence and operation of the ASX 100 companies. Each is, therefore, only rated at 1 on the adopted scale.

7.3.8.5 Assessing utility against Criterion 5 – Why are the boundaries between the company and its markets where they are?

Both theories appear to suggest why the boundaries between any ASX 100 company and its markets might be where they are. The Evolutionary TOTF suggests that a firm survives and grows because of its ability to learn and adapt (Frederick 2004) and two of the functions of such firms recognised by Frederick 2004, pp. 146 – 150) (innovation/generator and enabler/strategiser) identify where boundaries (or limits) to company activities might arise. The Sustainability Oriented TOTF suggests that the employees of such a company would manage company resources so as to increase its competitive advantage and the availability of resources might also suggest boundaries to market places. There are several data sets in ASX 100 company 2016 Annual Reports that provide some detail to support these contentions. Appendix 1 contains some details on the number of subsidiaries that the ASX 100 companies (as at 30 June 2016) have created and Table 7.5 gives an outline of the natural resources identified by one ASX 100 company (RIO) and of the countries in which that company operates.

The difficulty in understanding the utility of both these theories that arises is that the available data describes where the boundaries between an ASX 100 company and its markets are, but not why they are where they are. Both theories, therefore, offer only a very limited understanding of this aspect of the creation, existence and operation of the ASX 100 companies (as at 30 June 2016) and are rated at 1 on the adopted scale.

7.3.8.6 Assessing utility against Criterion 6 – Why is the company structured the way that it is?

Both theories in this group suggest reasons that a company might be structured the way that it is. The Evolutionary TOTF suggests that a company might have ‘learned’ that a particular structure either gives it a competitive advantage in the market place or enables it to earn the maximum possible profit given the environmental conditions in which it exists. Similarly, the Corporate Sustainability TOTF suggests that a sustainable corporation would ‘… manage its resources and empower its stakeholders so that the firm complies with laws, maintains its licence to operate, increases its competitive advantage …' (Lozano et al. 2015, p. 440). It is reasonable to assume that the structure of a sustainably oriented company would allow it to achieve these objectives.

There is no data in the 2016 Annual Reports of the ASX 100 companies that supports the exploration of any of these possibilities in any detail. Data such as that in Table 7.13 goes some way to supporting exploration of the contention that a company could have learned that an existing structure might (or might not) give it a competitive advantage in the market place. Similarly, data such as that in Appendix 5 might also support such a contention. However, it is impossible to link the data in Table 7.13 and Appendix 5 to any particular consolidated structure. The two theories therefore offer only a very limited understanding of this aspect of the creation, existence and operation of the ASX 100 companies and are each rated at only 1 on the adopted scale.

7.3.8.7 Assessing utility against Criterion 7 – What drives company strategy?

Both theories in this group suggest reasons for the establishment and implementation of company strategies. The Theory of the Evolutionary Firm suggests that such a firm is motivated by profit (but not by profit maximisation) and owns or controls value adding activities in two or more countries. These two characteristics (profit orientation and international spread) could certainly drive company strategies. The Theory of the Sustainability Oriented Firm suggests that a company should be sustainable in the long term, perform research and development and address economic and social issues.

Appendix 5 shows that all of the ASX 100 companies were profitable for most of the period 2007 to 2016 and Appendix 1 identifies those companies that report the number of subsidiaries that they own. Table 7.13 ties these two data sets together to provide a base for comparison against the requirements of the Evolutionary Firm TOTF. The companies have been chosen as representative of their GICS segment.

Table 7.13: A selection of profitable ASX 100 companies and the countries in which they hold subsidiary businesses

Company	Item	2007	2010	2013	2014	2016
BHP	NPAT US$m	13 416	12 722	11 223	13 832	(6 385)
	Country of operation	20 countries including Australia, North America, South America, Trinidad, Tobago, Algeria and the UK.				
WES	NPAT A$m	786	1 565	2 261	2 689	407
	Country of operation	Australia, New Zealand and the UK				
FBU	NPAT NZ$m	75	282	337	351	67
	Country of operation	Australia, New Zealand and many nations in the South Pacific				
ORI	NPAT A$m	498	676	593	603	343
	Country of operation	Australia, Indonesia, Singapore, Peoples' Republic of China, India, Germany, Sweden, Brazil, Chile, USA, Canada				

Sources: NPAT – Annual Report for the year nominated for the company named
Countries of operation – 2016 Annual Report for the company named

Although the data in Table 7.13 illustrates the characteristics of profit orientation and international orientation, there is nothing in the 2016 Annual Reports of the companies to suggest that there is a strategy that links the two together. It cannot be said, therefore, that the Theory of the Evolutionary Firm offers more than a very limited understanding of this aspect of the creation, existence and operation of the ASX 100 companies and the theory is only rated at 1 on the adopted scale.

There is equally little data available in the 2016 Annual Reports of the ASX 100 companies (as at 30 June 2016) available to support analysis against the characteristics of the theory outlined above. No ASX 100 company gives details of its creation (and hence about its age) and so it is not possible to consider the sustainability of those companies in the long term. The data in Appendix 5 certainly illustrates sustainability over the period 2007 to 2016, but it also shows that not all the companies in the ASX 100 index existed throughout that time (SCG (Number 10 in the ASX 100 index shown in Appendix 1) only listed on the ASX I June 2014). Data from other sources suggests that WBC (Number 2 in the ASX 100 index shown in Appendix 1) was created in 1817, but this is not highlighted in its 2016 Annual

Report. Similarly, no ASX 100 company gives detail, in its 2016 Annual Report, about its research and development activities or about how it addresses the economic and social issues existing in Australia (or in any other country in which it operates). This lack of data means that the Sustainability Oriented TOTF offers only a very limited understanding of the creation, existence and operation of the ASX 100 companies. It is, therefore, only rated at 1 on the adopted scale.

7.3.8.8 Assessing utility against Criterion 8 – What generates company productivity?

Both the Evolutionary and Corporate Sustainability TOTF suggest that a company could 'learn' what generates productivity and so adopt those practices and procedures in order to adapt and to survive. However, none of the ASX 100 company annual reports for 2016 contains any discussion on what drives productivity within their organisation. Both theories do not address the criterion at all and are, therefore, each rated at 0 on the adopted scale.

7.3.8.9 Assessing utility against Criterion 9 – What motivates company behaviour?

Both theories in this group are, potentially, of some assistance in helping understand this aspect of the creation, existence and operation of the ASX 100 companies. The Evolutionary TOTF suggests that knowledge acquired by the firm is adapted into procedures and routines that create patterns of behaviour within a firm (Alosaimi, MD 2016, Abstract) and the Corporate Sustainability TOTF suggests that a firm will adopt behaviours that make it sustainable.

The 2016 Annual Reports of the ASX 100 companies report on the existence and application of codes of conduct (see the example of the CBA (Number 1 in the ASX 100 index) provided as the example in Appendix 2). These codes of conduct are built on a directive contained in the ASX *Corporate Governance Principles and Recommendations* (ASX 2014, Principle 3). The other major example of learned behaviour documented in the 2016 Annual Reports of the ASX 100 companies is summarised in the Remuneration Reports (usually associated with the Directors' Report) provided by each company. These reports give significant amounts of detail regarding performance objectives set for the senior executives of the company and about their achievement against those objectives. As most of the listed executives have been employed by the company for several years, they have 'learned' that satisfactory performance against the objectives carries a financial reward and 'behave' accordingly. These two examples, based on readily accessible data, mean that the Evolutionary TOTF offers a reasonable level of understanding in this aspect of the creation, existence and operation of the ASX 100 companies. The theory is, therefore, rated at 3 on the adopted scale.

Not all ASX 100 company reports for 2016 contain material from which the utility of the Corporate Sustainability TOTF in understanding the behaviour of the companies can be assessed. However, the example of the CBA (Number 1 in the ASX 100 index) provided in Appendix 2 does so. Sometimes, there is only the comment that a separate Sustainability Report is available on the company's web site but this is taken as inclusion in the annual report for the purposes of this thesis. Table 7.14 gives outline details of the major components of the Sustainability Reports of three ASX 100 companies. These companies have been chosen as being representative of the GICS segment to which they belong.

TABLE 7.14: Major segments of the sustainability reports issued by a selection of the ASX 100 companies in 2016

GICS sector	ASX 100 number and name	Major segments in 2016 Sustainability Report
Financials	1.CBA	Page 3 of the CBA annual report for 2016 discusses the environmental, social and governance issues that the bank believes will make it sustainable. These issues include human rights, climate change and reduction in waste (energy and water). The CBA claims that it was the Number 1 bank in the G100 Most Sustainable Corporation index for 2016.
Materials	6.BHP	BHP publishes a separate Sustainability Report that is referred to in its 2016 Annual Report. The issues that this report covers include respecting human rights, health and safety, contributing to both local and national economies, engaging with indigenous people, climate change, ethics and integrity, enabling a resilient environment and inclusion and diversity.
Utilities	20.AGL	AGL publishes a separate Sustainability Report that is referred to in its 2016 Annual Report. The key issues mentioned in the Sustainability Report are: (i) the establishment of a Powering Australia Renewables fund; (ii) implementing an integrated domestic violence policy; (iii) investigating how emerging technologies can be used to balance power spikes in electricity demand; and (iv) achieving ‘Silver’ tier status in the Australian Workplace Equality Index.

Source: Either the Sustainability Report segment of the company’s 2016 Annual report or a separate Sustainability Report mentioned in that Annual Report

Miron et al. (2011, p. 175) suggest that the Corporate Sustainability TOTF might make contributions to understanding: (i) performance in the market place; (ii) performance of research and development; (iii) economic and financial performance; (iv) social behaviour; (v) acquisition and use of technology; (vi) flexibility in operations; and (vii) trends within the industry sector. There is no data supplied in the 2016 Annual Reports of the ASX 100 companies that could be used in any analysis of performance in the market place or trends within the industry. Although data that might explain performance against these two considerations is available in industry journals and financial newspapers (such as the Australian Financial

Review), such data is outside the scope of this research and is not considered. Similarly, the 2016 Annual Reports of the ASX 100 companies contain almost no data regarding research and development, technology acquisition and use or flexibility in operations. Social behaviour has already been considered and an understanding of its impact on the ASX 100 companies could be extended through an analysis of the CSR and community engagement activities reported by the companies. However, data on these two aspects of corporate operations is not extensively covered in the annual reports. The usefulness of the Corporate Sustainability TOTF in helping understand this aspect of the creation, existence and operation of the ASX 100 companies is, therefore, limited and it is only rated at 2 on the adopted scale.

It would appear, therefore, that although the two theories examined could be quite useful in helping understand the behaviour of the ASX 100 companies, the unavailability of a comprehensive array of data that could support such an analysis limits their utility.

7.3.8.10 Assessing utility against Criterion 10 – What are the company's obligations to shareholders and to other groups?

The only suggestion about company/shareholder obligations that the two theories in this group make concerns profitability. This issue is of major concern to shareholders and the extent of annual profits for the ASX 100 companies is illustrated in Appendix 5. That major shareholders are satisfied with the level and direction of profits (particularly of NPAT) appears to be demonstrated in Appendix 4 – where a gradual increase in the aggregate number of shares held by the five larger shareholders in each ASX 100 company has taken place over the period 2007 to 2016. Only the Sustainability Oriented TOTF makes any mention of other stakeholders and that is to a very limited extent. Some of the ASX 100 companies mention corporate social responsibility and the extent to which they support community groups. However, these community engagement activities are regarded as voluntary activities and not as obligations.

Both theories offer a very limited understanding of this aspect of the creation, existence and operation of the ASX 100 companies and are only rated at 1 on the adopted scale.

7.3.8.11 Assessing utility against Criterion 11 – What tests does the theory suggest for determining its utility in helping to understand the creation, existence and operation of the company?

After a preliminary inspection, it would appear that neither theory in this group offers any tests by which its utility in helping understand the creation, existence and operation of the ASX 100 companies can be assessed. However, this is not the case. The Evolutionary TOTF suggests tests relating to: (i) profitability and (ii) growth and the Corporate Sustainability TOTF suggests tests relating to: (i) profitability; (ii) longevity; and (iii) resource management.

For both theories, profitability can easily be assessed from the ASX 100 company (as at 30 June 2016) 2016 Annual Reports and Appendix 5 gives details of revenue, NPAT and dividends paid to shareholders over a period of ten years. This data affirms that the companies are profitable – even if they are not profit maximisers or do not always make a profit. One form of growth can also be determined from Appendix 5 – this is the growth in annual revenue over the period 2006/7 to 2015/16. However, this data must be interpreted carefully – particularly in the Materials/Mining companies. For these companies, annual revenue is dependent on both supply and demand cycles and the comparative value of the Australian currency. Both demand and supply might increase, but the actual revenue could decrease relative to the exchange rate of the currency. Another form of growth could be measured by the composition of the consolidated group reported on by each ASX 100 company. Growth can occur by driving less profitable businesses out of the market – such as happens when one company takes over another. The membership of the consolidated group can be determined from the list of subsidiaries contained in the annual report. Table 7.15 contains an outline of previous competitors now held within the ownership of major ASX companies. These companies have been selected as being representative of the GICS segment to which they belong.

Table 7.15: Previous competitors now within the ownership of selected ASX 100 companies

GICS Sector	ASX 100 Number and Name	Previous competitors now owned by the company and the year of acquisition
Financials	1. CBA	1920 - Ipswich Savings Bank 1931 - Australian Bank of Commerce 1970 - Government Savings Bank in Kiribati 1977 - Pacific Commercial Bank in Samoa 1988 - European Pacific Banking Corporation in the Cook Islands
	6. NAB	1987 - Clydesdale Bank (Scotland) 2000 - MLC Ltd (Australia and New Zealand)
Utilities	26. AGL	2006 - Alinta Ltd 2010 – Mosaic Oil 2013 – Australian Power and Gas
Energy	40. CTX	1981 – Golden Fleece 1995 – Ampol
Materials	63. FBU	2002 – Laminex group 2007 – Formica

Source: The table of subsidiary companies in the 2016 Annual Report for the company named.

The ready availability of this data means that the utility of the Evolutionary TOTF in helping understand this aspect of the creation, existence and operation of this ASX 100 companies is rated at 3 on the adopted scale.

The Sustainability TOTF suggests characteristics that might be explored in order to establish its usefulness in understanding the creation, existence and operation of the ASX 100 companies. Company profitability over the period 2007 to 2016 is examined in Appendix 5 and this is very helpful in understanding the existence and operation of the companies. As described in Section 7.3.8.7 no ASX 100 company gives data about its creation and listing on the ASX in its 2016 Annual Report and the longevity (or otherwise) of the company cannot be explored. The Sustainability Oriented TOTF therefore is only of limited utility in understanding longevity. Similarly, only the Materials (Mining) and Resource companies in the ASX 100 index mention available resources in their 2016 Annual Report. Unfortunately, no data about the rates of resource consumption is given in the 2016 Annual Reports of these companies and the Sustainability Oriented TOTF offers only a very limited understanding of tests by which resource management and company longevity might be measured. Because of these factors, the theory is only rated at 1 on the adopted scale.

7.3.8.12 An overall assessment of the utility of the contemporary theories in helping understand the creation, existence and operation and operation of the ASX 100 companies

Sections 7.3.8.1 to 7.3.8.11 provide an assessment of the contribution that the Contemporary TOTF make to helping understand the creation, existence and operation of the ASX 100 companies. These individual ratings are now brought together in Table 5.16 to give an overall assessment of the utility of the two theories.

Table 7.16: An overall rating of the utility of the Contemporary Theories of the Firm in helping to understand the creation, existence and operation of ASX 100 companies

CRITERIA	1	2	3	4	5	6	7	8	9	10	11	TOTAL
The theory of the evolutionary firm – rating	1	2	2	1	1	1	1	0	3	1	3	16
The corporate sustainability theory – rating	1	2	2	1	1	1	1	0	2	1	1	13

Neither of the Contemporary TOTF makes a major contribution towards understanding the creation, existence and operation of the ASX 100 companies. They are, however, reasonable useful in this endeavour. The ratings in Table 7.16 are carried forward to Table 7.17 so as to enable a comparison of the utility of all the TOTF examined in Chapter 7 in helping understand the creation, existence and operation of the ASX 100 companies (as at June 2016).

7.4 A summary of the chapter

The purpose of this chapter has been to develop and report a research that uses data on the 100 larger companies listed on the ASX on 30 June 2016 to determine the utility of existing theories of the firm in helping understand the creation, existence and operation of those companies. The objectives of the chapter are set out in Section 7.2 and examples of the data used in the research are given in Appendices 2 to 7. The data is taken from the 2016 annual report for each company identified in Appendix 1. A table in each section of the chapter summarises the utility of each group of theories. This utility uses criteria determined in Section 6.5 of the thesis and rates utility against each criterion using a five point (0 – 4) scale. The overall utility of the twenty one theories examined is summarised in Table 7.17.

