The reporting season has focused public attention, unfavourably, on many companies that have previously represented the who’s who of Australian corporate achievement, yet whose performance is now unsettled: Southcorp, Qantas, Wesfarmers, AMP and Aristocrat. This attention has been further soured by the most recent golden handshakes to departing executives, even those who have left behind poorly performing companies. All of this on top of unprecedented scrutiny of companies that appear to have been parodies of corporate stability: NRMA, HIH, One.Tel. The clamour of public voices asking why corporate Australia seems riven by incompetence, greed, mismanagement and even, at times, corruption, is not about to subside.

Mr Fred Hilmer, Chief Executive of John Fairfax Holdings Ltd, opened the CSA 2nd Annual Corporate Symposium on Corporate Accountability — An Impact on Community Expectations, with a warning that the main issue facing corporate Australia in 2003 is the erosion of trust. He noted that the insensitivity to community expectations, especially in relation to communication, has focused attention on the lack of leadership in boardrooms around Australia. ‘There is a lack of trust in CEOs, in analysts, in auditors, even in the market itself. Without trust you cannot have the market working properly. Commerce stops where there is no trust. The key leadership challenge is restoring trust.’

Mr Hilmer noted that the wrong question to ask is, how do we regulate? With trust under challenge, the right question is, how do we restore it? He commented that while a regulation-driven recovery is not going to happen, at present the corporate community does not have the moral position to argue against regulation. His warning to corporate directors and officers is that speaking out against regulation in the current climate is viewed as trying to maintain a position from which they can take advantage for themselves, at cost to shareholders. More rules might not be the solution, but nor is fighting them the proper approach.

But is one-size-fits-all regulation the best approach? Mr Hilmer noted that legislation that is black letter in form and intent is not workable, but it is the high price that needs to be paid for serious lapses in judgment and morals in the corporate world. These lapses range from a bias to covering up problems in the hope that they will go away in time to rewarding incompetence. ‘You need to confront problems, disclose them. And both board and senior management need to take a tougher approach to competence and pay for performance. I think the real test of character of a company, the real test of character of a system, is when we are prepared to let those people go who are making us money but not doing it in ways that we really are proud of’.

Enforcing values through leadership and behaviour is the leadership challenge. ‘We must go hard after transgressors,’ said Mr Hilmer, who believes that executives who break the law should be jailed, ‘because if you want to erode public trust you put someone in jail who has stolen a car but let someone who has obviously taken a lot of money from shareholders in patently wrong circumstances live a life somewhere in luxury.’

His calls for leadership were backed up by a panel of experts noting that chairmen find it difficult to confront directors, that Australian boards do not really understand the concept of accountability, that the time and effort put into CEO recruitment is not reflected in board recruitment, that the lack of performance appraisals of directors works against a culture of transparency and that courage is required in the boardroom but is, at present, conspicuously absent.

Ms Helen Conway, Company Secretary and General Counsel, Caltex Australia Limited, spoke of how executive remuneration continues to be done without consultation of and disclosure to shareholders. Even when it is grudgingly disclosed, it is only partial. Only one director in recent history refused directors’ retirement benefits upon retirement, despite the erosion of shareholder value over which many directors presided. She believes that directors not accepting that they need to fall on their swords is fundamental to their lack of appreciation of what the community requires of
them. Noting that a prescriptive approach is not necessarily the best approach, Ms Conway argues that guidelines provide a structure within which to work. Assess the guidelines in relation to your own company, she recommends, and if something does not work for your particular situation, disclose it and let the shareholders decide how they want the company to proceed. Importantly, don’t make the decision behind closed doors.

The importance of creating a culture of transparency as part of meeting the needs of a modern investment community was also stressed by Ms Karen Hamilton, Executive General Manager, Issuers & Market Integrity, Australian Stock Exchange. She noted that if you lose investor confidence even good news is met with a decline in the share price. This aligned with the presentation by The Hon Susan Ryan AO, President, Australian Institute of Superannuation Trustees, who sees shareholder activism as forcing a change in corporate governance practices.

Superannuation assets in Australia now stand at $505.7 billion. Of this, 44 per cent is invested in equities and units in trust, with most of the community now shareholders, if not directly then, just as vitally, through this means of saving. Most superannuation funds delegate the investment process to investment managers, and the performance of the companies in which they invest is now crucial to the future of most Australians. If the investments made by investment managers on behalf of fund members fail, Australians lose their savings. Superannuation assets decreased by 2.7 per cent in the September 2002 quarter, and the community saw its savings go backwards while unethical corporate behaviour dominated the headlines. Members of superannuation funds are now calling on their trustees to demand more of their investment managers in return for their large fees. Trustees are demanding that investment managers do more to ensure that the companies they invest in are properly run, and to take action on their behalf. Ms Ryan stressed that this will result in voting out poorly performing boards and engaging with poorly performing companies.

The emphasis on the expected increase in corporate governance standards and reforms as a matter of public concern was supported by Professor Thomas Clarke, Director, Centre for Corporate Governance, University of Technology. His overview of the cyclical nature of crisis and reform in corporate governance allowed him to note that there will never be a perfect system of corporate governance. Market systems are competitive and volatile and dynamic systems of governance will reflect this. Corporate governance is about risk-taking both to improve corporate performance and enhance corporate accountability.

A radical voice suggesting a complete overhaul of the system came from Dr Shann Turnbull, Fellow, The International Institute for Corporate Governance & Accountability, The George Washington University Law School. He noted that the cost of regulatory failures, the lack of independence of auditors, given they are paid by the companies they investigate, and the incapacity of accounting standards to prevent misleading reports should lead to a change in the existing system. He called for cumulative voting for directors and a watchdog board with the power to veto any related party transaction with a dominant shareholder or with any director. Reminding the audience that power corrupts and absolute power corrupts absolutely, Dr Turnbull recalled Adam Smith’s famous words that ‘when you get more than two businessmen together they will conspire against the public good’.

The symposium finished with a discussion on the need to open up board selection, with the majority of panel members agreeing that independent directors force this process to accelerate. Finite terms for directors was mooted, with moderator Mr Kerry O’Brien, of the ABC 7.30 Report, commenting that even US presidents are allowed no more than eight years in office. Audit committees were seen as non-controversial by most panel members, although there was a difference of opinion as to whether they should be applied to the top 500 companies only, because of the burden of cost they represented to smaller companies, or whether they should be mandatory for all listed companies. Some panel members felt that, if a company cannot afford an audit committee, there are doubts as to whether it should be listed at all. A final nod of agreement met the statement that disclosing sufficient information to allow investors to make their own decisions about the share price, and ensuring that such information does not rest with just a few board members, is at the heart of meeting community expectations.