

Not So Due Process:
The Case against the Due Process applied within the
Australian accounting standard setting arrangements.

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Abstract

Despite recent reforms of the Australian accounting standard setting regime the underlying mechanism for community participation in the standard setting process, the due process, remains unchanged.

Due process as developed through the common law can be thought of as providing insights into the equity of fair dealings between individuals and between individuals and government and finds relevance through time between the relationship of fair participation and just treatment. It is only through the observance of the main attributes of due process, *audi alteram partem* [to hear the other side; no person should be judged without a hearing] and *nemo iudex in re sua* [every judge must be free from bias] that the due process as applied within the accounting standard setting can be evaluated.

This paper contends that the due process as applied within the accounting standard setting regime differs significantly from its common law roots. Rather than a substantive process aimed at accommodating natural justice due process in the standard setting process finds total inclusion within the procedural domain alone and fails to incorporate an appropriate level of openness, opportunity to participate and consideration of interests and opinions that permeate the common law construct of due process. This divergence is clearly extenuated by the manner in which the value of participation is incorporated. Common law due process is consumed within the very nature of outcomes where the value of participation gives meaning to the outcome and is substantive in its nexus to the decision.

Whereas common law due process draws upon a notion of participatory citizenship that goes beyond self-interest; where citizens develop a consensus of the common good through debate and hearing the other side, the current process aligns more closely with an 'abolitionist' approach where groups of self-interested parties compete for advantage of private benefits and property rights in line with the modern interpretation of the public interest.

Keywords: Due Process; Natural Justice; Participation

Introduction

In January 2000, as a result of reforms associated within the Corporate Law Economic Reform Program, the Australian Parliament passed amendments to the accounting standard setting regime. One significant outcome of this reform was the removal of the influence the accounting profession held in the development of accounting standards through reconstructing and reconstituting the Australian Accounting Standards Board (AASB) as a government controlled body. The thrust of this change was to introduce new voices and a broader constituency into the standard setting process.

A second pertinent change was the decision made by the Financial Reporting Council (oversight body of the AASB) to adopt accounting standards issued by the International Accounting Standards Board (IASB). In this respect the AASB would follow their due process which would ideally be synchronised and integrated with the IASB's due process.

Whether these changes will constitute either a dilution of constituent ability to influence the process or a broadening of voices in the development of accounting standards will be revealed within the passage of time. However the underlying mechanism of community participation in the standard setting process, the due process, remains unchanged.

Due process as developed through the common law can be thought of as providing insights into the equity of fair dealings between individuals and between individuals and government and finds relevance through time between the relationship of fair participation and just treatment. It is only through the observance of the main attributes of due process, *audi alteram partem* [to hear the other side; no person

should be judged without a hearing] and *nemo iudex in re sua* [every judge must be free from bias] that the due process as applied within the accounting standard setting can be evaluated.

It is the contention of this paper that the due process as applied within the accounting standard setting regime differs significantly from its common law roots. It is argued that in terms of providing an appropriate consultative framework for the development of accounting regulation, the due process finds total inclusion within the procedural domain alone and fails to incorporate an appropriate level of openness, opportunity to participate and consideration of interests and opinions that permeate the common law construct of due process. This divergence is clearly extenuated by the manner in which the value of participation is incorporated. Common law due process is consumed within the very nature of outcomes where the value of participation gives meaning to the outcome and is substantive in its nexus to the decision.

Rather than a substantive process aimed at accommodating natural justice, the due process as applied within the accounting standard setting has a political bent. It enables an individual's entitlement to a fair hearing to be overridden by the need for a decision to be made and consequently does not promote the settlement of disputes, but rather merely bringing them to an end.

A crucial distinction relative to this discussion on due process rests with the relationship between procedures, outcomes and values. Procedures are connected to values in two ways in that they advance certain general social values and protect certain values about the treatment of individuals.

Bentham, cited in Galligan (1996, p.9) explains these relationships as follows.

Processes are there to produce accurate outcomes; accurate outcomes mean the correct application of the law to the facts and are important because they mean upholding social value, the values inherent in the substantive law and the value in stability through regular and consistent application of the law.²

Along this spectrum due process is discussed in terms of its substantive and procedural aspects. Substantive due process referring not to the rules of procedure but to the values which justify those rules, for instance, defining the rights and duties of persons whilst procedural due process refers to the procedures for enforcing those rights and duties. Inherent within is the concept of natural justice which can best be described as sitting between both substantive and procedural due process. Natural justice refers to the latter aspect of the old adage justice should be done and be seen to be done and is generally considered in the following sense: However ‘just’ the substance, injustice will occur unless the rules or law are administered impartially and objectively (Jackson, 1979; Golding, 1987).

Section one of this paper draws on the nature of due process as developed through the common law and its roots within natural justice. It considers the nature of participation within the policy making sphere and differentiates between normative policy making mechanisms that incorporate a democratic participatory citizenship, which embraces a search for the common good and the more secular, ‘abolitionist’ type policy making mechanisms premised upon the interaction of self-interested parties who compete for advantage of private benefits and property rights in line with the modern interpretation of the public interest.

² The two most illuminating studies of Bentham are: W. Twining, *Theories of Evidence: Bentham and Wigmore* (Weidenfeld, London, 1986) and G. Postema, *Bentham and the Common Law Tradition* (Clarendon Press, Oxford, 1988). Bentham’s writings on evidence and procedure are scattered, but some of his most important ideas are found in *A Treatise on Judicial Evidence* (M. Dumont (ed.), London, 1825), *Principles of Judicial Procedure* (Works 1837, ii), and *Rationale of Judicial Evidence* (Works, 1827, vi).

Section two then considers the existing standard setting due process in terms of its political bent and the nature of participatory activity pursuant to written submissions to exposure drafts. It is not the intention of this paper to consider in any detail the nature of lobbying, formal or informal, or the content analysis of written submission, suffice to consider in a general sense the participants involved.

Section three then concludes with a discussion on the perceived differences between common law due process and that applied within the accounting standard setting regime.

1. Theory of Due Process

Philosophical tradition has prevailingly related a sense of justice to the idea of equality. This combined relationship was significant because it not only required that laws be administered impartially and that like cases be treated alike, but it also demanded that the action of public officials who exercised authority “should not be capricious or arbitrary, but based on principle (Golding, 1987, p.120)”. The exclusion of arbitrariness was more fundamental to the concept of justice than equality alone. It encompassed the interconnected notions of objectivity, rationality, impartiality, consistency and equality. In dispute settling it also incorporated the notion of neutrality. It was not enough merely to treat the parties in a like or equal fashion, but rather that rules of fair procedure be established which equalised and maintained the parity of the parties. Treating persons equally badly was not necessarily seen as giving them justice. They should not only have the opportunity to state their case but also have a fair or adequate opportunity to do so.