Table 7.17: A summary of the utility of the twenty one theories of the firm examined in Chapter 7 in helping understand the creation, existence and operation of the ASX 100 companies

CRITERIA	1	2	3	4	5	6	7	8	9	10	11	TOTAL
Artificial Entity Theory - Rating	0	0	0	0	0	0	0	0	0	0	0	0
Aggregate Entity Theory - Rating	0	0	0	0	0	0	0	0	0	0	0	0
Real Entity Theory – Rating	4	3	4	4	0	1	0	0	2	2	1	21
Neo-classical Theory – Rating	0	0	0	1	1	1	2	0	2	0	0	7
Transaction Cost Theory – Rating	0	2	1	1	3	0	0	0	0	1	0	7
Team Production Theory – Rating	0	0	0	1	1	0	0	2	0	0	1	5
Contract Theory – Rating	0	0	0	1	2	0	0	1	1	2	1	8
Resource Based Theory – Rating	3	0	1	2	3	2	3	1	0	2	1	18
Natural Resource Based Theory – Rating	0	0	0	1	3	2	3	2	0	0	1	12

Table 5.17 continued

CRITERIA	1	2	3	4	5	6	7	8	9	10	11	TOTAL
Principal/Agent Theory – Rating	0	4	4	0	0	0	1	0	1	1	0	11
Revenue Maximisation Theory – Rating	0	2	4	0	0	1	1	0	1	1	0	10
Managerial Discretion Theory – Rating	0	0	4	0	0	0	1	0	1	1	0	7
Managerial Capitalism Theory – Rating	0	0	4	0	0	1	1	0	1	1	0	8
Stewardship Theory – Rating	0	4	0	0	0	0	1	0	1	1	0	7
Stakeholder Theory – Rating	4	0	4	2	1	0	0	0	0	2	2	15
Shareholder Theory – Rating	4	0	4	2	1	0	0	0	4	4	2	21
Theory of the Growth of the Firm – Rating	0	0	0	1	1	0	1	0	1	0	2	6
Theory of the Multinational Firm – Rating	0	1	0	1	1	2	1	0	1	0	2	9
New Institutional Theory – Rating	4	0	3	4	0	4	2	1	2	2	3	25
Theory of the Evolutionary Firm – Rating	1	2	2	1	1	1	1	0	3	1	3	16
Sustainability Theory – Rating	0	2	2	1	1	1	1	0	2	1	1	13

Table 7.17 provides a summary of the ratings of the utility of existing TOTF against the criteria identified in Section 6.5 and used in the earlier Sections 7.3.1 to 7.3.8 of this chapter. The highest possible rating is 44 out of 44 – but no theory achieves this score. The ten more useful theories (in descending order of utility) and their scores are:

1. New Institutional Theory 25
2. Real Entity Theory 21
3. Shareholder Theory 21
4. Resource Based Theory 18
5. Theory of the Evolutionary Firm 16

6. Stakeholder Theory 15
7. The Theory of the Sustainability Oriented Firm 13
8. Natural Resource Based Theory 12
9. Principal/Agent Theory 11
10. Stewardship Theory 11.

This section of the thesis (and particularly Table 7.17) answers background question 6 in Section 1.3.

In Chapter 8, the strong characteristics of each of these theories are used to construct an integrated theory of the firm that helps build a better understanding of the creation, existence and operation of the ASX 100 companies as at 30 June 2016.

CHAPTER 8 A NEW INTEGRATED THEORY OF THE FIRM

8.1 Introduction to this chapter

The analyses reported in Chapter 7 suggest that none of the existing twenty one TOTF offers a complete understanding of the creation, existence and operation of the ASX 100 companies. This chapter of the thesis draws on the strong points of each of those theories, as recognised in Chapter 7, and integrates them with contributions from the Social Contract, Corporate Ethics and Corporate Governance material outlined in Chapter 5 to develop and test a new Integrated Theory of the Firm. Discussion in this chapter also demonstrates how the new theory responds to the Research Question posed in Section 1.3.

The objectives of this chapter of the thesis are:

- to propose a new, integrated, TOTF that meets the criteria set out in Section 1.3;
- to demonstrate the utility of the Integrated TOTF using the criteria and rating scale detailed in Section 6.5 and applied to existing TOTF in Chapter 7;
- to develop an outline of a model company that meets the criteria contained in the new TOTF; and
- to suggest tests by which other researchers might be able to further explore the utility of the new theory.

As indicated in Chapters 1 and 6, the philosophical approach behind this thesis is based on Positivism, Realism and Constructivism. Positivism and Realism are the bases behind using the ASX 100 companies to undertake the analyses reported in Chapter 7 and Constructivism is now used to build a new theory of the firm.

Figure 8.1 shows how this chapter fits together with the rest of the thesis.

Chapter 7 Theories of the firm and the ASX 100 companies	Content:	• Companies to be used in the research; • Company data to be used to confirm fit against existing TOTF • Gaps in fit against existing TOTF that indicate the need for enhancement of or change to existing TOTF
Chapter 8 A new, integrated, theory of the firm	Content:	• Section 8.1 provides an introduction to the chapter; • Section 8.2 presents the new Integrated Theory of the Firm; • Section 8.3 establishes the utility of the Integrated Theory of the Firm; • Section 8.4 develops a model of a company that meets the criteria contained within the new theory; • Section 8.5 compares the Integrated Theory of the Firm with the requirements of the Research Question; • Section 8.6 outlines tests by which others might confirm the utility of the Integrated Theory of the Firm; and • Section 8.7 presents a summary of the chapter.
Chapter 9 Findings and further research	Content:	• The findings of the research • Contributions to theory and to practice • Limitations to the research • Further research

Figure 8.1: The structure of Chapter 8 and its connection to Chapters 7 and 9

8.2 A new Integrated Theory of the Firm

This section of the thesis is in two parts. Section 8.2.1 identifies the bases on which the new, integrated, TOTF is built and Section 8.2.2 presents the theory.

8.2.1 The bases for a new, integrated, theory of the firm

This section of the thesis draws on both the gaps in the literature relating to existing TOTF recognised in Section 3.2 and the strong points of each theory as identified in Chapter 7.

8.2.1.1 The company as a legal entity

By definition (Real Entity Theory in Section 3.2.1.3), a company must be incorporated within the legal and civil laws of a particular state (Lozano et al. p. 433) and this is the case with all companies in the ASX 100 index. These companies are incorporated as limited liability companies under the (Commonwealth) *Corporations Act 2001* (Parliament of Australia 2001). Real Entity Theory thus provides a perfect base for understanding the creation and continuing existence of ASX 100 companies and has been given a rating of 4 (out of 4) against Criterion 2 in Table 7.17. Data to demonstrate the utility of this component of the new TOTF is contained in the annual reports of all ASX 100 companies (as at 30 June 2016) as well as being readily available in publicly accessible data bases maintained by ASIC. The data in the annual reports is usually presented in the 'Other Information' pages at the end of the report but is sometimes found in the 'Corporate Information' table on the inside of the front or back cover.

Although no other existing TOTF addresses the issue of legal entity in any depth, the concept of the company as a legal entity is taken to form the first building block in the new Integrated TOTF

8.2.1.2 The profit oriented company

Friedman (1962) maintains that the only social responsibility of business (and, therefore, of companies) is to make a profit by acting within the rules established by the society within which it operates. To some extent, this view is reinforced by the ATO view of the characteristics of a business as including projections as to profit and/or loss (ATO n.d.). It is also reinforced by the contention within the Neo-classical TOTF (Section 3.2.2) that a firm has 'the single goal of maximising profit' and that that goal is attained at the point where marginal cost equals marginal revenue (economicsdiscussion.net n.d.). Although the concept of maximising profit is emphasised in several of the behavioural based theories of the firm, the Evolutionary Theory of the Firm (Frederick 2004) considers the firm to be profit oriented but not profit maximising.

The data contained in Appendix 5 suggests that companies in the ASX 100 index do not always operate at a profit and that annual net profits after tax are not always the maximum possible. Indeed, data in the appendix shows that there was a general trend downwards in profit after 2008 that was not arrested until 2010. It cannot, therefore, be held that ASX 100 companies are profit maximisers – unless the term is taken to mean the maximum profit possible at the time. They are, however, profit oriented and this contention forms the second building block for the new TOTF. As demonstrated by the data contained in Appendix 5, the annual reports of the ASX 100 companies provide sufficient data to demonstrate the utility of this component of the new, integrated, TOTF.

8.2.1.3 The company as an ethical entity

One of the major questions concerning the operations of companies is ‘Why do companies behave the way that they do?’ There is much discussion about whether or not companies, being legal but not real persons, can be expected to be moral persons and this topic is explored in Section 5.2. For the purposes of this thesis, it is assumed that companies can be moral persons and so be held to account for the ‘rightness’ of their actions. Just how well existing TOTF explain this aspect of company activities is explored in Chapter 7. The results of this analysis are displayed as Criterion 9 in Table 7.17 and the general answer (as represented by the weightings displayed in the table (a range of 0 to 4 on a scale of 0 to 4 with the majority of the theories scoring 0 or 1) is that the existing theories do not explain why companies act the way that they do at all well.

That Australian society, as a whole, sees company behaviour as being in need of significant improvement is demonstrated in the findings of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry commenced in 2017 (Federal Executive Council 14 December 2017). This enquiry identified billing customers for no service, charging dead people for services alleged to have been provided, opening savings accounts in the names of children so as to benefit employees and lending in a way that ‘crippled the disadvantaged and unemployed’ (Knaus 1 February 2019) as major reasons for increasing community distrust of major financial institutions. If the trust of community members in banks and other financial service providers is to be restored, then these companies (and their employees) will need to act in a manner that is more in line with community values and expectations. The need for companies to act ethically is not just something that should be (that is, normative behaviour) but something that is (that is, positive or descriptive behaviour). The need for ethical behaviour in companies is, therefore, the third foundation stone in the new theory.

In accord with Principle 3 in the ASX (2014) *Corporate Governance Principles and Recommendations,* all companies listed on the ASX are required to report annually (usually in their Annual Report) as to whether or not they have an established code of conduct and, if not, why not. All of the ASX 100 companies meet this requirement (see the example of the CBA given in Appendix 2) and, therefore, their annual reports provide an adequate base for assessing compliance with this aspect of the Integrated TOTF.

8.2.1.3 The relationship between the company and its shareholders

That shareholders have a major say in the way that companies operate (including the appointment of senior executives) is well demonstrated in the outline of powers available to companies and their members contained in Section 2.3.1 of this thesis. Although the owners of shares in a company delegate their power to appoint executives (as well as the power to monitor executive performance and to remunerate them) to the directors of the company, this does not gainsay the background authority of the shareholders. In Australia, the implementation of the ‘two strikes’ rule (Monem 2013, pp. 237-254) is another means by which shareholders can discipline both the executives and the directors who have appointed them. This rule gives shareholders a ‘non-binding’ vote on the executive remuneration report presented to each annual general meeting of a company. If the executive remuneration report is voted against for two years in succession, the shareholders may then decide to call for a spill of all board positions and a fresh election of directors. Although several Australian companies have now had their executive remuneration report voted against for two years in succession, no shareholders have yet voted for a spill of their directors. A recent example of this indecision on the part of shareholders can be found in the December 2019 Annual General Meeting of WBC (Number 2 on the ASX 100 index as at 30 June 2016). More than 25 percent of shareholders voted against acceptance of the company's remuneration report in 2018 and approximately 36 percent did so in 2019. This second vote was enough to require a vote on a decision to spill all board positions. The subsequent vote resulted in approximately 91 percent of the votes cast being against the spill (Gluyas 14 December 2019, p. 26).

That directors monitor the performance of the appointed executives is demonstrated by the material contained in Appendix 6 – which describes the composition of the remuneration packages and required performance standards in a selection of the ASX 100 companies. The power of shareholders to appoint managers and to discipline them if they do not use company resources in an acceptable way (that is, in a sustainable and cost effective manner) must be another building block in the creation of an integrated TOTF. The data presented in Appendix 6 illustrates both the short term and long term nature of the remuneration packages offered to senior executives.

Miner (2003) suggests that any TOTF should consider the motivation behind company and executive performance. One way to ensure alignment between the objectives of the owners of a company and their appointed agents is to ensure that the managers act as stewards (see Stewardship Theory in Section 3.2.4.5). If it is to be at all comprehensive, any new theory should consider this important nuance in the relationship between shareholders and executives.

The relationship between the owners of the company and the executives appointed to its day to day management must be an important part of any new theory. It is, therefore, included as a building block for the new theory.

8.2.1.4 The relationship between the company, other stakeholders and the social contract between society, government and business

The (Commonwealth) *Corporations Act 2001* (Parliament of Australia 2001) has been modified several times since it was enacted and Section 3.3.3.1 of this thesis briefly discusses an (unsuccessful) attempt to change it to legally require directors to consider the needs of stakeholders other than shareholders. Apart from changes to the *Act*, there are changes in the implicit social contract between society, government and business that Australian companies would be well advised to consider in their strategic planning. The discussion in Section 2.7 considers advice from the APRA that companies should consider (and advise their shareholders about) action to mitigate the potential effects of climate change on their business. Several potential changes in the social contract are also evident in the findings of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Federal Executive Council 14 December 2017). The need to be aware of (and responsive to) potential changes in this social contract is another base for the new Integrated TOTF.

Friedman and Miles (2006, p. 162) propose a ladder of stakeholder engagement and management (see Table 3.4) that could be used by companies to guide the discharge of their responsibilities to stakeholders other than shareholders. A need to involve other stakeholders is widely recognised and, accordingly, forms an important part of the new Integrated TOTF also.

8.2.1.5 The sustainability of the company

Lozano et al. (2015, p. 435) recognise that it is quite possible that company executives may give priority to short term benefits for shareholders over consideration of long term benefit and sustainability. Appendix 6 outlines the remuneration packages offered to executives in ASX 100 companies and differentiates between short term and long term incentives. In all of the examples listed, the short term incentive packages offer a reasonable cash consideration that is payable either immediately or within one year. This incentive could drive executives towards short term growth strategies. On the other hand, the long term incentives are almost always offered in share packages that have vesting periods up to five years. These future (and uncertain) benefits may not be sufficient to motivate executives to act in the long term interests of the company and its shareholders. Another driver towards short term strategies is the requirement to provide quarterly and half yearly financial accounts and statements of performance to the ASX. These requirements may also mitigate against the pursuit of long term strategies.

Only the Corporate Sustainability Theory proposed by Lozano et al. (2015, pp. 430-42) contains any requirement for the consideration of long term performance. Despite the limited current application of such an approach, long term sustainability is considered to be a major building block for the new theory.

8.2.1.6 The company and its marketplace

It would be tempting to suggest that companies should have their marketplace proscribed – particularly in relation to growth and international trade. However, in a free market economy such a restriction is not desirable and the Australian (Commonwealth) *Corporations Act 2001* (Parliament of Australia 2001) attempts no such restriction. Table 7.13 identifies several ASX 100 companies that trade in the international market. Many of the international companies identified in Tables 2.6 and 2.7 also have a recognisable presence in the Australian market. Buckley and Casson (1976, p. 74) suggest that companies will engage in international trade if there are firm, industry, region or nation specific factors that might work in their favour. These criteria amount to growth in either the local or international market as being worthwhile if a company can compete in a sustainable and cost effective manner.

Rather than attempt to specify boundaries within which a company must trade, any new theory should rather specify that entry into a new marketplace be undertaken in a sustainable and cost effective manner. This approach becomes another building block on which the new theory rests.

8.2.1.7 The company and its governance

Much of the discussion in Chapter 5 concerns the role of corporate governance in managing a company and in determining an appropriate balance between the company and its stakeholders. Of particular relevance to the creation of any new TOTF are the components of corporate governance identified by Casson (2013, p. 6) and the numbers of shareholders and other stakeholders in the five larger ASX 100 companies given in Table 5.2. As required by the *ASX Corporate Governance Principles and Recommendations* (ASX 2014), all ASX 100 companies now include an extensive section on Corporate Governance (and on how they comply with the ASX requirements) in each annual report. As recognised by Kuhndt et al. (2004, p. 15), good corporate governance exhibits the following characteristics:

> … assume societal responsibility for leadership; clearly and specifically identify their social, environmental and economic values in accordance with the demands of their stakeholders; define their social, environmental and economic priority areas of action; adopt specific management practices to integrate these values into their operations and take measurable action; disclose comprehensive data on their social, environmental and economic impacts; involve in comprehensive review of their activities; strive for continuous learning.

Corporate governance processes and procedures must, therefore, play a strong role in the formulation of any new TOTF.