Concepts of justice and equality can be dated to antiquity. The Athenian (Heliastic)³ judicial oath, for instance, contained a promise to listen equally to both prosecutor and defendant. Justice in the Greek context was seen as a two-sided coin. On the one side was an idea of natural justice which referred to a more formal mode of justice and was largely associated with the idea of the rule of law as contrasted with an idea of natural law or substantive justice premised on the view that fundamental laws exist in nature which are common to all mankind.

The Romans would later accept these concepts of natural justice as legal principles that were 'natural' or self-evident and did not require a statutory basis. The Roman lawyer and statesman, Seneca, stated of natural justice that "whoever shall have given judgment, leaving one of the parties unheard, will not have acted justly, even if his judgment in fact does justice (Kelly, 1992, p.76)".

These fundamental rules of natural justice were seen as a means to an end and not an end in themselves. "The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with and so forth (Jackson, 1979, p.6)". Consequently, the rules of natural justice were to be both flexible and capable of adaptation to accommodate whatever set of factual circumstances was in issue. In a general sense they were to apply whenever the rights, property or legitimate expectations of an individual were affected.

³ Heliastic Oath: "I shall vote according to the laws and decrees passed by the Assembly and the Council, but concerning things about which there are no laws I shall decide to the best of my judgment, without favor or enmity. I will vote only on the matters raised in the charge, and I will listen impartially to accusers and defenders alike".

Whatever the uncertainty inherent within the phrase natural justice, it connotes, above all, the maxims *audi alteram partem*; to hear the other side and that no person should be judged without a hearing and *nemo iudex in re sua* which means that nobody should judge his or her own case. By extension, however, it is often modified to entail the notion that a judge must be impartial or free from bias. Thomas Hobbes in his masterpiece, *Leviathan*, noted that “if a man be trusted to judge between man and man, it is a precept of the law of nature that he deal equally between them (Jackson, 1979, p.26)”. The importance of the principle that a judge should be impartial could hardly be more clearly illustrated than by the dictum in *Day v Savadge*, (1614) Hob 85.87; “Even an Act of Parliament made against natural equity as to make a man judge in his own cause is void (Jackson, 1979, p.29)”.

From the time of the Year Books, English law has recognised the importance of both a hearing and an impartial judge. From these concepts developed a notion of due process which was first introduced into the common law through the *Magna Carta*, in clause 39 of the 1215 Charter. The phrase due process of law was later expressly introduced into American jurisprudence in the Fifth Amendment (1791) to the *American Constitution*, which provides that “nor [shall any person] be deprived of life, liberty or property, without due process of the law”.

In the modern world international tribunals have recognised these as general principles of law common to civilized communities. They have been enshrined in Article Ten of the *Universal Declaration of Human Rights*, Article Fourteen of the *International Covenant on Civil and Political Rights* and Article Six of the *European Convention on Human Rights*.

The concept of due process as historically conceived had both procedural and substantive elements with procedural due process or fairness being a subordinate to the substantive. Substantive due process was not directly concerned with procedures but to the substantive limitations of government power. It was a conduit for incorporating into existing laws certain values not so expressly codified within it.

In contrast, the procedural element referred to certain procedures that came to be regarded as necessary for a fair trial, and was later extended in modified form to administrative purposes. Galligan (1996, p.168) believed that the “early growth of the common law was characterised not through abstract reflection on what the substantive rules ought to be, but by practical judgments about procedures”.

By the end of the nineteenth century, the substantive part of the due process, that no action should be taken against a person without the authority of the law, had been subsumed in the very idea of the rule of law, but the procedural aspects of due process had become enshrined in the procedures of courts. Irrespective of however defective the procedures may have been or appeared to have been they were considered due process.

In light of this and within the context of the old adage that justice should not only be done but should also be seen to be done an idea of procedural fairness developed premised upon rules relating to hearing, bias and evidence. Procedural fairness rests on the presumption that a person is treated fairly if they are treated in a manner in which they have a justifiable claim. First, under the hearing rule there is an implied right to be given a fair hearing, along with the opportunity to present one’s case. The decision maker must afford a person whose interests will be adversely affected by a decision an opportunity to present their case. It is a fundamental principle of

procedural fairness that both sides to a dispute are given the opportunity to understand and answer any case against them. The adversarial process of dispute resolution requires that each party be given this opportunity.

Second, there is an implied right to have the decision made by an unbiased or disinterested decision maker, where the decision maker must not have an interest in the outcome or an appearance of bias in the decision. Third, under the no evidence rule, there is an implied right to have the decision based on logically probative evidence.

Embedded within a denial of natural justice is the implied right or ground for review against an administrative decision. At common law, denial of such natural justice allows a review in circumstances where the administrative decision might affect a person's rights, interests or legitimate expectations.

The issue of procedural fairness raises two pertinent questions. First, is the importance of fairness in procedure more than one of merely giving the impression of justice? Golding (1987, p.121) suggests that it is insufficient to only equalise the parties as "treating persons equally badly is not necessarily giving them justice". Rather, the parties should have, besides an equal opportunity to state their side, a fair or adequate opportunity to do so in a rational and objective manner. Importantly the adherence to standards of procedural fairness should promote the settlement of disputes, rather than merely bringing them to an end.

Second, does the existence of law presuppose satisfaction of natural law requirements? If the substantive law is unjust, does it matter if the procedural rules are fair or not? Does justice in the administration of laws merely consist in applying the laws correctly?

While the ideal of justice would demand that individuals have the same entitlement to justice in the hearing of their disputes as to be governed by substantively just laws, institutional design distinguishes fair procedure to the extent both are weighed against each other. Consequently an individual's claim for a fair hearing may be overridden by the desire to reach a just resolution.

At the heart of success in balancing these issues lies the fundamental issue of participation. Notwithstanding the vagaries and variations of definitions a simple explanation for present purposes would be that a person affected by a legal process will know the issue and be able to present and respond to issues of argument and evidence. Above all participation connotes an active involvement in process and an ability to influence the outcome.

The literature abounds with discussion on the nexus between participation and the common good (see Rawls, *A Theory of Justice*; Mill, *Utilitarianism*; *Representative Government*), albeit modern thought has delineated a separate concept of public interest which requires some elucidation before progressing.

According to Douglass (1980, pp.104-105) "the common good consisted of a number of specific objectives designed to promote the general human well-being of all people – such as peace, order, prosperity, justice and community". Inherent within the concept was an understanding that the common good applied to all persons and subjugated and subordinated individual and group interest to a lesser level. The pursuit of the common good was also considered to deliver tangible material benefits to the moral and spiritual well-being of the people.