8.2.2 A new Integrated Theory of the Firm

Hart (1989, p. 1757) recognised the major shortcomings in existing TOTF when he wrote:

> Most formal models of the firm are extremely rudimentary, capable only of portraying hypothetical firms that bear little relationship to the complex organisations that we see in the world. Furthermore, theories that attempt to incorporate real world features of corporations, partnerships and the like often lack precision and rigor, and have therefore failed, by and large, to be accepted by the theoretical mainstream.

The analyses reported in Chapter 7 demonstrate the limited utility of twenty one existing TOTF in describing the creation, existence and operation of the companies in the ASX 100 index as at 30 June 2016. The low utility rating given to each of these theories in Table 7.17 demonstrates just how well Hart's (1989) contention describes these theories. Perhaps of greater importance for this thesis is the further contention by Hart (1989, p. 1774) that 'It is to be hoped that in the next few years the best aspects of each of these approaches (neoclassical, principal/agent, transaction cost, nexus of contracts and property rights) can be drawn on to develop a more comprehensive and realistic theory of the firm.'

A new Integrated TOTF that attempts to overcome the shortcomings identified by Hart (1989, p. 1757, 1774) and that meets the criteria set by Miner (2003), Foss et al. (2004) and Radin (2004) is now described. It is:

> The company is a legal, profit oriented, ethical entity that is formed and managed in accord with legislation that reflects the evolving social contract between society, government and business. The owners of the company elect members of a board of directors, as their representatives, and hold these directors responsible for the governance of the company in accord with the legal and civil requirements of the society in which the company operates. The directors of the company appoint managers as stewards responsible for using company assets, in a sustainable and cost effective manner, to achieve agreed goals. The directors then monitor the performance of their stewards against these goals and reward them according to their individual contribution to the long term satisfaction of all stakeholders.

If this theory is to have a comprehensive usefulness in describing the creation, existence and operation of business entities (and, particularly, of companies) it should offer a predictive capacity as well as being normative and descriptive. A test for such a predictive capacity could be found in how a company based on the theory is structured and governed – particularly so that, in the long term, it prospers and both benefits and protects the communities in which it operates.

The bases described in Section 8.2.1 have been used to construct the new Integrated TOTF outlined in Section 8.2.2. The ways in which companies in the ASX 100 index comply with this Integrated TOTF are examined in Section 8.3.

8.3 Establishing the utility of the new Integrated Theory of the Firm in understanding the creation, existence and operation of the ASX 100 companies

The utility of the new Integrated TOTF in helping understand the creation, existence and operation of the ASX 100 companies is now explored. The criteria used in assessing this utility are those used in Chapter 7 and utility against each criterion is rated on a scale of 0 to 4 as is also done in Chapter 7.

8.3.1 Assessing utility against Criterion 1: Why does the company exist?

The Integrated TOTF considers the company to be a legal entity that is formed and managed in accord with legislation that reflects the evolving social contract between society, government and business. As a minimum standard, in Australia, this means that a company must be formed in accord with the (Commonwealth) *Corporations Act 2001* (Parliament of Australia 2001). Amongst many other matters, this *Act* provides for: (i) the form of companies (s122); (ii) the creation of a constitution for a company (s136); the existence of shares and shareholders (s6); the recognition of directors and company secretaries (s5); the duties and liabilities of directors (s5.1); for the internal management of companies (s134); for delegation of duties and responsibilities within a company (s198D); and for meetings of the members of a company (s249F). The *Act* also provides for the appointment of a managing director (s201J) and for the payment of dividends out of profits (s254T). Within these matters, the *Act* provides sound reasons for the operation of a business entity as a company as against any other legal form of business enterprise. These reasons include: (i) the ability of many investors to subscribe to a single business enterprise that is separated from their individual persons, property and legal responsibility; (ii) the ability of these investors to be separated from the day to day activities of the company through the appointment of directors and managers; and (ii) the ability of the investors to benefit through the distribution of dividends paid out of profits.

The Integrated TOTF, therefore, offers a full understanding of this aspect of formation of the ASX companies as companies and is rated at 4 on the adopted scale.

8.3.2 Assessing utility against Criterion 2: Why has the company adopted its present legal form?

All of the ASX 100 companies are consolidated entities, frequently with many subsidiaries and operating in many countries. By again using the requirement of the Integrated TOTF for a company to be a legal entity created in accord with legislation enacted in a specific society, the reasons for the ASX 100 companies to have adopted their present legal form can be ascertained.

The Integrated TOTF does not attempt to place any restriction on either the size of a company or on the markets in which it competes. What it does do is require that the directors and their stewards use company resources in 'a sustainable and cost effective manner to reach agreed goals'. This characteristic of the theory leaves it to the board of directors to establish agreed goals relating to the use of subsidiary companies, product ranges and marketplace diversity. Once these goals are set, the directors then have guidelines against which the performance of the company and its appointed managers can be monitored. The data presented in Appendix 6 shows that this performance is already assessed against shareholder interests and business strategy and non-financial targets that support company strategies.

However, the data required to assess company performance (in sustainable and cost effective ways) against this criterion is almost impossible to collect from ASX 100 company annual reports and the Integrated TOTF, therefore, supports only a limited understanding of this aspect of the creation, existence and operation of the ASX 100 companies. The theory is, therefore, only rated at 2 on the adopted scale.

8.3.3 Assessing utility against Criterion 3: How does the company relate to its shareholders?

The relationship between the company and its shareholders is clearly outlined in the Integrated TOTF. The shareholders are the owners of the company (This concept of ownership is maintained - even though some others suggest that the shareholders merely own shares and not the company itself.). Through their elected representatives (the directors), the owners appoint managers as their stewards with responsibility for the sustainable and cost effective use of company resources and monitor their performance against agreed goals. The managers are then remunerated in accord with their contribution to the satisfaction of all stakeholders (one of the agreed goals). The goals (and strategies) of the ASX 100 companies are not often reported in their annual reports (see Section 5.4.3.7 for examples of goals and strategies attributed to BHP and Telstra) and it is difficult to obtain data to support this part of the theory. However, those goals for which senior executives are held responsible (and against which they are remunerated) are clearly described in the Remuneration Report now published in each ASX 100 company annual report (see Appendix 6 for examples of this data).

As each ASX 100 company (as at 30 June 2016) operates (at least in Australia) in accord with the provisions of the (Commonwealth) *Corporations Act 2001* (Parliament of Australia 2001) they are required to hold annual general meetings with their shareholders (s249F) and to pay dividends out of profits (s264T). These two requirements demonstrate a strong link between ASX 100 companies and their shareholders. The fact that shareholders can now express displeasure with the actions of the directors and senior executives by voting against the remuneration report presented to the annual general meeting (Monem 2013, p. 237) demonstrates another strong link between ASX 100 companies and their shareholders.

The Integrated TOTF, through both its requirement for ASX 100 companies to act in accord with the laws of the land and the links between companies and shareholders that it prescribes, offers a full understanding of this aspect of the creation, existence and operation of the ASX 100 companies and is rated at 4 on the adopted scale.

8.3.4 Assessing utility against Criterion 4: How is the personality of the company determined?

The Integrated TOTF describes a company as being ethical and profit oriented but needing to act in accord with the evolving social contract under which it operates. The company is also required to achieve agreed goals and to contribute to the long term satisfaction of all stakeholders. The requirement to act ethically (including acting in accord with a published code of conduct) sets a strong base for the determination of the personality of a company. All ASX 100 companies are required to have such codes and to make them readily available (ASX 2014, Principle 3). The existence of such codes is identified in the example presented in Appendix 2. The profit orientation of the ASX 100 companies (as at 30 June 2016) is demonstrated in the data contained in Appendix 5. This requirement also shapes the personality of the company and could be a major limitation on the way that the company spends money on social objectives (corporate social responsibility) that would otherwise be available for distribution to shareholders. However, the way that the company relates to its external stakeholders is also an objective described by the Integrated TOTF and needs to be considered by senior executives. Although not all ASX 100 companies describe their social responsibility and actions in their annual reports, some do. The existence of such reports is mentioned in the example given in Appendix 2.

No ASX 100 company (as at 30 June 2016) reports on how it remains aware of changes in the social contract in the Australian society – but Section 3.3.3 of this thesis describes several attempted changes of which all companies should be aware. The recently completed Royal Commission into Misconduct in the Banking, Superannuation and Financial Services industry ((Federal Executive Council 14 December 2017) is part of the evolving social contract in Australia and it would be hard for any company director or executive to be unaware of the implications of its findings for corporate culture and behaviour. Only time will tell how ASX 100 companies examine and report on actions in response to these findings.

A major component of the Integrated TOTF is that companies act to achieve the long term satisfaction of all stakeholders. Understanding what this requirement means requires definition of the ‘long term’. The financial outcome of ASX 100 company actions (over a ten year period) is shown in Appendix 5. But is a ten year period the long term? For many investors, it may be and Appendix 4 examines the change in shareholdings of the five larger investors in the ASX 100 companies over such a period. In most companies, the five major shareholders have increased their shareholdings over the period and this could be taken to demonstrate that the companies have acted to their shareholders’ long term satisfaction. The major limitation to this brief examination of long term shareholder satisfaction is that it only recognises a very small segment of ‘all stakeholders’. It is not possible to obtain data on the long term satisfaction of other stakeholders from the annual reports of the ASX 100 companies.

Overall, the Integrated TOTF offers a reasonable level of understanding as to how the personality of the ASX 100 companies is determined and is rated at 3 on the adopted scale.

8.3.5 Assessing utility against Criterion 5: Why are the boundaries between the company and its markets where they are?

There are three components of the Integrated TOTF that contribute to understanding why the boundaries between an ASX 100 company and its markets are where they are. These are the requirements: (i) to be profit oriented; (ii) to use company assets in a sustainable and cost effective manner to meet agreed goals; and (iii) to contribute to long term satisfaction of all stakeholders.

The profit orientation of ASX 100 companies is outlined in Appendix 5 and examined in Chapter 7. It is sufficient to note that the ASX 100 companies (as at 30 June 2016) are not always profitable and that there have been years when their profit has decreased rather than increased. Although companies in the Materials (Mining), Energy and Utility segments of the GICS used by the ASX do report on their resource availability (see the example of RIO in Table 7.5), no ASX 100 company annual report for 2016 provides data that would support determination of the sustainable and cost effective use of such resources. This is despite some companies mentioning their approach to sustainability in their 2016 Annual Report (see Appendix 2) or providing a sustainability report that is separate from their annual report. Obviously, some ASX 100 companies (as at 30 June 2016) do contribute to the long term satisfaction of their major shareholders and Appendix 4 shows an overall increase in the shareholding of these shareholders over the period 2007 to 2016. How these actions contribute to the existence of market boundaries is now examined.

As pointed out in Section 8.2.1.7, the Integrated TOTF does not attempt to set boundaries on either product range or marketplace diversity. Rather, such company growth and diversity is left to the directors to identify in their strategic plans and then to the appointed stewards to achieve as part of their monitored performance against agreed goals. One of the strategic objectives should be to invest only in marketplace opportunities that met the company's weighted average cost of capital and its discounted cash flow specifications. The achievement of such goals must be met within the criterion of sustainable and cost effective use of company resources.

By requiring the directors to set such str financial requirements, the Integrated TOTF could make a significant contribution to understanding why the boundaries between a company, its suppliers, competitors and markets are where they are. However, no ASX 100 company provides data that would illustrate the link between the achievement of goals and its strategic objectives in its 2016 Annual report and the theory, therefore, offers only a very limited understanding this aspect of their creation, existence and operation and is only rated at 1 on the adopted scale.

8.3.6 Assessing utility against Criterion 6: Why is the company structured the way that it is?

The Integrated TOTF offers two suggestions as to why an ASX 100 company might be structured the way that it is. They are: (i) profit orientation; and (ii) the need to act in accord with the evolving social contract between society, government and business.

The profit orientation of the ASX 100 companies is outlined in Appendix 5. In brief, it is that the companies are profit oriented but not profit maximisers. As is shown in the examples of BHP and WOW (Numbers 6 and 9 respectively in the ASX 100 index as at 30 June 2016), the companies do not always operate at a profit. However, the fact that the larger shareholders in the ASX 100 companies have, in aggregate, increased the size of their shareholdings over the period July 2007 to June 2016 (Appendix 4) suggests that the companies profit orientation (and hence the consolidated structure of principal company and subsidiaries (see examples in Appendix 1) is sufficient to meet their needs.

Although the need to act in accord with the evolving social contract between society, government and business is evident from the discussion in Section 4.2, there is little in the ASX 100 companies 2016 Annual Reports to suggest that changes in community values and expectations have been addressed. The integrated TOTF, therefore, supports only a limited understanding of this aspect of ASX 100 company creation, existence and operation and is rated at 2 on the adopted scale.

8.3.7 Assessing utility against Criterion 7: What drives business strategy?

The Integrated TOTF suggests four potential drivers of business strategy. They are; (i) profit orientation; (ii) the requirement to use company assets in a sustainable and cost effective manner; (iii) to achieve agreed goals; and (iv) the need to contribute to the long term satisfaction of all stakeholders.

Appendix 5 illustrates the profit orientation of the ASX 100 companies and so this requirement of the Integrated TOTF is satisfied. There is no data in ASX 100 company (see Appendix 1) Annual Reports for 2016 that enables an examination of the cost effective use of assets and this part of the new TOTF is of no value. Many ASX 100 companies (including CBA, BHP and AGL) do include sustainability reports (or refer to a web site location for them) in their 2016 Annual Reports. It would appear, therefore that this requirement of the Integrated TOTF can be met. However, the reports are fairly limited in scope (see Table 7.14) and the requirement, therefore, is not well met. The only area of the 2016 Annual Reports in which the achievement of agreed goals is mostly discussed is in the award of incentive payments to executives. Appendix 6 gives some indication of the criteria against which such incentive payments are made and, therefore, the Integrated TOTF is of some use in this regard.

There is very little data in ASX 100 company (as at 30 June 2016) annual reports for 2016 that supports analysis of the satisfaction levels of all stakeholders. The only data that is consistently reported is the level of shares held by major shareholders. Appendix 4 illustrates changes in the number (and percentage) of shares held by the five larger shareholders in each ASX 100 company over the period July 2007 to June 2016, As shown in the TOTALS row for each company in the example, the aggregate level of shareholdings for the five larger shareholders has consistently grown.

This data suggests that the Integrated TOTF offers a limited understanding of what drives strategy in the ASX 100 companies. The theory is, therefore, rated at 2 on the adopted scale.

8.3.8 Assessing utility against Criterion 8: What generates company productivity?

Although the Integrated TOTF does not mention productivity, there are three components of the theory that do make some contribution to this aspect of company creation, existence and operation. These components are: (i) the profit orientation of the company; (ii) the need for the appointed managers to use company assets in a sustainable and cost effective manner so as to achieve agreed goals; and (iii) the requirement for directors to monitor the performance of the managers and to reward them according to their contribution to long term stakeholder satisfaction. Appendices 5 and 6 (respectively) highlight the profits (NPAT) made by the ASX 100 companies over the period 2007 to 2016 and the remuneration and performance standards applicable to their executives. However, the 2016 Annual Reports for these companies provide no data that would support a determination of sustainable and cost effective resource management. The Integrated TOTF, therefore, supports only a limited understanding of what generates productivity in the ASX 100 companies and is rated at 2 on the adopted scale.

8.3.9 Assessing utility against Criterion 9: What motivates corporate behaviour?

There are four components of the Integrated TOTF that contribute to an understanding of what motivates corporate behaviour in the ASX 100 companies. They are: (i) the requirement to be profit oriented; (ii) the need to be aware of and responsive to the evolving social contract between society, government and business; (iii) the need to reach agreed goals; and (iv) the requirement to contribute to the long term satisfaction of all stakeholders.

The profit orientation of the ASX 100 companies is shown in Appendix 5. The data in this Appendix clearly demonstrates that the companies are profit oriented but not profit maximisers. This is made clear in that: (i) profits do not always increase from year to year; and (ii) in some years, some of the ASX 100 companies have traded at a loss) (see the loss reported by both BHP (No 5 in the ASX 100 index as at 30 June 2016) and that reported by WOW (No 6 in the ASX 100 index as at 30 June 2016) in Appendix 5). While profits (or losses) are reported in each annual report for the ASX 100 companies, there is nothing in the 2016 Annual Reports that suggests the steps that the companies have taken to remain aware of changes in the evolving social contract that surrounds them. Such awareness could be expected to be published in the risk management report produced by the Risk Management Committee of the Boards of the ASX 100 companies. However, as is shown in Table 8.1, no such awareness is found in the risk management reports of the companies sampled. The companies included in the table have been chosen as representative of the GICS segment to which they belong.