The advent of the industrial revolution and acceptance of the neo-classical economic principle of self-interest brought with it a more individualistic approach where well-being was defined within the individual domain and premised upon an emerging acceptance of private benefits and property rights which required protection. By the early 19th century public interest was understood as the sum of particular interests (Gunn, 1969) and had begun to permeate into the layers of administrative processes. Participation in many administrative situations was institutionalised, left to the expertise of professionals, managers, and politicians or other consultative mechanisms such as committees. Criticisms of such approaches focused on the power differentials between those with the ability to influence as opposed to those neither engaged in the participation or who lacked sufficient power to express their preferences or views (see Cornwall and Gaventa, 1999).

On the benefits of participation the writings of John Stuart Mill are most instructive. He suggests that participation is a form of moral education in that it promotes the virtue and intelligence of the members of the community because the citizen is “called upon, while so engaged, to weigh interests not his own; to be guided, in case of conflicting claims, by another rule than his private partialities; to apply, at every turn, principles and maxims which have for their reason of existence the common good (1952, p.349)”. Mill also argued that participation led to the creation of good laws.

Inherent within this construct is an assumption that participation means more than simply putting an argument or casting a vote. It should encourage the examination of alternatives through active and positive discussion and argument in search of the most reasonable or best alternative.

The question which then begins to take shape is how the concern for effective regulation setting can be matched with the equally important concern that the processes be responsive to the community in general and to those affected by it in the particular. Cochran (1974) discerned a typology of public interest theories that help explore the issues and constraints associated with this issue. The typology distinguishes between a normative approach premised upon the utilitarian idealism of Jeremy Bentham and John Stuart Mill which encapsulates the original idea of the common good, where policy acceptance is based upon an ethical appeal to that which offers the greatest good at one end of a spectrum and the more pluralistic approaches that accept self interest through group influence as the focus of policy development at the other end.

The latter pluralistic approaches at best suggest a limited participatory input with the influence of outcomes the product of interest-group conflict. The most removed of these from the normative approach is an 'abolitionist' approach which does not recognise the existence of a 'society' but only groups of self-interested parties who compete for advantage of private benefits and property rights (see Cassinelli, 1958; Sturm, 1978). Further process and consensualist approaches are less radical to the extent they define society, the public good, public interest and interest groups.

The task becomes one of considering how groups and individuals should be treated in the policy making environment and how their input is incorporated as part of the policy forming process.

A first proposition based on the preceding principles of justice, equality, and procedural fairness therefore will embody the notion that those affected by a policy outcome had no prior entitlement to that outcome aside from the judgement being

premised on all things considered and the outcome was the best available for the common good. Inherent within is an understanding that the process is open to all parties to have an appropriate opportunity to participate by having their interests and opinions considered.

Within the realm of common law due process these principles are seen as being self-evident and as such the law has not promulgated a strict definition or fixed meaning of due process that can be imprisoned within the treacherous limits of any formula. The extent to which due process must be afforded a person is the consideration of sets of circumstances which begin with a determination of the substantive function of the law, which is then weighted against private interest effects.

Barron's *Law Dictionary* portrays due process not as a technical conception nor mechanical instrument, like most legal rules, but rather a process whose fixed content is unrelated to time, place and circumstance, which must be respected in periods of both calm and trouble. Its expression is said to find form, through its enforcement by law, that provides "that feeling of just treatment ... and profound attitude of fairness between man and man, and more particularly between individual and government (Gifis, 1996, p.159)", which has evolved through centuries of Anglo-Saxon constitutional history and civilisation. Importantly, it is not a yardstick, but rather compounded of history, reason, the past course of decisions, and stout confidence in the strength of democratic faith, while also being "a delicate process of adjustment inescapably involving the exercise of judgment (Gifis, 1996, p.159)".

With its greater nexus with participation, models of policy formulation premised on normative principles embellished with this construct of due process are seen to provide broader processes that include the means for gaining information about what

is proposed, for allowing those with an interest or concern to put their point of view, and to have some influence on outcomes. These processes are also more likely to include avenues through which the reasons and facts for the policy choice are explained.

Two issues present themselves in this respect. First, whilst participation is clearly one of the main values sought views about the point and worth of participation is varied and divergent. Second, if the aim of policy is to achieve what is good for society as a whole, there are several different conceptions of what this means and what processes are suited to achieving it. These issues can be resolved with reference to the following three normative models and their respective levels of community participation in achieving the common good.

1a. Standard Model

The first model of the common good is the one most likely to be evidenced in modern Western society. In its broadest sense, 'for the common good' carries the connotation that the policy maker defines the issue, examines the evidence and facts, identifies the different courses open, and then decides as appears best for the overall good. The good of the community is the governing criterion, not simply the policy maker's view of what is good, but that the policy maker will be guided by a framework of values which incorporates rationality, coherency and consistency along with being reasoned and reasonable in light of values specific to the community.

This model accepts that people of goodwill may still disagree on what should be done and consequently a decision by someone in authority is essential. The role of procedures in this model is to provide a structured process that enables opinions and

interests to be revealed through participation and involvement but which ultimately must ensure that the official makes a decision which best advances the common good.

1b. Competing Interests Model

This second model narrows ‘for the common good’ to mean the accommodation of conflicting interests and choosing the outcome that best satisfies those competing interests. This image of competing interests represents a major approach to policy making which has found significant acceptance and implementation throughout the West. Galligan (1996, p.469) suggests this to be the least attractive model as “the result is that either the more powerful interests prevail or the decision maker covertly appeals to some external principle”.

1c. Consensus Model

This approach goes beyond merely embracing the interests of those affected. It is premised on the belief that;

Members of a society should be able to agree on what the common good requires ... through procedures which encourage discussion are open and transparent, and within which popular participation is given special importance can be utilised to determine the common good. [Through a construct] of proceduralism and strong democracy, people can reach a higher level of understanding and tolerance; they can also grasp a full understanding of the social order within which their own interests are important but not dominant. (Galligan, 1996, p.467)

This imagery of policy making through consensus draws upon a notion of citizenship that goes beyond self-interest; that through participation, through hearing the other side, and through debate, citizens develop a sense of the good of all. The role of procedures involved within this model is inextricably and indispensably linked to the process of reaching agreement. Agreement on the outcome demands the participation of citizens hence participatory procedures are essential to achieving the common good. This sense of seeking the common good through agreement appeals to noble

ideas. It has a vision of participatory democracy and citizenship, yet its dependence upon the momentary consensus of shifting alliances identifies its overwhelming weakness, its naïve idealism.

Overall, the standard model appears to provide the most attractive and realistic model. Realistic, in the sense that, policy makers, in practice, do try to justify their decisions by appeal to the common good and attractive, because it acknowledges that final agreement may be impossible and that a decision will have to be made by someone in authority. Section Two below however will identify the competing-interest model as that which most closely aligns with the current standard setting regime.