TABLE 8.1: Contents of the risk management reports for a selection of ASX 100 companies

ASX 100 No. and Name	GICS Segment	Contents of the risk management segment of the company annual report for 2016
9. WOW	Consumer staples	Customer strategy implementation fails to rebuild trust in the company, failure to comply with existing and new legal and regulatory obligations
16. RIO	Materials (mining)	The development of a business model that will drive long term performance, liquidity and solvency, group reputation and the maintenance of a social licence, climate change, the operating environment and business integrity, cost reduction and community expectations
26. AGL	Utilities	Business resilience, maintenance of a diverse culture, business continuity, safe and reliable assets, transition to a low emissions culture, fraud management, innovation, IT security, proactive stakeholder management, retain valuable staff and strategic and appropriate governance
71. VOC	Telecommunication Services	Security of digital assets; privacy; business continuity, financial risk and energy

Source: The above data is taken from the risk management segment of the 2016 Annual Report for the company identified.

While there is nothing about being aware of changes in the social contract between society, government and business in the risks identified in Table 8.1, there are mentions of the maintenance of a social licence (RIO) and stakeholder management (AGL). Being aware of changes in these items could be seen as being conscious of changes in the social contract. The new theory, therefore, certainly contributes to a reasonable understanding of this aspect of ASX 100 company (as at 30 June 2016) creation, existence and operation and is rated at 3 on the adopted scale.

8.3.10 Assessing utility against Criterion 10: What are the company's obligations to its shareholders and to other groups?

The Integrated TOTF suggests two areas in which obligations to shareholders and other groups could be examined. They are: (i) the need to reach agreed goals; and (ii) the need to contribute to the long term satisfaction of all stakeholders. As discussed in previous sections of this chapter of the thesis, little data is presented in ASX 100 company 2016 Annual Reports that supports analysis against these criteria.

As outlined in Section 8.3.7, the only area of ASX 100 company annual reports for 2016 that discusses the achievement of agreed goals is the Remuneration Reports that are generally found in the Directors' Report section. As illustrated in Appendix 6, the data on goal achievement is generally brief and is of limited application. The material analysed in Appendix 5 demonstrates the result of individual company approaches to profit generation and distribution and this does have an impact on shareholder satisfaction. The data contained in Appendix 3 suggests that the larger shareholders are, in aggregate, satisfied with the results obtained by their company. However, data presented in Section 8.3.7 illustrates the difficulty inherent in using ASX 100 company annual reports to determine other stakeholder satisfaction.

Because of the limited array of useful data contained in ASX 100 company 2016 Annual Reports, the Integrated TOTF offers only a limited understanding this aspect of company creation, existence and operation. The theory is, therefore, only rated at 2 on the adopted scale.

8.3.11 Assessing utility against Criterion 11: What tests does the theory suggest for determining its utility in helping understand the creation, existence and operation of the company?

Each aspect of the Integrated TOTF suggests tests by which its utility in helping understand the creation, existence and operation of the ASX 100 companies can be determined. As examples, the test associated with being a legal entity is applied in Section 8.2.1.2 and the test of profit orientation is outlined by the data in Appendix 5. A test against ethical behaviour is more difficult to develop and apply, but Sections 8.2.1.3 and 8.2.1.4 discuss several aspects of company operations that demonstrate how its behaviour is guided. The possible tests of utility in corporate governance are quite diverse. Both Casson (2015, p. 6) and Kuhndt et al. (2004) outline the possible contents of good corporate governance in detail and the ASX *Corporate Governance Principles and Recommendations* (2014) suggest elements of corporate governance that must be reported (annually) by ASX 100 companies. The most general test that can be applied against the topic is to ascertain how comprehensive company reports (regarding corporate governance) are. The components of the theory that are harder to test relate to stakeholder involvement and social/sustainability responsibility – as only limited data on these matters is presented.

However, the theory does suggest a wide range of tests by which its utility can be determined. It, therefore, offers a full understanding of the application of this criterion and, consequently, it is rated at 4 on the adopted scale.

The test suggested in Section 1.4 (namely ‘How could a company be structured and governed so that, in the long term, it prospers and both benefits and protects the communities in which it operates’) has not yet been addressed. This test is the critical issue within the thesis and is applied in Section 8.4

8.3.12 An overall assessment of the new, integrated, TOTF in helping understand the creation, existence and operation of ASX 100 index companies?

Sections 8.3.1 to 8.3.11 present an analysis of the utility of the Integrated TOTF in helping understand the creation, existence and operation of the ASX 100 companies. Each sub-section also contains a rating of that utility in the form described in Section 4.6. Table 8.2 sums these individual ratings so as to present an overall rating of the utility of the theory.

Table 8.2: An overall rating of the utility of the Integrated Theory of the Firm in helping to understand the creation, existence and operation of ASX 100 companies

CRITERIA	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**TOTAL**
The Integrated, TOTF – rating	4	2	4	3	1	2	3	2	3	2	4	30

The overall rating presented in Table 8.2 shows that the Integrated TOTF does not provide a perfect understanding of the creation, existence and operation of the ASX

100 companies. However, with a score of 30 out of a potential 44, it rates as being considerably more useful than any of the theories examined in Chapter 7.

8.4 Using the Integrated Theory of the Firm to structure a company and its operations

The test of predictive capacity proposed for the Integrated TOTF is: How could a company be structured and governed so that, in the long term, it prospers and both benefits and protects the communities in which it operates? This question is answered by drawing on the description of the theory given in Section 8.3 and sections of the (Commonwealth) *Corporations Act 2001* (Parliament of Australia 2001).

8.4.1 The company as a legal person

The first building block in the Integrated TOTF requires a company to be a legal entity. As described in Chapter 2, this requires an Australian company to be incorporated under the provisions of the (Commonwealth) *Corporations Act 2001* (Parliament of Australia 2001). The various legal forms that a business could adopt are described in Section 2.2 – What is a business in Australia? The powers and responsibilities given to a company incorporated under this *Act* are described in Section 2.3.1 – The legislative framework. One identifier given to a registered company in Australia is a unique Australia Company Number (ACN). This number is required (by ASIC) to be displayed on the first page of any company document. A simple check that can easily be carried out (to affirm that an Australian company listed on the ASX is a legal entity) is, therefore, to check that the company name and ACN is displayed on the first page of its annual report. All the ASX 100 companies include this data in their annual reports. The new theory is, therefore, an acceptable base for predicting this aspect of the life of a business entity as a company.

8.4.2 The company as a profit oriented entity

The Integrated TOTF defines a company as being profit oriented. The financial data of ASX listed companies published in their annual reports readily establishes whether or not a company is profit oriented (see Appendix 5). There is, therefore, nothing in the Integrated TOTF that requires a listed company to be structured in any way other than they are at present. Where the new theory imposes additional criteria on company structure and operations is that company strategy must aim at long term sustainability and satisfaction of its stakeholders. The question of how to engage external stakeholders in company operations in order to achieve this is addressed in Sections 8.3.3 and 8.3.10.

One area of company annual report financial data that could be improved is to structure the summary financial data provided as a ten year series. Such a financial report would give a reasonable picture of both the profitability of the company and, potentially, its potential for long term survival. Some companies do already provide ten year data, but most only provide two or five year financial performance data in each annual report.

8.4.3 The company as an ethical entity

The Integrated TOTF suggests that a company should be an 'ethical' person. Although the (Commonwealth) *Corporations Act 2001* (Parliament of Australia 2001) is silent on ethics, the *ASX Corporate Governance Principles and Recommendations* (ASX 2014, Principle 3) do require a listed company to report on its ethical standards in each annual report. Such reports mostly concentrate on the existence of a code of conduct and its availability. However, the findings of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (see Section 8.2.1.3) suggest that companies with established codes of conduct do not necessarily enforce them.

None of the ASX 100 companies examined in Appendix 7 reports having a board committee responsible for maintaining the ethical standards of the company. Nor do they report on having a formal ethics training and reinforcement structure in place. A company structured so as to reflect the requirements of the Integrated TOTF could be expected to have an Ethics Committee at the board level and a formal structure responsible for training, implementation and monitoring performance against ethical standards. This would reflect the suggestions by Svensson et al. (2009, p.262) and overcome the shortcomings in the ASX approach identified by Longstaff (2003, p.1).

8.4.4 Being responsive to the evolving social contract between society, government and business

The Integrated TOTF requires ASX listed companies to be aware of and responsive to changes in the social contract between society, government and business. Section 3.3 of this thesis examines several potential changes to this implicit contract but Table 8.1 shows no concern in ASX 100 companies (as at 30 June 2016), at the board level, for such changes (In that there is nothing in the reported scope of board Risk Committees to suggest monitoring of changes in the social contract.). The APRA (Hutchens 17 February 2017) has warned that a response to climate change concerns should play a part in company strategic planning (see Section 2.7). Such concern should be managed at board level and it would be expected that ASX listed companies would start to include this subject in the considerations of their board Risk Management Committees. The inclusion of this approach is a change in corporate structure that the Integrated TOTF would require – in that it would require either the addition of another board committee or the inclusion of potential changes in the social contract being added to the remit of the Risk Management committee that all ASX 100 companies currently have.

8.4.5 The appointment of managers as stewards

The Integrated TOTF requires the appointment of managers as stewards – rather than as agents. Although Stewardship Theory has much to say about how stewards act, it is silent on how to differentiate between agency and stewardship during the recruitment stage of executive life. The adoption of this part of the new theory would, therefore, require changes to the structure of executive contracts and to the bases of executive remuneration currently shown in Appendix 6. The literature on stewardship contains no suggestions as to how the role of a steward might be described and managed in executive contracts and no attempt is made, in this thesis, to proscribe such content.

8.4.6 The involvement of stakeholders other than shareholders

Although the Integrated TOTF acknowledges the existence of shareholders as the owners of companies, it also gives recognition to executive actions being directed towards achieving the long term satisfaction of all stakeholders. No specific steps towards stakeholder engagement and satisfaction are offered by the Integrated TOTF, but such steps can be found in the writings of Wilburn and Wilburn (2011) and Friedman and Miles (2006). It is in the ladder of stakeholder engagement (Table 3.4) proposed by Friedman and Miles (2006, p. 162) that suggestions as to how stakeholders might be engaged emerge. Steps 1 to 7 of this ladder range from no stakeholder involvement to consultation and negotiation with stakeholders in order to obtain conditional support for a company (or a particular activity). It is in Steps 8 (Involvement – with some decision making power over specific projects) to 12 (Stakeholder control – with a majority of stakeholders control in decision making) that stakeholder engagement definitely emerges. While Steps 10 and 11 (joint decision making and a minority representation of stakeholders in decision making) might satisfy many external stakeholders, it may be that Steps 7 and 8 are more likely to be achievable in the Australian context.

Just what form this engagement might take is unclear. It is tempting to suggest that ASX 100 companies should consider adopting the German form of split supervisory and management boards (see Section 2.4.4). However, there does not appear to be any discussion of such an approach within Australian management circles and it may even require modification of the (Commonwealth) *Corporations Act 2001* (Parliament of Australia 2001) in order to bring about such a change. Any attempt to introduce such a change would, undoubtedly, be resisted strongly - mostly on the grounds of cost and the dilution of control by existing shareholders. A more possible form would be advisory boards – such as those outlined in a discussion paper by the AICD (2009). Such boards would not give stakeholders a decision making capacity, but would involve them in considering strategic issues or risks and offering advice to the existing board of directors. Such an approach would fit within Steps 7 and 8 of the ladder of stakeholder engagement proposed by Friedman and Miles (2006). The issue of cost would still arise and companies would need to weigh likely costs against the benefits to be gained by having wider community involvement in and support for their activities. This aspect of the new theory would require a considerable change to stakeholder engagement in Australian companies as the present approach to a SLTO and CSR (Chapter 4) would not demonstrate compliance with the theory.

In Australia, there are examples of an advisory board to be found in organisations away from the structures of commercial, profit oriented, companies. One such example can be found in the Ipswich City Council (ICC) in Queensland. In June 2019, the Council appointed five advisory groups in the areas of economic development, resilient communities, growth management, the environment and transparent governance (ICC March 2019, p. 1). Each group has its own scope and objectives but, generally, they are expected to 'provide information, advice and views to the council on matters relating to its business functions' (ICC March 2019, p. 1). Four of the fields in which guidance is sought from the Transparent Governance Community Reference Group are: (i) financial management and budgeting; (ii) good governance and leadership; (iii) corporate reporting; and (iv) customer services. There are, therefore, models of stakeholder involvement readily available that Australian companies could study.

8.4.7 Summary of Section 8.4

Section 8.4 explores just what a company created in accord with the new Integrated TOTF would look like. The major differences between such a company and most of the ASX 100 companies identified in Appendix 1 are: (i) the Integrated TOTF company would require a formal ethics training and reinforcement structure; (ii) the company would include the monitoring of risks associated with changes in the social contract between society, government and business in its risk management approach; (iii) the company would demand that its executive management act as mindful stewards of company resources; and (iv) the company would actively involve external stakeholders in its advisory structure.

8.5 The Integrated Theory of The Firm and the Research Question

The Research Question behind this thesis is:

> What is the content of a theory of the firm that: (i) addresses the shortcomings in existing TOTF recognised by Hart (1989), Miner (2003), Foss et al. (2004) and Radin (2004) and that (ii) provides a base for a continuing understanding of a company as it evolves from one form to another?

The answer to this question is explored in Chapters 7 and 8 of this thesis and is derived from the examination of eleven criteria that explore how well each criterion explains the creation, existence and operation of the 100 Australian companies identified in Appendix 1. These criteria are based on the concerns expressed by Hart (1989), Miner (2003), Foss et al. (2004) and Radin (2004). This new, Integrated TOTF is spelt out in Section 8.2.2 and its utility is recognised in Table 8.2. Although the Integrated TOTF is more useful than any of the existing twenty one TOTF recognised in Chapter 7, it still has reasonably limited utility (scoring only 30 on a rating scale of 44). Although it is possible to use the Integrated TOTF to predict the context of a company that would meet it in full (Section 8.4), it has not been possible to identify such a company contained in the ASX 100 index as at 30 June 2016. The reason for this failure is that none of these companies publishes the range of data that would be required to make such an assessment.

All ASX 100 companies (as at 30 June 2016) meet the criteria posed by Real Entity Theory (Section 3.2.2), but several of them have evolved from either Artificial Entity or Aggregate Entity companies. However, none of these evolving companies (see Section 3.2.1.1) gives reasons for their evolution in the annual reports (2006-07 to 2015-16) examined for this thesis and it has not been possible to test the Integrated TOTF against the second part of the Research Question. Such material could be available from company archives (as in the case of AMP) or in the parliamentary debates that changed government owned corporations (including CBA, CSL and QAN) into ASX listed companies. Searching for such material would require a time and financial commitment that is beyond the scope of a PhD thesis and has, accordingly, been left for future research when these resources are available.

8.6 Tests by which others might explore the utility of the Integrated Theory of the Firm

The utility of the Integrated TOTF in helping understand the creation, existence and operation of the ASX 100 companies has been explored in Section 8.3 using the companies identified in Appendix 1. Table 8.2 provides a summary of the ratings accorded to the theory against the criteria established in Section 6.5 and establishes that the new theory has greater utility than does any of the existing twenty one TOTF recognised in Section 3.2. However, this utility has been established using only a very limited sample (100) of the approximately 804 000 companies registered in Australia. The reasons for the selection of this sample are: (i) the ease of recognising the larger 100 companies listed on the ASX; and (ii) the relatively ready availability of performance data for these companies. Similar data is also available for the (approximately) other 1 900 companies listed on the ASX and it would be reasonably easy to compare any sample of these companies with the Integrated TOTF using the same criteria. Most of the other 802 000 companies recognised by the ABS (Table 2.1) are private (proprietary limited) companies and very little data about their performance is readily available. Such information as is available is mostly held by the ASIC and is only available to the public at a cost of (approximately) A$18 per individual company report per year. A major characteristic of these reports is that they only identify the range of company reports available and not the detailed content of each report. However, the other companies listed on the ASX and the private companies recorded by ASIC are two additional sources of data against which the overall utility of the Integrated TOTF might be tested.

Even then, the testing will only have been performed against Australian companies and it may be that the Australian data does not directly apply to business entities registered in the other jurisdictions (the UK, The USA, France and Germany) recognised in Chapter 2. Other researchers might, therefore, be able to further explore the utility of the Integrated TOTF by testing it against business entities (both companies and other legal forms) registered in these jurisdictions.

8.7 A Summary of the chapter

This chapter of the thesis introduces the new Integrated TOTF (Section 8.2) and then examines that theory to determine its utility in helping to understand the creation, existence and operation of the ASX 100 companies as at 30 June 2016 (Section 8.3). The new theory does not achieve a 100 percent score against the criteria established in Section 6.6 of this thesis but is rated far more highly (Table 8.2) than are any of the previously existing TOTF (Table 7.17). The areas of company structure and governance in which the theory would require most adjustment are described in Section 8.4.

Chapter 9 of the thesis provides a summary of the research behind the thesis and its findings. It also: (i) presents the contributions of the thesis to both management theory and practice: and (ii) suggests areas where further research might advance a greater understanding of the life and activities of companies worldwide.

CHAPTER 9 THE FINDINGS OF THE RESEARCH, THEIR CONTRIBUTION TO BOTH THEORY AND TO PRACTICE, THEIR LIMITATIONS AND FURTHER RESEARCH

9.1 An introduction to this chapter

Chapter 1 of this thesis sets out the objectives for the research project and subsequent chapters lay out the research and analyses by which these objectives are achieved. The purposes of this chapter are: (i) to identify the findings of the research; (ii) to outline the contribution that the work makes to both theory and practice; (iii) to recognize the limitations of the research undertaken; and (iv) to suggest further research that might usefully contribute to the discussion on the utility of theories of the firm.

The objectives of this chapter of the thesis are:

- to identify the findings of the research and of the analyses reported in Chapters 7 and 8;
- to summarise the contributions that the thesis makes to literature relating to TOTF and to managerial practice;
- to recognise the limits imposed on the research by the methodology used and by the sources of data accessed; and
- to suggest areas where further research could make a worthwhile contribution to understanding the utility of the Integrated Theory of the Firm.

Figure 9.1 outlines the structure of the chapter and its connections to Chapters 8 and 10.

Chapter 8 A new, integrated, theory of the firm	Content:	• A new, integrated, theory of the firm is developed • Confirmation of the utility of the new, integrated, TOTF • Tests by which others might explore the utility of the new, integrated, TOTF
Chapter 9 **The findings of the research and their contribution to theory and to practice**	Content:	• Section 9.1 introduces the chapter; • Section 9.2 sets out the findings of the research behind the thesis; • Section 9.3 describes the contributions that the thesis makes to the literature surrounding theories of the firm and to managerial practice and teaching; • Section 9.4 recognises the limitations imposed by the methodology, strategies and techniques adopted; • Section 9.5 suggests further research by which the utility of both the existing and new theories of the firm might be further examined; and • Section 9.6 provides a summary of the chapter.
Chapter 10 Conclusion	Content:	• Conclusion

Figure 9.1: The structure of Chapter 9 and its connections with Chapters 8 and 10

9.2 The findings of the research

Research has been undertaken and reported in five areas. These are: (i) the social contract between society, government and business; (ii) corporate ethics; (iii) corporate governance; (iv) existing theories of the firm; and (v) the new, integrated, theory of the firm. The findings of this research are now summarised.

9.2.1 Findings relating to the social contract between society, government and business

The social contract between society, business and government is a constantly evolving relationship that alters in response to changes in the values and interests of the society in which a business is based. Changes occur at both the broader level of society and at the local community level and businesses must remain aware of (and be responsive to) changes at both these levels.

Changes at the overall society level are frequently reflected in either changes to government legislation or in attempts to change such legislation. Examples of both these approaches are given in Chapter 3 (Section 3.3). Frequently, attempts to change legislation are driven by government inquiries (see Section 3.3.3) and other times they arise from long standing community discontent with company strategies and practices. An example of the second approach is the recently concluded (December 2018) Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Customers of Australian banks, insurance, superannuation and financial advisory companies have long been dissatisfied with their treatment by these service providers and this discontent was finally picked up by both government and opposition parties at the Commonwealth level and an enquiry established. In February 2019, the final report of the Royal Commission was presented to the Commonwealth Government. This report was awaited, with great interest, by many – but it is only one of the more than fifty substantial reviews, investigations and inquiries into industry and commerce that have been held and reported, in Australia, since the global financial crisis of 2008 (Long 5 February 2019). As well as containing more than 70 recommendations for changes at both company and government level that will lead to a reshaping of Australia's financial system, the report refers more than twenty potential legal prosecutions to government regulators (Murphy 4 February 2019).

Although the Royal Commission concentrated solely on community discontent with banks and other financial service companies, there are lessons for all companies in its findings. This is so regardless of whether or not the findings become law. Two of these findings are that boards and senior executives bear primary responsibility for poor conduct by their employees and that the interests of consumers must come first (Murphy 4 February 2019). A further suggestion as to how companies might need to change comes from a 'corporate governance expert' (Andrew Linden) at RMIT in Melbourne and is:

> Boards should be restructured from a profits-focussed, one-tier structure to a two-tier board model, as used in Germany, where a supervisory board and a managerial board operate in tandem. The supervisory board includes union and employee directors, creating a layer of internal accountability. By having union and employee directors on their supervisory boards, they have internal and industry eyeballs on the managers … the ones who are actually responsible for systemic misconduct (Knaus 1 February 2019).

This German approach is recognised in Section 2.4.4 of this thesis. Such an approach may be part of the evolving social contract between society, government and business that Australian companies may do well to learn from. Perhaps a suitable concluding contribution to this summary can be found in the words of the Chair of the Board of NAB (Number 4 in the ASX 100 index as at 30 June 2016). After reflecting on his discussion with counsel before the Royal Commission mentioned earlier, he suggested that boards … should be responsible not only to shareholders, as the law requires, but also to the wider community they serve (Irvine 9 February 2019).

9.3 The contributions of the findings to the literature surrounding theories of the firm and to managerial practice

The research behind this thesis and the analyses reported in Chapters 5 and 6 make the following contributions to literature and practice as follows.

9.3.1 A contribution to the literature surrounding the theories of the firm

The work reported in this thesis makes the following contributions to the literature surrounding TOTF:

(i) The utility of twenty one TOTF in helping to understand the creation, existence and operation of companies listed in the ASX 100 index is explored

(Chapter 7). Three particular aspects are explored. They are: (i) the reasons that companies come into being and then continue to exist; (ii) the reasons that the boundaries between one company and others, between the company and its competitors and between the company and its markets are where they are; and (iii) the reasons that companies behave the way that they do. The utility of the recognised theories in describing the creation, existence and operation of the ASX 100 companies is limited – as is illustrated in Chapter 7. A major reason for this finding is that the ASX 100 companies (as at 30 June 2016) do not publish data that would support analysis against some of the theories in their annual reports. A more detailed examination of these companies (such as might be made possible by a mailed (or personal) questionnaire) was not possible within the time and resources available for this thesis.

(ii) Based on gaps identified by the research and analyses contained in Chapter 7 a new, more useful, theory of the firm is developed. This Integrated Theory of the Firm is given in Chapter 8 and a similar analysis to that applied to the twenty one existing theories identified in Section 1.3 is applied to it. A comparison of the data contained in Tables 7.17 and 8.2 demonstrates that the new TOTF has greater utility in developing an understanding of the creation, existence and operation of the ASX 100 companies.

(iii) Data sources that would enable other researchers to explore the Integrated TOTF and so confirm, or disprove, the utility claimed for it are suggested. In this way, the Integrated TOTF differs from most of the other theories – which do not suggest either tests or data sources.

9.3.2 The contributions of the findings to practice of management

The thesis and its research make the following contributions to the literature relating to the management of public, limited liability, companies in Australia.

(i) The research reported in Chapter 7 is the only contemporary study on the creation, existence and operation of companies listed on the ASX (as at 30 June 2016) against existing TOTF. It, therefore, makes an important contribution to understanding how such theories can be used to assess the performance of public companies.

(ii) The research is also the only contemporary study that examines ownership and control in the ASX 100 companies (as at 30 June 2016) (see, particularly, the data in Appendices 3 and 4). The work, therefore, makes a significant contribution to understanding how shareholders (as the owners of companies) can guide the decisions of their appointed stewards (the senior executives of the company).

(iii) The new Integrated Theory of the Firm provides a single approach to understanding the creation, existence and operation of public, limited liability, companies. It may, therefore, simplify the teaching of the theories that underlie management practice.

9.4 Limitations imposed by the methodology adopted

Section 1.4 sets the objectives to be met by the research undertaken and Chapter 2 establishes the business entities to be used during the research as being the 100 larger, limited liability, companies listed on the ASX (the ASX 100 index as at 30 June 2016 as shown in Appendix 1). This selection immediately imposes boundaries on the work undertaken that could limit its usefulness. The major limitation is that the research is limited to Australian companies. As shown in Chapter 2, the public, limited liability companies used in the research are similar, in their legal structure, to public, limited liability companies in other jurisdictions. However, they are much smaller in annual turnover, capitalisation, the number of employees and in the number of countries in which they operate (see Tables 2.3, 2.5 and 2.7). These limitations may be important in terms of understanding the utility of theories of the firm and this possibility is worthy of further exploration.

Other limitations imposed by the use of the ASX 100 index companies include:

1. The ASX 100 index excludes the more than 2000 other companies listed on the ASX. The annual reports of the smaller capitalisation companies listed may show characteristics that reveal different answers to the analytical criteria used in Chapter 7. This possibility is also worthy of further study.

2. The limited liability companies listed on the ASX are only a small proportion of all companies registered in Australia. In particular, the ASX listing automatically excludes the more than 800 000 other (mostly proprietary limited) companies registered with ASIC (see Table 2.1). Some of these companies are very large – for instance, Shell Holdings Australia Pty Limited is a very formidable competitor to CTX (Number 40 in the ASX 100 index as at 30 June 2016). Although these companies are not required to publish annual reports, some data about their ownership and operations is publicly available (mostly at a cost) through ASIC databases. The value of the Integrated TOTF in helping understand the creation, existence and operation of these companies is worthy of further examination.
3. The ASX index excludes co-operative associations (such as Norco – see Section 3.7.1.2) and their relationship with their owners and communities is quite different from that of the ASX 100 companies. While publicly accessible data on these entities is often only available through media reports, the way in which the various TOTF explain their creation, existence and operation is worthy of a detailed examination.

The recognition of these limitations suggests several areas for further research.

9.5 Areas for further research

The research behind this thesis has concentrated on public companies formed under the Australian (Commonwealth) *Corporations Act 2001* (Parliament of Australia 2001) and only a limited comparison with similar companies formed in other legal jurisdictions has been made. There is, therefore, the opportunity for further research aimed at determining the utility of the new Integrated TOTF in understanding the creation, existence and operation of these companies. Based on the research behind this thesis, it is suggested that the new Integrated TOTF could also apply to the forms of company described in Section 2.7 of this thesis – particularly in helping understand the evolution of presently very large consolidated companies into more loosely associated enterprises. There are also many other forms of business enterprise (both incorporated and unincorporated) in Australia and the new

Integrated TOTF could be tested against them so as to determine its utility in describing their creation, existence and operation.

Appendices 3 and 4 give considerable detail about the major shareholders in the ASX 100 companies (as at 30 June 2016). It could be worthwhile undertaking further research into the impact of variations in the size and timing of major shareholdings (including those of substantial shareholders) on all TOTF – particularly through the potential of major shareholders to have an impact on corporate governance processes and for any changes in these processes to be in conflict with some TOTF.

9.6 A summary of the chapter

This chapter provides a summary of the findings (Section 9.2) and limitations (Section 9.4) of the research behind the thesis. It also outlines the contribution of the thesis to both the literature relevant to theories of the firm and to managerial practice (Section 9.3) and suggests areas for future research (Section 9.5). The chapter brings together the major elements of the thesis that are summarised in the concluding chapter.

Chapter 10 now concludes the thesis.

CHAPTER 10 CONCLUSION

10.1 Introduction to the chapter

Chapters 1 to 8 of this thesis describe a research program aimed at: (i) recognising the characteristics of public companies in Australia and several other legal jurisdictions; and (ii) at exploring the utility of twenty one existing theories of the firm in helping understand the creation, existence and operation of such companies. Based on this analysis, a new Integrated Theory of the Firm has been developed and its utility is examined in Chapter 8. This chapter now summarises the work undertaken.

The objectives of this chapter of the thesis are:

- to provide a summary of the objectives that have driven the research and analyses behind the thesis;
- to demonstrate how the analyses undertaken demonstrate the limited utility of the existing TOTF and recognises gaps that need to be filled;
- to summarise a new Integrated Theory of the Firm and the data sources that other researchers could use to confirm, or disprove, its claimed greater utility; and
- to summarise further research that could demonstrate the utility of the new theory in helping to understand the creation, existence and operation of other forms of company and of other forms of business enterprise.

Figure 10.1 outlines the structure of the chapter and its connection with Chapter 9.

Chapter 9 The findings of the research and their contribution to theory and to practice	Content:	• A new, integrated, theory of the firm • Confirmation of the utility of the new, integrated, TOTF • An examination of the predictive capacity of the new, integrated, TOTF • Tests by which others might explore the utility of the new, integrated, TOTF
Chapter 10 **Conclusion**	Content:	• Section 10.1 provides an introduction to the chapter; • Section 10.2 summarises the research undertaken; • Section 10.3 restates the findings of the research; • Section 10.4 outlines areas where further research into the utility of the new Integrated Theory of the Firm might usefully be undertaken; and • Section 10.5 concludes the thesis with a summary of the chapter.
References Appendices	Content:	• The list of references contained in the text • Appendices 1 to 7

Figure 10.1: The structure of Chapter 10 and its connection to Chapter 9

10.2 A summary of the research undertaken

The research behind the thesis is presented in seven steps as follows:

- Chapter 2 identifies public, limited liability, companies listed in the ASX 100 index as at 30 June 2016 as the business enterprises explored in the thesis. These companies are identified in Appendix 1. It also suggests that these companies are sufficiently similar to limited liability companies in the UK, the USA, France and Germany (the four base legal jurisdictions used in Chapter 2) to allow conclusions about the utility of the proposed Integrated Theory of the Firm based on the ASX 100 companies to be extended to include those companies.
- Chapter 3 explores the characteristics of the twenty one existing TOTF recognised in Section 1.2. This work is of particular importance as it supplies the framework against which the utility of the theories in helping to understand the

creation, existence and operation of the ASX 100 companies (as at 30 June 2016) can be tested. Of great importance is the recognition that several existing TOTF cannot be tested against data presented in the ASX 100 companies' annual reports for 2016 and that the ability to test these theories depends on data only available to 'insiders' (such as directors and executives).

- Chapter 4 explores the social contract that exists between society, government and business in Australia. It also recognises several approaches (changing societal values at a local community level, parliamentary enquiries, Royal Commissions and attempts to enact new laws) by which changes in community expectations of companies might be made part of the 'hard' law by which companies are governed. The section concludes with the suggestion that companies should become aware of such proposed changes so that they are readily able to respond to the constantly evolving social contract.
- Chapter 5 explores the expectation that companies can be moral persons and so exhibit ethical behaviour and a culture that meets the expectations of society. The analysis reported in the section concludes that, based on the Theory of the Evolutionary Firm proposed by Frederick (2004), companies can be expected to be moral persons. The (Commonwealth) *Corporations Act 2001* (Parliament of Australia 2001) contains no requirement for a company to attain any ethical standard, but the principal 'soft' law that surrounds public, limited liability companies in Australia (the ASX *Corporate Governance Principles and Recommendations* (ASX 2014)) does. This 'soft' law requires that the ASX 100 companies develop and disclose, in their annual reports whether or not they have developed and applied a code of conduct for their directors, executives and other employees. The existence of these codes of conduct is revealed in the data presented in Appendix 1.
- Chapter 5 also explores the approach to corporate governance displayed in the ASX 100 companies as at 30 June 2016.
- Chapter 6 sets out the methodology by which the research proceeds.
- Chapter 7 explores the utility of existing TOTF in helping understand the creation, existence and operation of the ASX 100 companies. This utility is assessed against eleven criteria developed in Section 6.5 and a rating against each criterion is made using a five point scale. The overall rating of each criterion is

reported in Table 7.17. The data in this table suggests that the existing TOTF are of limited utility in achieving the stated purpose. The five more useful theories are: (i) New Institutional Theory: (ii) Real Entity Theory; (iii) Shareholder Theory; (iv) Resource Based Theory; and (v) The Theory of the Evolutionary Firm. However, even these theories score 25 or fewer points (out of a possible maximum of 44) on the rating scale used. Of particular importance is the conclusion that few of the existing theories propose tests by which their utility can be tested (Criterion 11 in Table 7.17).

- Chapter 8 develops a new Integrated Theory of the Firm and tests it utility in helping understand the creation, existence and operation of the ASX 100 companies. It concludes that such utility is much greater than is that of any single existing theory (Section 8.3.12). Of critical importance is that the Integrated Theory of the Firm suggests tests by which other researchers could confirm, or challenge, its claimed utility.
- Chapter 9 summarises the findings of the research.

10.3 A summary of the findings

The findings of the research are summarised in Section 1.7. The two major findings are:

(i) The existing TOTF have a limited utility in describing the reasons for the existence of a business enterprise as a company, for determining why the boundaries between an ASX 100 index company (as at 30 June 2016) and its suppliers, competitors and the market are where they are and why the company behaves the way that it does. This lack of descriptive power mostly arises because the data required to compare company performance against several of the existing theories is not available from the companies' annual reports and is often only available to 'insiders'.

(ii) The existing TOTF seldom propose a means by which their utility in describing the creation, existence and operation of the ASX 100 companies can be tested.