2. Due process in the Australian accounting standard setting environment

Whilst most regulations tabled in parliament come from government departments and reflect the implementation of government policy many other regulations are the result of delegated legislation to bodies consisting of individuals selected from various relevant professional and industry associations. Walker (1987, p.283) has claimed that the regulation of accounting has “become more closely aligned to the form of interest group politics ... labelled neo-corporatism. In neo-corporatist arrangements, efforts to secure consensus are achieved through government recognition of interest groups and the granting to those groups of privileged access to the policy making process”.

Generally parliament tends not to specify the procedures to be followed in the rule making process and the subordinate body proceeds as it thinks best although where Government has taken such an approach it usually relies on defining a broad concept such as those espoused within the terms of the CLERP reforms.

In many instances these subordinated bodies position themselves as the foremost authority capable of establishing regulations through their ability to determine what the fundamental objectives are, such as in the case of accounting standard setters who would establish standards premised on their superior understanding of the objectives of financial reporting.

Regulatory bodies endeavour to balance the competing demands and views of lobbyists, while also being mindful of their own situation and the extent to which their activities fall within the ambit of their political masters. Jordan (2005) suggested that participants to the due process who found a policy choice unacceptable were often the same persons who sought future redress through new legislation or executive involvement. Viewed in terms of an agency relationship [Principal – Government; Agent - delegated legislative authority] he considered that participation in the due process may work at cross purposes to the policy preferences of the principal. Where participation may reveal information to the principal not otherwise known about policy it may also enable the agent to evade control by predicting the limits of its discretion.

Accounting regulation generally seeks to restrict the choice of accounting methods available to management and may force companies to report financial information in a form those companies would not have voluntarily chosen. Such outcomes usually impact on reported earnings and the financial positions of business entities resulting in widespread and significant economic and social implications. Consequently proposed accounting rules would be of interest to many individuals and groups whose wealth and welfare would be affected and relevant stakeholders affected by such regulations would seek to persuade the rule makers to write the rules to their advantage.

In many instances, sectional groups of stakeholders form interest-groups whose main focus is to influence the policy making process. These groups often have an advantage by belonging to policy communities which become capable of exerting disproportionate influence as well as exerting themselves to be the only legitimate interest. A major consequence of interest-group activity is that informal negotiations often become the covert natural procedural mode of the policy making process.

It is well documented that the setting of accounting standards is the outcome of a political, rather than a technical or economic process. Gerboth (1973, pp.24-25) saw politicalisation as the heart of accounting regulation.

For decades economists have realised that income and wealth – concepts that are fundamental to accounting – are value judgments. That is, in accounting ..., concepts of income and wealth are not descriptive, but normative; not objective, but subjective; and not unique, but manifold ... A politicisation of accounting rule- making [is] not only inevitable, but just. In a society committed to democratic legitimisation of authority, only politically responsible institutions have the right to command others to obey their rules.

Likewise Solomons (1979, p.69) discerned the political nature of accounting standards stating;

Accounting can no longer be thought of as non-political. The numbers that accountants report have, or at least are widely thought to have, a significant impact on economic behaviour. Accounting rules therefore affect human behaviour. Hence, the process by which they are made is said to be political. It is then only a short step to the assertion that such rules are properly to be made in the political arena.

Hines suggested that for a standard setting body to remain politically viable its processes must be seen to be, and be, neutral with participation not merely being symbolic, but carrying the responsibility to influence directly the process outcome. Irrespective of the diligence and expertise applied to the formation of accounting rules, conflicting views would create difficulties associated with reconciling neutrality with reality. Hines (1983, p.25) discerned from this dilemma that if accounting

standards could not therefore be neutral “the process that gave rise to the issue of regulations must, at least, be seen to be neutral instead, if the regulatory body was to remain politically viable”.

Against this backdrop a concept of due process is applied within the institutional arrangements for regulating financial reporting and more particularly within the promulgation of accounting standards. As outlined in Policy Statement No. 1. (par. 24) ‘The Development of Statements of Accounting Concepts and Accounting Standards’ issued by the AASB, the due process is portrayed as a set of procedures and processes which incorporates a set of technical developments and professional input leading to the development and issue of an exposure draft for public exposure, comment and feedback. Generally, the procedures incorporate the publication of working papers, consultation, the taking of expert advice and the opportunity for notice and comment through written submissions. Such invitations are generally dispatched according to an existing mailing list of subscribers, interested parties and previous respondents. Generally, there is a three month response period that is preceded by a moderate level of advertising, which usually entails some extent of professional journal coverage.

Accounting literature abounds with historical studies over the last three decades of the lobbying influence of written submissions on standard setters (see Hurst, 2004; Sims, 1993; Currie *et al*, 1987). Many of these have questioned the ability of the standard setter to adequately interpret the content of written submissions and question the validity of applying such an approach (see Tutticci *et al*, 1994; Huang and Tower, 1994; Currie *et al*, 1987). For instance, Sutton (1984) suggested that lobbying was more likely to be effective while the regulator’s preferences were still unresolved,

arguing that the regulatory body would be more conducive to influence during that period where their views were crystallising, rather than at the point of exposure draft issue which reflected their collective views.

Appendix A presents a cross sectional view of the number of submissions received on a number of exposure drafts (ED). An initial cursory investigation reveals that participation through submissions is quite small particularly over the range of ED99 (issued December 1999) through ED141 (issued July 2005) with an average written submission intake of around fourteen. This represents a significant decline from earlier submissions as can be seen from ED12 (issued July 1979) through ED58 (issued March 1993) which averaged a little over fifty.

Prior studies by Currie *et al* (1987), Morris (1986), and Hurst (2004) have suggested several reasons for low participation. Currie *et al* suggest that low participation may have emanated from an association between the level of responses and the publicity given to a proposed standard, or that responses may have been influenced by the procedural aspects utilised by the standard setter to publicise new proposals. Currie *et al* (1987, p.22) also suggest that such procedures “are targeted at a limited sub-set of potentially-interested parties” and if so may “partly explain the low level of participation from consumers rather than producers of accounting information”.

Morris identified several reasons why the incentives to participate are perceived to be low for individuals and entities. First, there are the comparatively high costs borne by entities or individuals as part of keeping informed and aware of a proposed standard. As these often entail detailed relationships between the proposals itself and other standards, potential lobbyists do not acquaint themselves with the full spectrum of a proposed standard.

Second, a potential participant will refrain from participating if it is perceived that their efforts will be fruitless. Currie *et al* support this by suggesting that potential submitters may be dispirited in submitting as a result of their perceptions upon the amount of attention paid to previous submissions and perhaps the extent to which they view the regulatory body as being dominated by certain interest groups such as the major accounting firms.

Sutton suggested that financial statement preparers were more likely to participate than the users or consumers of such statements, as the potential economic outcomes that flowed to the preparer from securing a preferred proposal were greater in absolute terms. His argument was premised on the basis that the preparer was likely to be wealthier than the user or consumer and even if not, with the exception of comprehensively diversified companies, they usually drew their income from fewer sources. Hence, this lack of diversification rendered the preparer of financial statements more vulnerable to any adverse economic consequences associated with a proposed standard.

Appendix B details a list of the written submission participants to the Australian accounting standard setter from the issue of ED99 (issued December 1999) through to ED141 (issued June 2005). Of the forty-one exposure drafts considered there were five hundred and sixty-four submissions received from one hundred and fifty-five different parties. Table 1 lists a grouping of these submissions as follows.

Table 1: **Submissions to Exposure Drafts 99 – 141**
(Excluding ED100 and ED104)

	Number	%	Submissions	%
Large Accounting Firms	6	3.9%	116	20.6%
Smaller Accounting Firms	9	5.8%	10	1.8%
Professional Accounting Organisations	5	3.2%	53	9.4%
Business Associations	24	15.5%	79	14.0%
Large Australian Corporations (In top 150)	18	11.6%	83	14.7%
Other Corporations	22	14.2%	27	4.8%
Consultants	11	7.1%	12	2.1%
Government Departments - Commonwealth	6	3.9%	38	6.7%
Government Departments - State	19	12.3%	59	10.5%
Local Government Departments and Councils	12	7.7%	12	2.1%
Individuals: Educational Institutions	15	9.7%	54	9.6%
Individuals: Other	8	5.2%	21	3.7%
	155	100.00%	564	100.0%

Table 1 and Appendix B reveal several insights into the submission process. First, special interest pockets can be clearly identified particularly with reference to the business associations that submit on behalf of certain interest groups. If the local government associations are removed from the list the remaining organisations represent the cream of private sector policy communities in the Australian business community. Of considerable activity was the Group of 100⁴, albeit the Australian Institute of Company Directors, Australian Shareholders Association, Australian Bankers Association, Securities Institute of Australia and the Institute of Actuaries for Australia were also quite prominent in submitting.

Second, the submission activity by certain participants was quite interesting. As previously discussed the cost of keeping abreast and the requisite knowledge

⁴ The Group of 100 represents Australia's senior finance executives where members are drawn from the nation's major private and public business enterprises. The primary mission of the Group of 100 is to ensure that the voice of major business enterprises is heard on financial reporting and management, corporate governance and regulatory issues covering the core areas of Accounting Standards; Business Regulations; Corporate Finance; Corporate Governance; Corporations Law and Stock Exchange requirements

relationships between proposals are high. Given the implications of changed regulations it would not be unexpected that the large accounting firms, professional accounting bodies, large corporations and their associated business organisations would submit generally on a regular basis which is evidenced below. This aside however, approximately sixty-five per cent of participants submitted only once which would appear consistent with the cost, knowledge and self-interest constraints associated with the nature of the process.

What is curious though is the number of submissions sent by certain individuals and organisations. There was a significant level of submission activity particularly in terms of high profile academics. The input by Langfield-Smith (sixteen), Pierson (eleven), Alfredson (nine) and Deegan (five) who represented less than one per cent of the total participants equated with over seven per cent of total submission activity. Prominent business writer Tom Ravlic submitted on seven occasions. Similarly were the inputs of the State Rail of New South Wales (eight) and the Department of Treasury and Finance – South Australia (nine) high in terms of input activity. It may be surmised by an educated guess that these parties are on the standard setter's mailing list.

Table 2 reveals that a total of eighty-three submissions were received from those large corporations currently within the top one hundred Australian Listed Companies. Taken together with the further thirty-six submissions made by the Group of 100, twenty-one per cent of all submissions have been received from the big end of town.

Table 2: **Submissions to Exposure Drafts 99 – 141: Large Corporations**
(Excluding ED100 and ED104)

<u>Corporations</u>	Number of Submissions	Market Capitalisation \$m	Ranking in Top 150
BHP Billiton	20	85192	2
CBA	3	56865	3
NBA	4	52303	4
Westfield Holdings Ltd	1	30708	8
Woodside Petroleum	10	27400	9
Telstra	19	23748	10
Woolworths Ltd	1	19878	11
QBE	4	15798	13
AMP Ltd	3	14716	16
Wesfarmers Ltd	1	13782	17
Suncorp Metway	1	11398	21
Fosters Group Ltd	5	11277	22
AXA Asia Pacific Holdings	3	8902	26
Australian Gas Light Company	4	7762	34
Santos	2	7438	36
Lend Lease	1	6008	40
Rural Press Ltd	1	2290	94

Source: Australian Financial Review, 16/1/2006, p.18.

An insight into the impact of proposed accounting changes can be gleaned through the submission activity of these big corporations who clearly consider it worthwhile to make a submission aside from the more informal interactions suggested by the business press. Table 2 also reveals that the combined market capitalisation of these firms is around \$400 billion dollars which suggests significant socio-economic and political influence within the Australian economy.

Table 3 details the input by the large accounting firms whilst Table 4 documents the submissions by the professional accounting bodies. Contending there to be a relationship between these larger accounting firms and the professional accounting bodies it can be seen that eleven organisations representing seven per cent of the total population considered, submitted one hundred and sixty-nine submissions or approximately thirty per cent of the total submissions.

Table 3: **Submissions to Exposure Drafts 99 – 141: Large Accounting Firms**
(Excluding ED100 and ED104)

<u>Large Accounting Firms</u>	Number of Submissions
Deloitte Touche Tomatsu	29
Price Waterhouse Coopers	27
Ernst & Young	24
KPMG	20
Pitcher Partners	15
Arthur Andersen	1
	116

Table 4: **Submissions to Exposure Drafts 99 – 141: Professional Accounting Bodies** (Excluding ED100 and ED104)

<u>Professional Accounting Bodies</u>	Number of Submissions
CPA Australia	27
Institute of Chartered Accountants (ICAA)	21
National Institute of Accountants (NIA)	3
Institute of Chartered Accountants (ICA) - NZ	1
International Federation of Accountants (IFA)	1
	53

Whilst all the exposure drafts considered were issued in the context of the new international accounting regime a clearly defined lessening of the input by both the three Australian professional accounting bodies and the five large accounting firms is observable as can be seen through Table 5 below and Appendix D.