The new Integrated Theory of the Firm that arises from the research and analyses described in this thesis is:

> The company is a legal, profit oriented, ethical entity that is formed and managed in accord with legislation that reflects the evolving social contract between society, government and business. The owners of the company elect members of a board of directors, as their representatives, and hold these directors responsible for the governance of the company in accord with the legal and civil requirements of the society in which the company operates. This board of directors may seek advice from stakeholders other than shareholders.
>
> The directors of the company appoint managers as stewards responsible for using company assets, in a sustainable and cost effective manner, to achieve agreed goals. The directors then monitor the performance of these stewards against those goals and reward them according to their individual contribution to the long term satisfaction of all stakeholders.

The utility of this theory is tested in Section 8.3 by using it to address the question:

> How could a company be structured and governed so that, in the long term, it prospers and both benefits and protects the communities in which it operates?

An answer to this question is developed in Section 8.4.

10.4 Further research

The research reported in this thesis concentrates on public, limited liability, companies listed on the ASX as at 30 June 2016. There are many other forms of business enterprise (both incorporated and unincorporated) in Australia and the new Integrated Theory of the Firm could be tested against them so as to determine its utility in describing their creation, existence and operation. Based on the research behind this thesis, it is suggested that the new Integrated Theory of the Firm could also apply to public, limited liability, companies in other legal jurisdictions – as well as to the newer forms of company described in Section 2.7. Further detailed exploration of this suggestion would also be a worthwhile contribution to the understanding of the new theory.

10.5 A summary of the chapter

This chapter provides a summary of the thesis. It starts with a statement of the reasons that the ASX 100 index companies (as at 30 June 2016) are used as the base for the research and then outlines the literature review reported in Chapters 3, 4 and 5. The research that compares the ASX 100 companies with both twenty one existing TOTF of the firm (Chapter 7) and the development and testing of a new Integrated TOTF (Chapter 8) is highlighted in Section 10.2. The findings of the research reported in Chapters 7 and 8 are summarised in Section 10.3. Section 10.4 suggests areas where further research into the wider application of the new theory could lead to a greater understanding of the new Integrated TOTF in helping understand the creation, existence and operation of business enterprises (but particularly of companies) in both common and civil law jurisdictions around the world.

Through the work described in Chapters 7 and 8, the thesis meets the objectives set in the Research Question posed in Section 1.3:

> What is the content of a theory of the firm that: (i) addresses the shortcomings in existing TOTF recognised by Hart (1989), Miner (2003), Foss et al. (2004) and Radin (2004); and that (ii) provides a base for a continued understanding of a company as it evolves from one form to another?

The thesis also demonstrates how the utility of such a theory can be demonstrated by using it to answer the question:

> How could a company be structured and governed so that, in the long term, it prospers and both benefits and protects the communities in which it operates?

An important part of the chapter is Section 10.4, where areas for future research could be carried out are identified. It would have been of great interest to have pursued some of these areas (particularly those relating to Australian companies other than those on the ASX 100 index), but the time and financial restraints of preparing a PhD thesis have prevented this.

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APPENDICES

APPENDIX 1: THE ASX 100 COMPANIES (AT 30 JUNE 2016) USED IN THE RESEARCH UNDERLYING THIS THESIS

ASX NUMBER/ CODE	COMPANY	GICS SECTOR	MARKET CAPITAL-ISATION (A$m)	NUMBER OF SUBSIDIARY COMPANIES
1. CBA	Commonwealth Bank of Australia	Financials	133 721	32
2. WBC	Westpac Banking Corp	Financials	99 673	
3. ANZ	Australia and New Zealand Banking Group	Financials	72 618.1	
4. NAB	National Australia Bank	Financials	71 764.7	
5. TLS	Telstra Corporation Ltd	Telecom Services	68 952.7	48
6. BHP	BHP Billiton Ltd	Materials	59 689.3	70
7. CSL	CSL Limited	Health Care	51 960.0	52
8. WES	Wesfarmers Ltd	Consumer Staples	47 689.3	
9. WOW	Woolworths Ltd	Consumer Staples	28 222.2	35
10. SCG	Scentre Group	Financials	24 545.0	
11. TCL	Transurban Group	Industrials	24 334.8	
12. MQG	Macquarie Group Ltd	Financials	24 040.2	
13. WPL	Woodside Petroleum Ltd	Energy	22 358.5	
14. WFD	Westfield Corporation	Financials	21 497.8	
15. BXB	Brambles Ltd	Industrials	20 284.4	18
16. RIO	Rio Tinto Ltd	Materials	18 838.4	
17. AMC	Amcor Ltd	Materials	18 634.5	
18. SUN	Suncorp Group Ltd	Financials	16 751.5	
19. QBE	QBE Insurance Group Ltd	Financials	16 318.1	25
20. AMP	AMP Limited	Financials	16 297.1	37
21. SYD	Sydney Airport	Industrials	15 996.4	
22. NCM	Newcrest Mining Ltd	Materials	15 514.2	
23. RHC	Ramsay Health Care Ltd	Health Care	14 376.1	11
24. IAG	Insurance Australia Group	Financials	14 369.5	
25. VCX	Vicinity Centres	Financials	12 786.4	
26. AGL	AGL Energy Ltd	Utilities	12 650.9	10
27. GMG	Goodman Group	Financials	12 581.6	7
28. CIM	Cimic Group Ltd	Industrials	12 540.9	
29. RMD	Resmed Inc	Health Care	11 166.2	46
30. SGP	Stockland Ltd	Financials	12 764.2	

ASX NUMBER/ CODE	COMPANY	GICS SECTOR	MARKET CAPITAL-ISATION A$(m)	NUMBER OF SUBSIDIARY COMPANIES
31. TPM	TPG Telecom Ltd	Telecom Services	10 173.3	
32. OSH	Oil Search Ltd	Energy	9 905.1	
33. APA	APA Group Ltd	Utilities	9 811.5	
34. ORG	Origin Energy Ltd	Energy	9 625 2	
35. GPT	GPT Group	Financials	9 601.1	
36. AZJ	Aurizon Holdings Ltd	Industrials	9 131.3	
37. JHX	James Hardie Industries PLC	Materials	9 038.6	
38. FMG	Fortescue Metals Group Ltd	Materials	8 967.7	
39. SHL	Sonic Healthcare Ltd	Health Care	8 922.4	
40. CTX	Caltex Australia Ltd	Energy	8 742.4	
41. CWN	Crown Resorts Ltd	Consumer Discretion	8 689.7	
42. AIO	Asciano Ltd	Industrials	8 593.2	
43. ASX	ASX Ltd	Financials	8 458.2	
44. MPL	Medibank Private Ltd	Financials	8 454.8	
45. DXS	Dexus Property Group Ltd	Financials	8 421.2	
46. S32	South 32 Ltd	Materials	8 411.6	12
47. ALL	Aristocrat Leisure Ltd	Consumer Discretion	7 887.5	
48. TWE	Treasury Wine Estates Ltd	Consumer Staples	7 621.2	
49. LLC	Lendlease Group Ltd	Financials	7 610.9	
50. STO	Santos Ltd	Energy	7 513.0	
51. REA	REA Group Ltd	Consumer Discretion	7 231.1	
52. MGR	Mirvac Group Ltd	Financials	7 077.6	
53. COH	Cochlear Ltd	Health Care	6 814.2	
54. CCL	Coco-cola Amatil Ltd	Consumer Staples	6 734.9	
55. QAN	QANTAS Airways Ltd	Industrials	6 414.1	41
56. SPK	Spark New Zealand Ltd	Telecom Services	6 184.7	
57. DMP	Domino’s Pizza Enterprises Ltd	Consumer Discretion	6 053.0	15
58. CPU	Computershare Ltd	Information Technology	5 781.0	
59. TTS	Tatts Group Ltd	Consumer Discretion`	5 726.3	14
60. DUE	Duet Group Ltd	Utilities	5 693.3	58
61. IPL	Incitec Pivot Ltd	Materials	5 559.2	21
62. AST	Ausnet Services	Utilities	5 508.1	

ASX NUMBER/ CODE	COMPANY	GICS SECTOR	MARKET CAPITAL-ISATION A$ (m)	NUMBER OF SUBSIDIARY COMPANIES
63. FBU	Fletcher Building Ltd	Materials	5 469.7	44
64. SEK	Seek Ltd	Industrials	5 445.6	21
65. FPH	Fisher & Paykel Healthcare	Health Care	5 329.0	11
66. CGF	Challenger Ltd	Financials	5 200.9	11
67. ORI	Orica Ltd	Materials	5 060.0	110
68. HVN	Harvey Norman Holdings Ltd	Consumer Discretion	5 051.0	Several Hundred
69. HSO	Healthscope Ltd	Health Care	5 040.1	
70. BLD	Boral Ltd	Materials	4 982.1	
71. VOC	Vocus Commun-icationsLtd	Telecom Services	4 882.9	
72. BEN	Bendigo and Adelaide Bank Ltd	Financials	4 630.4	
73. SGR	Star Entertainment Group Ltd	Consumer Discretion	4 607.3	3
74. BOQ	Bank of Queensland Ltd	Financials	4 359.6	
75. AWC	Alumina Ltd	Materials	4 109.5	
76. MFG	Magellan Financial Group Ltd	Financials	3 810.9	
77. SKI	Spark Infrastructure Gp	Utilities	3 725.7	9
78. PTM	Platinum Asset Management Ltd	Financials	3 652.1	
79. BSL	Bluescope Steel Ltd	Materials	3 519.5	
80. ABC	Adelaide Brighton Ltd	Materials	3 514.6	
81. TAH	Tabcorp Holdings Ltd	Consumer Discretion	3 504.6	17
82. HGG	Henderson Gp PLC	Financials	3 348.0	
83. CYB	CYBG PLC	Financials	3 324.1	
84. ORA	Orora Ltd	Materials	3 294.1	
85. FLT	Flight Centre Travel Gp Ltd	Consumer Discretion	3 199.8	
86. EVN	Evolution Mining Ltd	Materials	3 164.1	
87. BTT	BT Investment Management Ltd	Financials	3 034.8	
88. LNK	Link Administration Holdings Ltd	Information Technology	3 025.9	
89. CAR	Carsales.com Ltd	Information Technology	3 013.7	
90. QUB	Qube Holdings Ltd	Industrials	2 991.9	
91. BKL	Blackmores Ltd	Consumer Discretion	2 815.5	
92. ANN	Ansell Ltd	Health Care	2 803.3	

ASX NUMBER/ CODE	COMPANY	GICS SECTOR	MARKET CAPITAL-ISATION	NUMBER OF SUBSIDIARY COMPANIES
93. NST	Northern Star Resources Ltd	Materials	2 737.0	
94. SKC	Skycity Entertainment Group Ltd	Consumer Discretion	2 720.7	
95. MQA	Macquarie Atlas Roads Group Ltd	Industrials	2 680.6	
96. IOF	Investa Office Fund Ltd	Financials	2 609.7	
97. ILU	Iluka Resources Ltd	Materials	2 430.6	
98. IFL	IOOF Holdings Ltd	Financials	2 419.1	
99. DLX	Dulux Group Ltd	Materials	2 413.4	
100.PMV	Premier Investments Ltd	Consumer Discretion	2 403.4	28

Sources: ASX 18 May 2017
2016 Annual Report for each company

APPENDIX 2: EXAMPLE OF DATA SHEET PREPARED FOR EACH OF THE COMPANIES IDENTIFIED IN APPENDIX 1

ASX 200 No.	**Name**	**Commonwealth Bank of Australia**		
1	**ACN**	123 123 124		
	Market cap ($)	1 July 2016 - A$133 721 million		
	ASX Listing date	12 September 1991 - founded 1911		
	Registered office	Sydney NSW		
	Internet address	http://www.commbank.com.au/		
CBA	**Sector**	Banking	**GICS group**	Financials

PRINCIPAL BUSINESS ACTIVITIES (annual report 2016)

Consolidated entity (32 subsidiaries listed) – The Group is one of Australia's leading providers of integrated financial services - including retail, business and institutional banking, funds management, superannuation, life and general insurance, brokering and finance company activities.

DIRECTORS (annual report 2016 pp. 40-1)

Chairman: Mr David Turner FAICD 71	**NED**: Ms Luana Inman MAICD 60
MD/CEO: Mr Ian Narev (since 2011) 49	Ms Catherine Livingstone FAICD 60
Executive Director: Nil	Mr Brian Long 70
NED: Sir John Anderson (NZ) 71	Mr Andrew Mohl 59
Mr Shirish Apte (S'pore) 63	Ms Mary Padbury 57
Sir David Higgins (UK) 61	Ms Wendy Stops 55
	Mr Harrison Young 71

Total No. Directors	Executive Directors (Incl MD)	Non Executive Directors	Female Directors	Male Directors	AICD MEMBERS
12	1	11	4	8	3

pp. 48, 56-64: 12 key management personnel have service agreements with short and long term incentives.

GROSS REVENUE, SHARE PRICE, NPAT AND DIVIDENDS as at 30 June 2016

Year	2012	2013	2014	2015	2016
Shareholder equity	41 620	45 537	49 348	52 993	60 756
Gross rev (A$m)	19 476	20 821	22 401	23 578	24 747
NPAT (A$m)	7 090	7 677	8 361	9 063	9 227
Share price A$	53.10	69.18	81 47	86.65	73.83
DPS A$	3.34	3.64	4.00	4.20	4.20

ANNUAL REPORT 2016 contains

Sustainability report	Group environmental policy. No 1 bank in Global 100 Most Sustainable Corporation Index	**Page number:** 3
Ethics statement (ASX Principle 3)	No - available on line	**NA**
Community/stakeholder engagement report	Support for local communities CSR statement	**Page number:** 7 **Page number:** 34-37

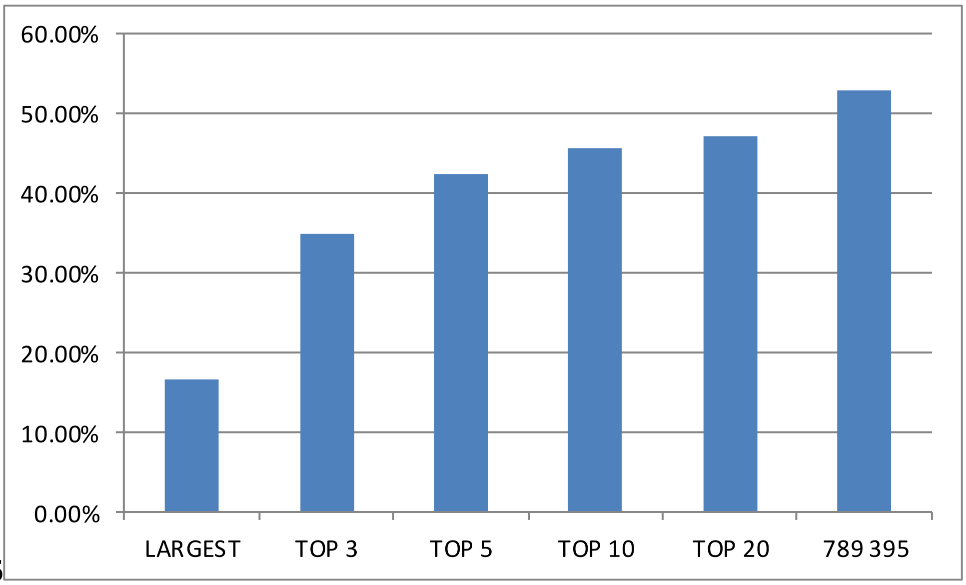
SHARES ISSUED (30 June 2016) - 1 715 142 177 shares held by 819 613 shareholders.

TOP 20 SHAREHOLDERS (annual report 2016 p. 185) (47.22 % shares issued)

Name	%	Name	%
1 HSBC Custody Nominees Aust Ltd	17.22	**11** Milton Corporation Ltd	0.18
2 JP Morgan Nominees Aust Ltd	10.65	**12** Pacific Custodians Pty Ltd	0.17
3 National Nominees Ltd	5.86	**13** UBS Nominees Pty Ltd	0.14
4 Citicorp Nominees Pty Ltd	5.86	**14** Nulis Nominees (Aust) Ltd	0.13
5 BNP Paribas Noms Pty Ltd	3.24	**15** Invia Custodian Pty Ltd	0.11
6 Bond Street Custodians Ltd	1.34	**16** Network Investments Ltd	0.10
7 RBC Dexia Investor Svcs Aust	0.99	**17** IOOF Investment Mgmt Ltd	0.10
8 Aust Foundation Investment Company Limited	0.46	**18** Mr Barry Martin Lambert	0.10
9 Navigator Australia Ltd	0.23	**19** McCusker Holdings Pty Ltd	0.08
10 Argo Investments Ltd	0.19	**20** ANZ Executors and Trustees	0.08

As at 30 June 2016, there were no substantial shareholders in the CBA.