Table 5: **Submissions to Exposure Drafts 99 – 141: Professional Accounting Bodies and Large Accounting Firms** (Excluding ED100 and ED104)

Submissions Exposure Drafts	Professional Accounting Bodies	%	Large Accounting Firms	%
121-141 [21]	17	33%	45	39%
99 - 120 [20]	34	67%	70	61%
Total	51	100%	115	100%

When considering the input of Government, Commonwealth, State and Local Government Departments and Councils taken as a whole, thirty-seven (twenty-four percent of respondents) made one hundred and ten submissions or approximately twenty per cent of the total submissions which was less than from either the large corporations or the large accounting firms and professional accounting bodies.

With most accounting regulation directed towards the private sector and for-profit entities, Government input has at best been limited although heightened over the past fifteen years through a neo-liberalism ideology which has advocated the use of private sector financial reporting for Government.

Appendix C details the input of Government in terms of the due process and identifies that on nine occasions or on twenty two percent of exposure drafts considered Government, on any level, did not make a submission. The particular nine exposure drafts were:

<u>Exposure Draft Title</u>	<u>N0.</u>	<u>Issued</u>
IASB ED 6 Exploration for and Evaluation of Mineral Resources	130	Jan-04
IASB ED of Proposed Amendments to IFRS 3 Business Combinations – Combinations by Contract Alone or Involving Mutual Entities	133	Jun-04
IASB ED of Proposed Amendments to IAS 39 Financial Instruments: Recognition and Measurement and IFRS 4 Insurance Contracts — Financial Guarantee Contracts and Credit Insurance	134	Jul-04
IASB ED of Proposed Amendments to IAS 39 Financial Instruments: Recognition and Measurement — Cash Flow Hedge Accounting of Forecast Intra-group Transactions	135	Jul-04
IASB ED of Proposed Amendments to IAS 39 Financial Instruments: Recognition and Measurement — Transition and Initial Recognition of Financial Assets and Financial Liabilities	136	Jul-04
IASB ED 7 Financial Instruments: Disclosures	137	Aug-04
Concise Financial Reports: Revisions to AASB 1039	138	Dec-04
Proposed amendments to AASB 3 Business Combinations	139	Jul-05

It is not of little interest that on the majority of these exposure drafts, which are the more recent, there were few or no submissions from either the professional accounting

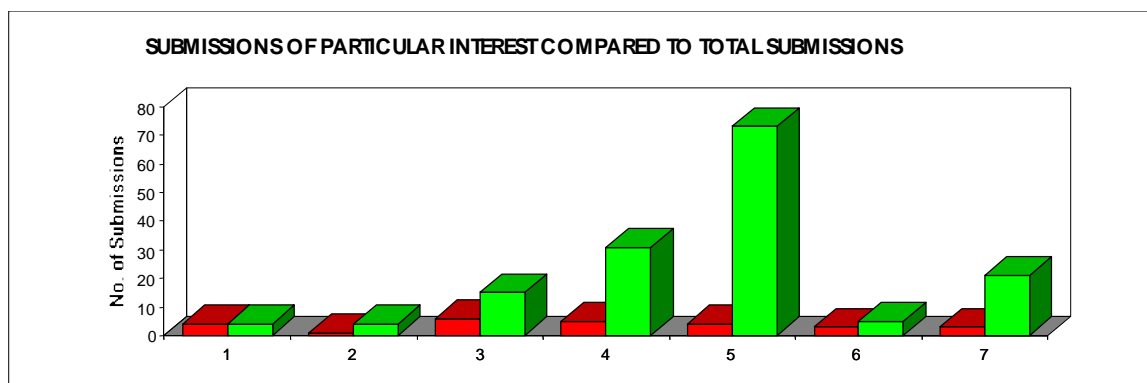
bodies or the large accounting firms albeit the Group of 100 failed only to submit on ED133 and ED137.

General input and particularly Government input into the accounting standard setting regime may have lessened given the Commonwealth Law Economic Reform Program CLERP reforms of 2000 and the subsequent decision to adopt accounting standards issued by the IASB, albeit this will require the process of time and further research.

An interesting insight into prior Government input into the accounting standard setting process can be seen through the promulgation of AAS27 'Financial Reporting by Local Government' as a result of the issue of Exposure Draft 50 in 1989. ED50 elicited one hundred and fifty-four submissions which to date is still the highest number received. Table 6 below details the origins of those submissions and the twenty-six of those considered to be of particular interest that were directed by the Australian Accounting Research Foundation (AARF) for the attention of the Public Sector Accounting Standards Board when considering written submissions.

Table 6: **Total Submissions received and those considered to be of Particular Interest**

Legend		Particular Interest	Total Submitted
1	Local Government Departments	4	4
2	Auditor-General Departments	1	4
3	Local Government Represent. Group	6	15
4	Local Government: Urban	5	31
5	Local Government: Rural	4	73
6	Accounting Firms	3	5
7	Other	3	22
	Total	26	154



Although sixty-eight per cent, or one hundred and four submissions, of the total submissions emanated from local government, only twenty-one per cent, or nine, were considered to offer any significant input. When split between urban and rural councils, this indicates that although seventy-three rural councils submitted, only four were considered significant, yet of the five accounting firm submissions, sixty per cent or three were accorded special attention for PSASB members.

Prior research by Hurst (2004) in considering the finer details, implications and reasons surrounding this found the process discriminated against many participants. This study found, that most submissions received by the standard setter opposed the proposed changes. A post standard survey to local government councils reinforced this observation and suggested the outcome of the due process had been pre-ordained given the standard setters augmentation of their conceptual framework. Importantly, it also alluded to the inability of the process to provide either appropriate insights or communicative feedback as to the formulation of the outcome and suggested criticisms of bias and of not hearing the other side by the standard setter.

AAS27 has been somewhat of a thorny issue to the standard setters with an emerging call for changes which resulted in a 2002 CPA Australia Position Paper and an October 2003 release of ED125 'Financial Reporting by Local Governments' with

comments closed on in February 2004, but still without adjustments made to AAS27 at the present time.

The extent to which parties participate in the due process is very much dependant upon their perceptions of involvement within the process and their ability to influence the outcome. Written submissions to ED125 amounted to twenty-eight, of which eight emanated from city councils and shires, five from specific local government associations with the remainder comprising accounting firms, consultants and commonwealth and state departments.

The 2002 CPA Position Paper had thus commented:

There is, however, some concern in local government that a significant amount of attention is placed on systems and reporting to meet the requirements of accounting standards, and little on the users of this information.

The Position Paper further concluded:

The review appears to support a general view that the AASB is setting standards that everyone must comply with, irrespective of whether the information produced actually provides what is intended by the standard — useful, meaningful, understandable financial information. Such an attitude could potentially drive local government to producing two sets of reports — one under the AASB standards, and one under their own for users.