DISTRIBUTION OF SHAREHOLDINGS IN CBA (as at 30 June 2016)



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NOTE: The Australian *Corporations Act 2001 Sec 9 Dictionary* defines a substantial shareholder as being one who holds 5% or more of the ordinary shares of a company on issue. Nominee companies are normally not regarded as being a single shareholder as they must vote according to the instructions of their individual holders.

The significance of this table is that it shows the distribution of power within the shareholders of CBA. The twenty larger shareholders hold 47.22% of the ordinary shares on issue, whereas all others hold 52.58% between them.

APPENDIX 3a: MAJOR SHAREHOLDERS IN THE ASX 100 COMPANIES AS AT 30 JUNE 2016

ASX 100 No/Name	Number of shareholders	Largest Shareholder	% Shares	Second Largest Shareholder	% Shares	Third Largest Shareholder	% Shares	% shares held by large shareholders			
								Top 3	Top 5	Top 10	Top 20
1. CBA	819 613	HSBC Custody Nominees (Aust)	17.22	JP Morgan Nominees Aust	10.65	National Nominees Ltd	5.86	33.73	42.83	46.04	47.22
2. WBC	622 674	HSBC	19.42	JP Morgan	12.30	National Nom	7.28	39.00	47.58	51.24	53.06
3. ANZ	544 712	HSBC	20.24	JP Morgan	13.62	National Nom	7.09	40.95	49.93	53.83	56.22
4. NAB	581 938	HSBC	21.14	JP Morgan	12.73	Citicorp Nominees P/L	5.18	39.05	46.04	49.73	53.03
5. TLS	1 394 146	HSBC	15.29	JP Morgan	13.47	National Nom	7.78	36.54	46.58	49.14	51.08
6. BHP	597 215	HSBC	19.92	JP Morgan	14.15	National Nom	6.43	40.43	51.43	56.18	58.33
7. CSL	138 647	HSBC	27.05	JP Morgan	15.65	National Nom	9.75	52.45	60.31	63.60	65.27
8. WES		HSBC	17.01	JP Morgan	12.88	National Nom	6.34	36.34	43.19	46.14	49.76
9. WOW	457 031	HSBC	17.31	JP Morgan	10.97	National Nom	5.95	34.23	41.04	46.87	49.36
10. SCG	91 132	HSBC	40.67	JP Morgan	16.98	BNP Paribas Noms P/L	9.62	67.27	80.14	86.59	89.54
11. TCL	92 322	HSBC	27.01	JP Morgan	15.32	BNP Paribas	12.92	55.25	71.15	76.37	78.20
12. MQG	114 282	HSBC	22.22	JP Morgan	16.40	National Nom	8.96	47.58	58.85	68.06	71.55
13. WPL	213 041	HSBC	23.81	Shell Energy	13.28	JP Morgan	13.04	50.31	61.26	66.25	68.68
14. WFD	92 709	HSBC	37.55	JP Morgan	17.15	Citicorp Nom	5.99	60.69	68.11	70.48	84.36
15. BXB	69 362	HSBC	39.53	JP Morgan	18.83	National Nom	12.29	70.65	79.66	83.92	85.72
16. RIO	170 433	HSBC	28.72	JP Morgan	16.94	Citicorp Nom	5.70	51.36	59.88	65.66	68.40
17. AMC	73 594	HSBC	31.75	JP Morgan	23.54	National Nom	11.70	66.99	75.09	78.36	80.24
18. SUN	185 407	HSBC	20.92	JP Morgan	18.10	National Nom	8.46	47.48	56.70	60.90	63.36
19. QBE	126 245	HSBC	36.14	JP Morgan	16.17	Citicorp Nom	8.95	61.26	70.58	75.15	77.35
20. AMP	788 696	HSBC	28.72	JP Morgan	11.32	Citicorp Nom	6.95	46.99	53.33	57.45	59.54

APPENDIX 3b: MAJOR SHAREHOLDINGS IN EACH COMPANY IN THE ASX 100 INDEX AT 30 JUNE 2016

ASX 100 No/Name	Number of shareholders	Largest Shareholder	% Shares	Second Largest Shareholder	% Shares	Third Largest Shareholder	% Shares	% shares held by large shareholders			
								Top 3	Top 5	Top 10	Top 20
21. SYD	107 732	HSBC	23.64	BNP Paribas	17.98	JP Morgan	17.65	59.27	67.96	72.73	74.97
22. NCM	57 969	HSBC	50.18	JP Morgan	19.80	Citicorp Noms	10.86	80.84	85.17	88.81	90.73
23. RHC	53 224	Paul Ramsay Holdings	32.16	HSBC	14.05	JP Morgan	11.31	57.52	65.59	73.57	77.35
24. IAG	733 486	HSBC	18.26	JP Morgan	12.96	National Noms	8.12	39.35	48.98	56.82	58.88
25. VCX	25 628	HSBC	27.71	JP Morgan	15.77	National Noms	9.76	53.25	69.42	79.98	91.19
26. AGL	10 182	Citicorp Noms	6.37	HSBC	4.56	IOOF Investment	3.77	14.70	21.14	29.75	35.75
27. GMG	23 903	HSBC	31.17	JP Morgan	24.96	National Noms	12.28	68.41	79.15	86.41	93.05
28. CIM	31 932	Hochtief Aust	72.68	HSBC	8.42	JP Morgan	7.03	88.12	91.07	92.03	92.55
29. RMD	Company is listed on the New York Stock Exchange and its annual reviews do not include shareholder data										
30. SGP	51 198	HSBC	30.48	JP Morgan	18.39	National Noms	14.82	63.59	77.37	82.51	84.68
31. TPM	20 863	Washington H Soul Patinson	25.15	TSH Holdings P/L	11.98	Victoria Holdings P/L	11.88	49.01	62.02	79.77	86.99
32. OSH	51 123	HSBC	28.01	JP Morgan	23.86	Aust Executor	12.91	64.78	73.86	81.95	84.76
33. APA	Shareholder data not included in 2016 Annual Report										
34. ORG	170 378	HSBC	21.94	JP Morgan	17.74	National Noms	8.99	48.87	59.02	62.69	64.71
35. GPT	Shareholder data not included in 2016 Annual Report										
36. AZJ	51 865	HSBC	33.16	JP Morgan	19.93	Citicorp Noms	15.01	68.10	78.72	87.64	90.72
37. JHX	Annual returns filed in Ireland and the USA – shareholder data not included in the company's Australian Annual Review for 2016										
38. FMG	51 075	Mindaroo Group	29.47	JP Morgan	13.26	HSBC	10.32	53.05	65.32	81.97	88.74
39. SHL	67 088	HSBC	26.22	JP Morgan	13.42	National Noms	12.43	52.07	60.43	66.15	69.60
40. CTX	32 296	HSBC	40.02	JP Morgan	21.11	Citicorp Noms	7.14	68.27	77.03	80.92	85.32

APPENDIX 3c: MAJOR SHAREHOLDINGS IN EACH COMPANY IN THE ASX 100 INDEX AT 30 JUNE 2016

ASX 100 No/Name	Number of shareholders	Largest Shareholder	% Shares	Second Largest Shareholder	% Shares	Third Largest Shareholder	% Shares	% shares held by large shareholders			
								Top 3	Top 5	Top 10	Top 20
41. CWN	67 085	CPH Crown Holdings	47.01	HSBC Noms	12.51	JP Morgan	8.77	68.31	75.11	82.80	85.56
42. AIO	51 865	HSBC Noms	33.16	JP Morgan Noms	19.93	Citicorp Noms	15.01	68.10	78.72	87.64	90.72
43. ASX	54 422	HSBC Noms	19.25	JP Morgan Noms	13.68	BNP Paribas Noms	10.20	43.03	56.95	60.07	61.95
44. MPL	282 610	HSBC Noms	18.08	JP Morgan Noms	14.57	National Noms	7.19	39.81	49.01	55.95	58.66
45. DXS	31 197	HSBC Noms	33.88	National Noms	20.72	JP Morgan	18.14	72.74	85.81	88.67	89.96
46. S32	461 756	HSBC Noms	20.28	JP Morgan Noms	16.80	National Noms	6.92	44.20	54.58	63.80	69.28
47. ALL	13 423	Not named	31.84	Not named	13.92	Not named	13.40	59.16	73.13	88.76	95.53
48. TWE	61 494	JP Morgan	27.65	HSBC Noms	27.18	National Noms	12.90	67.73	82.46	87.27	88.52
49. LLC	61 957	HSBC Noms	21.50	JP Morgan Noms	16.06	National Noms	12.39	49.95	61.07	68.26	72.39
50. STO	148 853	HSBC Noms	20.28	Citicorp Noms	12.83	JP Morgan	11.01	44.12	56.87	61.85	64.00
51. REA	12 153	News Ltd	56.06	JP Morgan Noms	8.31	HSBC Noms	7.61	71.98	82.03	91.22	93.01
52. MGR	30 816	HSBC Noms	36.60	JP Morgan Noms	20.88	National Noms	13.87	71.35	84.17	89.22	90.89
53. COH	28 833	HSBC Noms	26.50	JP Morgan Noms	17.63	National Noms	16.72	60.85	69.00	73.26	75.47
54. CCL	Data not included in 2016 Annual Report										
55. QAN	106 991	HSBC Noms	26.78	JP Morgan Noms	18.36	National Noms	12.96	58.10	72.03	78.04	80.26
56. SPK	40 770	HSBC Noms (NZ)	29.62	National Noms (NZ)	19.86	JP Morgan	7.93	57.43	67.58	76.98	84.05
57. DMP	7 363	Somad Holdings	26.30	JP Morgan Noms	21.11	HSBC Noms	16.66	64.07	76.46	85.24	90.00
58. CPU	43 022	HSBC Noms	23.08	JP Morgan Noms	15.37	National Noms	10.36	48.81	61.19	70.66	75.75
59. TTS	70 845	JP Morgan	20.85	Citicorp Noms	19.21	National Noms	6.27	46.33	56.48	66.58	70.09
60. DUE	21 230	HSBC Noms	25.95	BNP Paribas	16.09	JP Morgan	13.99	56.03	73.44	80.38	82.18

APPENDIX 3d: MAJOR SHAREHOLDINGS IN EACH COMPANY IN THE ASX 100 INDEX AT 30 JUNE 2016

ASX 100 No/Name	Number of shareholders	Largest Shareholder	% Shares	Second Largest Shareholder	% Shares	Third Largest Shareholder	% Shares	% shares held by large shareholders			
								Top 3	Top 5	Top 10	Top 20
61. IPL	53 173	HSBC Noms	40.22	JP Morgan	17.51	National Noms	6.99	64.72	73.77	78.13	79.79
62. AST	12 981	Singapore Power	31.10	State Grid International	19.90	HSBC Noms	13.10	64.10	75.60	88.37	92.16
63. FBU	39 484	NZ Central Securities	53.63	JP Morgan	5.22	HSBC Noms	3.48	62.33	67.81	73.33	77.50
64. SEK	27 072	JP Morgan	25.54	HSBC Noms	22.10	National Noms	13.12	59.66	67.51	74.53	79.25
65. FPH	20 846	JP Morgan Chase Bank	7.19	JP Morgan	6.89	National Noms	6.10	20.18	32.17	52.31	68.14
66. CGF	33 674	HSBC Noms	28.29	JP Morgan	15.21	National Noms	9.96	53.40	63.65	70.89	74.39
67. ORI	170 378	HSBC Noms	21.94	JP Morgan	17.74	National Noms	8.99	48.40	58.82	62.49	64.71
68. HVN	14 045	Gerald Harvey	29.83	Christopher Brown	16.48	HSBC Noms	11.17	57.40	73.95	86.56	93.13
69. HSO	25 801	JP Morgan	27.70	HSBC Noms	20.79	National Noms	11.29	59.78	68.33	76.14	78.80
70. BLD	53 548	HSBC Noms	22.13	JP Morgan	15.93	Citicorp Noms	12.12	50.18	66.80	76.63	78.66
71. VOC	30 871	HSBC Noms	18.64	JP Morgan	14.30	National Noms	8.11	41.04	51.33	58.13	65.11
72. BEN	93 086	HSBC Noms	13.53	JP Morgan	7.99	Citicorp Noms	4.19	25.71	30.97	33.29	35.01
73. SGR	73 202	HSBC Noms	23.08	JP Morgan	15.12	Citicorp Noms	11.26	49.46	64.39	81.1	86.64
74. BOQ	96 092	HSBC Noms	16.86	JP Morgan	9.78	National Noms	7.62	34.26	43.47	47.24	49.35
75. AWC	52 853	HSBC Noms	24.53	JP Morgan	17.00	Citicorp Noms	10.55	52.08	65.06	79.63	86.57
76. MFG	13 273	HSBC Noms	12.60	Magellan Equities	10.45	JP Morgan	10.07	33.12	46.60	57.29	63.85
77. SKI	19 318	HSBC Noms	36.69	JP Morgan	11.24	Citicorp Noms	9.32	57.25	66.68	73.65	79.46
78. PTM	7 484	Platinum Investments	17.05	Citicorp Noms	3.32	Avanteos	1.41	21.78	23.47	25.03	26.73
79. BSL	85 295	HSBC Noms	24.05	Citicorp Noms	16.19	JP Morgan	14.45	54.69	72.82	79.90	83.64
80. ABC	NA	Barro Properties	28.72	HSBC Noms	12.46	Citicorp Noms	9.31	50.49	63.86	70.81	73.48

APPENDIX 3e: MAJOR SHAREHOLDINGS IN EACH COMPANY IN THE ASX 100 INDEX AT 30 JUNE 2016

ASX 100 No/Name	Number of shareholders	Largest Shareholder	% Shares	Second Largest Shareholder	% Shares	Third Largest Shareholder	% Shares	% shares held by large shareholders			
								Top 3	Top 5	Top 10	Top 20
81. TAH	117 175	JP Morgan	21.74	HSBC Noms	20.23	National Noms	14.54	56.51	65.48	69.45	72.39
82. HGG PLC	43 559	JP Morgan	11.47	HSBC Noms	10.96	RBC Investor Services	7.75	30.18	44.38	68.45	77.04
83. CYB PLC	389 245	Data not included in 2016 Annual Report									
84. ORA	48 167	HSBC Noms	18.83	JP Morgan Noms	15.63	National Noms	13.70	48.16	59.89	69.43	74.21
85. FLT	26 111	Gairnsdale P/L	15.1	Gehar P/L	14.5	James Mgmt Svcs	12.9	42.5	52.8	62.2	70.7
86. EVN	19 032	Citicorp Noms	34.95	HSBC Noms	16.52	National Noms	14.51	65.98	79.33	84.42	86.53
87. BTT PLC	Data not included in 2016 Annual Report										
88. LNK	3 740	JP Morgan	21.45	HSBC Noms	20.56	National Noms	12.22	54.2	70.19	80.61	88.84
89. CAR	18 086	HSBC Noms	24.40	JP Morgan	14.50	National Noms	7.10	46.0	58.4	71.1	77.7
90. QUB	24 209	HSBC Noms	22.05	JP Morgan	7.41	RBC Investor Services	5.64	35.1	44.33	55.62	62.23
91. BKL	13 694	MC Blockhard	19.25	Citicorp Noms	6.10	HSBC Noms	4.50	29.85	37.12	46.94	55.67
92. ANN	39 704	HSBC Noms	27.41	National Noms	14.68	JP Morgan	13.07	55.16	64.86	71.15	73.42
93. NST	12 341	HSBC Noms	24.65	National Noms	19.25	JP Morgan	17.67	61.57	70.58	74.01	76.92
94. SKC (NZ)	17 408	HSBC (NZ) Noms	8.67	JP Morgan	7.99	HSBC (NZ) Noms	6.50	23.16	35.87	51.60	70.82
95. MQA	114 282	HSBC Noms	22.22	JP Morgan	16.10	National Noms	8.96	47.58	58.85	68.08	71.55
96. IOF	13 823	HSBC Noms	23.10	JP Morgan	16.39	Merrill Lynch	9.83	49.64	66.80	81.24	86.63
97. ILU	24 047	HSBC Noms	33.63	JP Morgan	18.49	Citicorp Noms	13.80	65.92	80.27	84.33	86.55
98. IFL	63 797	Trust Coy Aust	8.49	HSBC Noms	8.12	Citicorp Noms	7.50	24.09	35.54	41.06	44.96
99. DLX	37 761	HSBC Noms	22.42	JP Morgan	18.05	Citicorp Noms	10.08	50.55	60.28	66.70	71.02
100.PMV	8 003	Century Plaza	32.81	JP Morgan	12.82	HSBC Noms	9.28	23.16	35.87	51.60	70.82

APPENDIX 4: AN EXAMPLE OF THE CHANGES IN MAJOR SHAREHOLDER PORTFOLIOS IN THE ASX 100 COMPANIES OVER THE PERIOD I JULY 2007 TO 30 JUNE 2016