Notwithstanding that the initial issue of ED50 in 1989 was significant in that it proposed the introduction of private sector financial reporting on local government and would therefore garner a significant amount of participatory activity, it may have been expected that a larger number of submissions from affected councils and shires may have submitted to ED125. One unsubstantiated insight on this issue may concern an individual's perception of ability to influence as opposed to the collective ability of organised associations.

3. Conclusion

This research suggests that democratic participation within the due process as applied within the accounting standard setting regime is constrained to a limited subset of knowledgeable and self-interested participants.

Suggested difficulties with the due process are as follows. First, participants are observed to have a narrow persona in that they participate due to self-interest. This most aligns with an 'abolitionist' approach where groups of self-interested parties compete for advantage of private benefits and property rights in line with the modern interpretation of the public interest. Whereas an ideal normative concept of policy making draws upon a notion of citizenship that goes beyond self-interest; that through participation, debate and hearing the other side, citizens develop a consensus of the good of all, the current process generally results in outcomes premised on the prevailing power interests.

Second, the cost and knowledge requirements to stay abreast appear to have narrowed participation to the larger corporations and their associated industry bodies and consulting groups which also incorporate the large accounting firms and the professional accounting bodies. In terms of the formal process, one consequence of these inter-relationships would appear to be that of a low and declining participation in the process. Early studies, such as those of Gavens *et al* (1989), have suggested that responses to proposed accounting standards were mostly prompted by disagreement with proposals. Whilst, in the broader sense this paper does not consider nor take a view on the level of participant agreement or disagreement with an exposure draft, the trend to lower and less participation may suggest, in such neo-corporatist arrangements, a convergence of participant input and content.

Third, there would appear to be bias due to the limited number of submissions along with difficulties in determining the representative distribution of submissions received.

Common law due process differs significantly from the above. Within its quest to achieve common good outcomes from the policy making process, it subordinates the self-interest focus that permeates the standard setting process. It does this by being more democratically inclusive by demanding a far broader participation and incorporating a far greater transparency of process. Moreover, the value of participation gives meaning to the outcome and is substantive in its nexus to the decision.

The extent to which participation through written submissions influence the decisions of standard setters is at best conjectural and is perhaps not helped by the nature and construct of the standard setter themselves. Under common law due process there is an implied right to have the decision made by an unbiased or disinterested decision maker, where the decision maker must not have an interest in the outcome or an appearance of bias in the decision. A further implied right is to have the decision based on logically probative evidence. Whilst theory monographs and discussion papers precede the issue of exposure drafts and document the underlying principles and reasons for the development of new regulations, the ability of participants, let alone researchers, to discover thorough insights into the understandings and reasoning behind the standard setters decisions, following the receipt of written submissions is far removed from the level of evidence revealed under the common law due process. It is perhaps a consequence of the impartiality demanded through the common law due process that adherence to the maxim, *nemo iudex in re sua*; [that a judge should

be impartial and free from bias] that a relationship and nexus between participation, evidence and outcomes can be clearly identified. The extent to which these same relationships are far less revealed in the standard setting due process may suggest a contrived construct to blur the extent of impartiality applied.

Democratic participation rests with its ability to be responsive to the community in general and in particular to those affected, by enabling a means for gaining information about what is proposed. Whilst the ability to make a written submission may appear as an equal opportunity for participants to state their side, common law due process also includes the opportunity to do this in a rational and objective manner. Usually, an exposure draft will be issued along with a brief guide identifying topics on which specific comment is sought. Exposure drafts usually mirror the proposed policy outcome without explanation of the policy choice explained with fact and reason. For the most part, submitters neither know the content of other submissions or the various policy options being considered.

The adherence to standards of procedural fairness should promote entitlement to a fair hearing where parties are given the opportunity to understand and answer situations or outcomes that they may be adversely affected by. The institutional design of the due process enables this entitlement to a fair hearing to be overridden by the need for a decision to be made and consequently does not promote the idea of an equitable settlement, rather than bringing them merely to an end. There appears no implied right to, or ground for review against an administrative decision aside from seeking future redress through new legislation or executive involvement and little feedback to participants or publication by the standard setters of the reasons behind their decisions. Studies by Hurst (2004) and Sims (1994) document the very limited feed-

back to submitters from the standard setter. Moreover, there is a plethora of research studies that have attempted to fathom the reasons behind the standards setter's decisions. At common law, embedded within a denial of natural justice is the implied right or ground for review in circumstances where the administrative decision might affect a person's rights, interests or legitimate expectations.

It is perhaps pertinent to consider the concepts of both representative and participative democracy. Participative democracy entails a civic participation and involvement in the policy making process other than through elected representatives. Varga (2001) identified an involvement and integration dimension of civic participation with the former referring to a citizen's will to participate, and the latter, integration, attuned to the level which society allows such participation. On both counts, participation within the standard setting due process appears problematic and arbitrary. Within a process where many would-be participants feel disempowered in their ability to influence the outcome, where the costs of keeping informed are comparatively high, representative input into the due process is generally low and appears to be lessening. Civic participation appears likewise. The extent to which the large entities and their associated business associations exert significant socio-economic influence on the economy, have the capacity to participate and lobby pre and post to obtain preferred outcomes and permeate the business press are indicative signposts as to the nature of the standard setting due process. The process would appear to provide an image of public accountability and accessibility in name only and used to allay public concern by invoking notions of the common law due process; notions of *audi alteram partem* and *nemo iudex in re sua* that fit uncomfortably within the standard setting regime.

APPENDIX A: Exposure Drafts 12-58 / 99-143

Exposure Draft Title	Exposure Draft		
	No.	Issued	Sub.
Equity Method of Accounting for Investments	12	Jul-79	57
Accounting for Revaluation of Tangible Fixed Assets and Investments in the Context of Historical Cost Accounting	14	Sep-79	29
Statement of Sources & Application of Funds	16	Aug-80	46
Accounting for Leveraged Leases by Lessors	18	Jan-81	14
Accounting for Construction Contracts	20	Apr-82	21
Accounting for Research & Development Costs	21	May-82	25
Accounting for Goodwill	23	May-83	50
Foreign Currency Translation	24	Sep-83	40
Accounting for the Acquisition of Assets	29	Mar-85	17
Proposed Amendment of Accounting Standard AAS 12 and Approved Accounting Standard ASRB 1007 to Require Disclosure of Cash Flows from Operations	37	Jul-86	30
Accounting for Defined Benefits Superannuation Plans	38	Nov-86	38
Accounting for Defined Contribution Superannuation Plans	39	Nov-86	
Consolidated Financial Statements	40	Jun-87	40
Related Part Disclosures	41		28
Proposed Statements of Accounting Concepts (Series 1) - Objective of Financial Reporting - Qualitative Characteristics of Financial Statements - Definition and Recognition of Assets - Definition and Recognition of Liabilities	42	Dec-87	51
Financial Reporting of General Insurance Activities	43	Dec-87	51
Extinguishment of Debt	44	Apr-88	62
Proposed Statements of Accounting Concepts (Series 2) - Definition of a Reporting Period - Definition and Recognition of Expenses	46 46(A) 46(B)	Apr-88	28
Consideration by the ASRB of Accounting Standards 1, 2, 3, 4, & 7 for Interim Approval and Certain Proposed amendments to such Standards	47	Jan-89	95
Proposed Statement of Policy on Differential Reporting	48	Jan-89	131
Accounting for Identifiable Intangible Assets	49	Oct-90	117
Financial Reporting By Local Government	50	Nov-89	154
Statement of Cash Flow	52	May-91	58
Accounting for Employee Benefits	53	Aug-91	22
Calculation and Disclosure of Earnings Per Share	54	Dec-91	32
Financial Reporting by Government Departments	55	Jan-92	46
Present Procedures for the Development of Statements of Accounting Concepts and Accounting Standards	57	Mar-93	46
Interim Financial Reporting	58	Mar-93	31