ASX COMPANY	SHAREHOLDER	NUMBER OF SHARES IN 2007	% ALL SHARES 2007	NUMBER OF SHARES IN 2011	% ALL SHARES 2011	NUMBER OF SHARES IN 2015	% ALL SHARES 2015	NUMBER OF SHARES IN 2016	% ALL SHARES 2016
1 CBA	HSBC Custody Nominees (Aust)	109 534 755	8.42	199 701 465	12.81	270 757 648	16.64	295 339 382	17.22
	JP Morgan Noms	109 243 847	8.40	166 016 623	10.65	168 399 464	10.35	182 660 882	10.65
	National Nominees	97 156 812	7.47	131 816 588	8.46	127 377 721	7.83	100 493 201	5.86
	Citicorp Nominees	79 937 793	6.15	67 836 352	4.35	86 227 061	5.30	100 457 862	5.86
	Various (4)	34 231 769	2.63	29 371 985	1.88	36 846 518	2.26	55 488 308	3.24
TOTALS			33.07	594 743 013	38.15	689 608 412	42.38		42.80
2 WBC	HSBC Custody Nominees (Aust)	281 616 743	15.10	457 678 453	15.10	577 884 330	18.15	649 907 415	19.42
	JP Morgan Noms	220 319 040	11.81	371 801 509	12.27	358 040 748	11.25	411 679 271	12.30
	National Nominees	183 863 682	9.86	322 630 545	10.65	312 571 318	9.82	243 646 379	7.28
	Citicorp Nominees	123 019 924	6.60	139 374 084	4.60	192 467 775	6.05	211 759 963	6.33
	Various (2)	59 056 593	3.17	57 080 520	1.88	70 328 517	2.21	75 156 046	2.25
TOTALS			46.54	1 348 565 111	44.50	1 511 292 688	47.48		47.58
8 BHP	HSBC Custody Nominees (Aust)	377 638 519	11.25	557 639 660	17.36	609 196 602	18.97	639 750 740	19.92
	JP Morgan Noms	372 983 700	11.11	367 083 926	11.43	442 160 195	13.77	454 398 834	14.15
	National Nominees	324 120 541	9.65	322 857 804	10.05	256 763 649	7.99	206 630 417	6.43
	Citicorp Nominees (BHP ADR)	124 360 778	3.70	211 082 608	6.57	173 245 830	5.39	181 277 380	5.64
	Citicorp Nominees Pty Ltd	440 460 280	13.12	134 103 375	4.18	173 045 019	5.39	169 453 030	5.28
TOTALS			48.83	1 592 767 373	49.59	1 654 411 295	51.51		51.42

Noms = Nominees. Various (2) and (4) indicates the number of shareholders in the Number 5 position over the period examined.

APPENDIX 5a: EXAMPLES OF THE ANNUAL REVENUE, NET PROFIT AFTER TAX AND DISTRIBUTION TO SHAREHOLDERS IN THE ASX 100 COMPANIES 2006/7 TO 2015/16

ASX No/Coy	ITEM	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
1. CBA	Total operating income (A$m)	13 197	14 341	16 818	19 059	19 659	19 476	20 821	22 401	23 587	24 747
	NPAT (A$m)	4 527	4 733	4 415	6 101	6 835	7 039	7 760	8 680	9 137	9 450
	NPAT attributable to equity holders	4 470	4 791	4 723	5 664	6 394	7 016	7 618	8 631	9 063	9227
	% NPAT paid out as dividends	75.2	74.1	73.1	79.7	78.3	76.0	77.4	75.5	75.7	78.3
	Dividends (A$)	2.56	2.66	2.28	2.90	3.20	3.34	3.64	4.01	4.20	4.20
	ASX price (A$)	55.02	40.33	38.49	59.58	49.31	52.88	68.89	81.13	86.29	72.56
2. WBC	Total operating income (A$m)	10 319	11 605	16 505	16 910	16 913	17 983	18 595	19 937	21 642	20 985
	NPAT (A$m)	3 518	3 932	3 517	6 412	7 059	6002	6 825	7 625	8 068	7 460
	NPAT attributable to equity holders	3 451	3 859	3 446	6 346	6 991	5 936	6 751	7 561	8 012	7 445
	% NPAT paid out as dividends	70.1	68.9	92.6	64.9	67.0	85.3	79.7	74.7	73.4	84.2
	Dividends (A$)	1.31	1.42	1.16	1.39	1.56	1.66	1.74	1.82	1.87	1.88
	ASX price (A$)	25.83	20.57	19.88	28.02	21.08	21.01	28.71	33.97	32.82	28.34
3. ANZ	Total operating income (A$m)	11 022	12 295	14 367	15 782	16 815	17 848	18 391	19 578	20 537	20 577
	NPAT (A$m)	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
	NPAT attributable to equity holders	4 180	3 319	2 943	4 501	5 355	5 661	6 310	7 271	7 493	5 709
	% NPAT paid out as dividends	60.9	82.6	82.3	71.6	68.5	69.4	71.4	67.4	68.6	81.9
	Dividends (A$)	1.36	1.36	1.02	1.26	1.40	1.45	1.64	1.78	1.81	1.60
	ASX price (A$)	28.58	33.60	33.10	23.44	21.34	22.03	28.58	33.60	33.10	23.44

APPENDIX 5b: EXAMPLES OF THE ANNUAL REVENUE, NET PROFIT AFTER TAX AND DISTRIBUTION TO SHAREHOLDERS IN THE ASX 100 COMPANIES 2006/7 TO 2015/16

ASX No/Coy	ITEM	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
4. NAB	Total operating income (A$m)						17 715	18 203	18 856	18 437	18 122
	NPAT (A$m)						4 083	5 363	5 184	6 806	6 425
	NPAT attributable to equity holders						4 082	5 355	5 295	6 338	352
	% NPAT paid out as dividends						NA	NA	NA	NA	NA
	Dividends (A$)						1.80	1.90	1.98	1.98	1.98
	ASX share price (A$)	42.14	25.50	31.30	23.99	23.26	21.12	28.35	31.55	32.86	24.61
5. TLS	Total operating income (A$m)				25 029	25 304	25 503	24 776	26 296	26 112	27 850
	NPAT (A$m)				3 940	3 250	3 424	3 791	4 345	4 305	5 849
	NPAT attributable to equity holders				3 883	3 231				4 231	5 780
	% NPAT paid out as dividends						102.0	93.0	86.0	88.0	65.0
	Dividends (A$)	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.295	.305	0.31
	ASX share price (A$)	4.72	4.34	3.28	3.23	3.04	3.69	4.76	5.26	6.20	5.35
6. BHP	Total operating income (US$m)	47 473	59 473	50 211	52 798	71 739	56 642	53 860	56 762	44 636	30 912
	NPAT (US$m)	NA	NA	6 338	13 009	23 946	16 617	12 820	15 224	2 878	(6 207)
	NPAT attributable to equity holders(US$m)	13 416	15 390	5 877	12 722	23 648	15 473	11 223	13 832	1 910	(6 385)
	% NPAT paid out as dividends	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
	Dividends (US$)	0.47	0.70	0.82			1.12	1.16	1.21	1.24	0.78
	ASX share price (A$)	32.05	44.12	30.96	35.45	43.27	31.35	28.42	32.99	27.50	17.54

APPENDIX 5c: EXAMPLES OF THE ANNUAL REVENUE, NET PROFIT AFTER TAX AND DISTRIBUTION TO SHAREHOLDERS IN THE ASX 100 COMPANIES 2006/7 TO 2015/16

ASX No/Coy	ITEM	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
7. CSL	Total operating income (US$m)						4 814	5 130	5 524	5 628	6 129
	NPAT (US$m)						NA	1 216	NA	NA	NA
	NPAT attributable to equity holders(US$m)						1 024	1 211	1 307	1 379	1 242
	% NPAT paid out as dividends	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
	Dividends (US$)						0.865	1.02	1.13	1.24	1.26
	ASX share price (A$)	29.10	35.51	32.00	32.57	32.46	39.42	61.58	66.94	87.77	106.75
8. WES	Total operating income (A$m)	9 667	33 301	50 641	51 485	54 875	57 685	57 466	59 903	62 129	66 981
	NPAT (A$m)	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
	NPAT attributable to equity holders	786	1 063	1 522	1 565	1 922	2 126	2 261	2 689	2 440	407
	% NPAT paid out as dividends	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
	Dividends (A$)	2.25	2.00	1.10	1.25	1.50	1.65	1.80	2.00	2.00	1.86
	ASX share price (A$)	44.89	36.86	22.49	30.12	32.41	30.80	40.80	42.57	39.47	39.26
9. WOW	Total operating income (A$m)	42 477	47 035	49 595	51 694	54 143	54 771	59 158	60 773	60 679	60 186
	NPAT (A$m)	1 311	1 652	1 860	2 038	2 140	2 179	2 359	2 458	2 607	1 606
	NPAT attributable to equity holders(A$m)	1 294	1 627	1 836	2 021	2 124	1 817	2 259	2 452	2 146	(1 235)
	% NPAT paid out as dividends	69.0	68.9	69.7	70.4	70.0	85.4	73.4	70.3	81.9	(79.5)
	Dividends (A$)	0.74	0.92	1.04	1.15	1.22	1.26	1.33	1.37	1.39	0.77
	ASX share price (A$)	27.60	25.02	25.96	27.10	27.25	26.38	32.81	35.66	27.39	20.56

APPENDIX 5d: EXAMPLES OF THE ANNUAL REVENUE, NET PROFIT AFTER TAX AND DISTRIBUTION TO SHAREHOLDERS IN THE ASX 100 COMPANIES 2006/7 TO 2015/16

ASX No/Coy	ITEM	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
10. SCG	Total operating income (A$m)									2 868	2 521
	NPAT (A$m)									2 730	3 022
	NPAT attributable to equity holders(A$)	Listed on the ASX 25/06/2014.								2 587	2 976
	% NPAT paid out as dividends									NA	NA
	Dividends (A$)									0.21	0.21
	ASX share price (A$)									3.85	4.67
11. TCL	Total operating income (A$m)									1 860	2 210
	NPAT (A$m)	Data for periods before 2015 not available.								(373)	22
	NPAT attributable to equity holders									(182)	99
	% NPAT paid out as dividends									NA	NA
	Dividends (A$)									0.375	0.43
	ASX share price (A$)	7.68	4.23	3.77	4.10	4.88	5.28	6.22	7.39	9.44	11.53
12. MQG	Total operating income (A$m)	7 181	8 248	5 526	6 638	7 665	6 963	6 657	8 132	9 262	10 135
	NPAT (A$m)	1 551	1 888	974	1 093	989	762	872	1 279	1 623	2 088
	NPAT attributable to equity holders(A$m)	1.463	1 803	871	1 050	956	730	851	1 265	1 604	2 063
	% NPAT paid out as dividends	54.3	52.2	60.0	60.4	67.3	66.4	79.0	66.8	67.6	65.7
	Dividends (A$)	3.25	3.45	1.85	1.86	1.86	1.40	2.00	3.76	3.30	4.00
	ASX share price (A$)	NA	48.04	37.77	39.50	31.23	26.00	41.87	60.46	82.50	71.20

APPENDIX 6a: ASX 50 COMPANIES (AS AT 30 JUNE 2016) SHORT TERM AND LONG TERM INCENTIVE SCHEMES FOR THE 2016 FINANCIAL YEAR

COMPANY		STRATEGIC OBJECTIVES OF REMUNERATION POLICY	COMPONENTS OF SHORT TERM INCENTIVE (STI) SCHEME	COMPONENTS OF LONG TERM INCENTIVES (LTI) SCHEME
Position	**Name**			
1	CBA	One purpose of the scheme is to align remuneration policy with shareholder interests and business strategy (NB: All key management personnel are eligible).	STIs may be offered in the range of 0-150% of fixed remuneration. 50% of the STI is paid as cash in the relevant year. The other 50% is paid in cash in the following year. STIs are based on (i) customer focus, (ii) strength of current year balance sheet, (iii) employee productivity, (iv) technology application and (v) building an effective workforce.	LTIs are paid as share options 100% deferred for 4 years. LTIs may be offered up to 100% of fixed remuneration and are measured against both Total Shareholder Return (TSR) (75%) and Customer Satisfaction (25%). TSR is externally measured against a stated peer group of other ASX listed companies.
2	WBC	There are four remuneration policy objectives: 1. To motivate strong performance against both short and long term performance measures. 2. To manage risk appropriately. 3. To link pay to shareholders' interests. 4. To attract and retain high performing executives.	STIs may be offered in the range of 0-150% of the STI target. 50% of the STI is paid as cash in the relevant year. The other 50% is paid as restricted shares or share rights. Performance is measured against risk adjusted financial targets as well as against non-financial targets that support the Group's strategy.	LTIs are paid as share rights that vest over four years if performance hurdles are reached. Award of LTIs takes into account market benchmarks, individual performance over time, succession potential and key skills.

APPENDIX 6b: ASX 50 COMPANIES (AS AT 30 JUNE 2016) SHORT TERM AND LONG TERM INCENTIVE SCHEMES FOR THE 2016 FINANCIAL YEAR

COMPANY		STRATEGIC OBJECTIVES OF REMUNRATION POLICY	COMPONENTS OF SHORT TERM INCENTIVE (STI) SCHEME	COMPONENTS OF LONG TERM INCENTIVE (LTI) SCHEME
Position	**Name**			
55	QAN	… remuneration outcomes that are aligned with performance and the creation of shareholder value.	STIs may be offered in the range of 0 – 120% of base pay. Two thirds of the allocated STI will be in cash and one third will be restricted shares. The weightings applied to the elibility criteria are: (i) 50% is based on NPAT and 50% on individual contribution to group strategies (transformation, safety, customer relations and growth).	LTIs may be offered in the range of 50-80% of base pay and will be based on Total Shareholder Returns over a three year period. Company TSR will be compared against: (i) all other companies in the ASX 100 index; and (ii) other global listed airlines.
80	ABC	… robust performance measures linked to strategic plans and long term Total Shareholder Returns.	The STI will be offered as a mixture of cash and deferred share rights. 60% of the STI is related to company NPAT, 20% to divisional EBIT and 20% related to individual objectives.	The LTI will be offered as fully paid shares.50% of the LTI will be based on company earnings per share and 50% will be based on Total Shareholder Returns.
99	DLX	The remuneration strategy is aimed at: (i) encouraging a strong focus on financial and operational performance; (ii) attracting, motivating and retaining appropriate people; and (iii) aligning executive and stakeholder interests through share ownership.	A NPAT 'gateway' is set each year. It is based on prior year NPAT, economic conditions and industry trends. 70% of any STI award will be based on group NPAT, Group EBIT, business or region EBIT, cash flow and working capital. 10% will be based on safety and environmental measures and 20% based on personal alignment to strategic objectives.	The base for the LTI program is a 4% compound growth in earnings per share. Any such awards will be made in restricted company shares (that may be funded by a repayable company loan scheme) and will have a three year base.

APPENDIX 7: BOARD DIVERSITY IN A SELECTED GROUP OF THE ASX 100 COMPANIES (AS AT 30 JUNE 2016)

COMPANY		GICS SEGMENT	BOARD SIZE			MEMBER		AGE (av)		QUALIFICATION		AICD
ASX No.	NAME		ALL	M	F	ED	NED	M	F	M	F	
1	CBA	Financials (Banking)	12	8	4	1	11	64	58	NA	NA	3
9	WOW	Consumer Staples	8	4	4	1	7	NA	NA	UG – 2 PG - 2	UG – 2 PG – 2	NA
16	RIO	Materials (Mining)	7	5	2	2	5	60	59	UG – 3 PG - 2	UG – 1 PG – 1	NA
26	AGL	Utilities	8	5	3	1	7	64	56	UG – 2 PG - 3	UG – 2	3
40	CTX	Energy	7	5	2	1	6	NA	NA	UG – 4 PG - 1	PG – 2	3
55	QAN	Industrials (Transport)	10	7	3	1	9	59	55	UG - 1 PG - 6	UG – 1 PG – 2	2
71	VOC	Telecoms	8	7	1	2	6	NA	NA	UG – 5 PG - 1	PG 1	4
80	ABC	Industrials (Manuf)	6	5	1	1	5	64	59	UG – 2 PG - 1	PG – 1	3
85	FLT	Consumer Discretionary	5	4	1	1	4	57	42	UG - 4	UG – 1	3
98	IFL	Financials (Insurance)	6	4	2	1	5	NA	NA	UG – 3 PG - 1	UG – 1 PG – 1	4

Source: All data was extracted from the Directors' Report section of the relevant company 2016 Annual Report

Notes: M = Male; F = Female; ED = Executive Director; NED = Non-executive Director; UG = Undergraduate Degree; PG = Postgraduate Degree
AICD = Australian Institute of Company Directors member; NA = Not disclosed in the company's 2016 annual report