Impairment of Assets	99	Dec-99	14
Arrangements for the Provision of Public Infrastructure by Other Entities - Disclosure Requirements	100	Dec-99	
Revaluation of Non-Current Assets	101	Mar-01	23
International Convergence and Harmonisation Policy	102	Jul-01	12
Investment Property (and Consequential Amendments to AASB 1021/AAS 4 and AASB 1041)	103	Dec-01	30
Impairment of Assets	104	Mar-02	
Statement of Financial Performance: Amendments to AASB 1018 / AAS 1	105	Apr-02	26
Director, Executive and Related Party Disclosures	106	May-02	21

Proposed Improvements to International Accounting Standards and their Impacts on Australian Standards	---	May-02	13
Proposed Improvements to International Accounting Standards IAS 32 Financial Instruments: Disclosure and Presentation and IAS 39 Financial Instruments: Recognition and Measurement	---	June-02	20
IASB ED 1 First-time Application of International Financial Reporting Standards	107	Aug-02	9
IASB ED 2 Share-based Payment	108	Nov-02	16
IASB ED 3 Business Combinations, IASB ED of Proposed Amendments to IAS 36 Impairment of Assets & IAS 38 Intangible Assets and AASB added material ED 109 AASB Preface IASB ED 3 Business Combinations IASB ED 3 Business Combinations - Basis for Conclusions IASB ED 3 Business Combinations - Illustrative Examples IASB ED of Proposed Amendments to IAS 36 Impairment of Assets & IAS 38 Intangible Assets	109	Dec-02	20
IAS 7 Cash Flow Statements	110	May-03	20
IAS 23 Borrowing Costs	111	May-03	18
IAS 29 Financial Reporting in Hyperinflationary Economies	112	May-03	13
IAS 30 Disclosures in the Financial Statements of Banks and Similar Financial Institutions	113	May-03	15
IAS 41 Agriculture	114	May-03	20
IAS 19 Employee Benefits	----	Jun-03	
Presentation Currency of Australian Financial Reports	115	Jul-03	26
IAS 2 and IPSAS 12 Inventories	116	Jul-03	16
IASB ED 4 Disposal of Non-current Assets and Presentation of Discontinued Operations	117	Jul-03	11
IAS 11 Construction Contracts	118	Jul-03	14
IAS 14 Segment Reporting	119	Jul-03	12
IAS 16 and IPSAS 17 Property, Plant and Equipment	120	Jul-03	15
IAS 31 Financial Reporting of Interests in Joint Ventures	121	Aug-03	13
IASB ED 5 Insurance Contracts	122	Aug-03	11
Amendments to AASB 1023 General Insurance Contracts	122A	Oct-03	
Amendments to AASB 1038 Life Insurance Contracts	122B	Oct-03	
IAS 39 Financial Instruments: Recognition and Measurement - Fair Value Hedge Accounting for a Portfolio Hedge of Interest Rate Risk	123	Sep-03	4
The Definition of Reporting Entity; IASB Framework for the Preparation and Presentation of Financial Statements; IAS 18 Revenue; and IAS 20 Accounting for Government Grants and Disclosure of Government Assistance	124	Oct-03	20
Financial Reporting by Local Governments	125	Oct-03	28
IAS 34 Interim Financial Reporting	126	Oct-03	10
IAS 37 Provisions, Contingent Liabilities and Contingent Assets	127	Oct-03	12
IAS 12 Income Taxes	128	Oct-03	11
Disclosing the Impact of Adopting AASB Equivalents to IASB Standards	129	Dec-03	21
IASB ED 6 Exploration for and Evaluation of Mineral Resources	130	Jan-04	12
IASB ED Proposed Amendments to IAS 19 Employee Benefits: Actuarial Gains and Losses, Group Plans and Disclosures	131	Apr-04	15
IASB ED Proposed Amendments to IAS 39 Financial Instruments: Recognition and Measurement - The Fair Value Option	132	May-04	10
IASB ED of Proposed Amendments to IFRS 3 Business Combinations – Combinations by Contract Alone or Involving	133	Jun-04	2

Mutual Entities			
IASB ED of Proposed Amendments to IAS 39 Financial Instruments: Recognition and Measurement and IFRS 4 Insurance Contracts — Financial Guarantee Contracts and Credit Insurance	134	Jul-04	2
IASB ED of Proposed Amendments to IAS 39 Financial Instruments: Recognition and Measurement — Cash Flow Hedge Accounting of Forecast Intra-group Transactions	135	Jul-04	4
IASB ED of Proposed Amendments to IAS 39 Financial Instruments: Recognition and Measurement — Transition and Initial Recognition of Financial Assets and Financial Liabilities	136	Jul-04	3
IASB ED 7 Financial Instruments: Disclosures	137	Aug-04	3
Concise Financial Reports: Revisions to AASB 1039	138	Dec-04	10
Proposed amendments to AASB 3 Business Combinations	139	Jul-05	7
Proposed amendments to AASB 137 Provisions, Contingent Liabilities and Contingent Assets	140	Jul-05	12
Proposed amendments to AASB 127 Consolidated and Separate Financial Statements	141	Jul-05	3
Financial Reporting by General Government Sectors by Governments	142	Oct-05	
Director and Executive Disclosures by Disclosing Entities: Removal of AASB 1046 and Addition to AASB 124	143	Sep -05	19

Alkane Exploration Ltd	1	D.G. & A.B. Maxwell	1
Sydney Gas Ltd	1		12
Epic Energy Corporate	2		
Gandel Group	1		
Australand Holdings Ltd	1	Government Departments - Commonwealth	
Grand Hotel Group	1	Heads of Treasuries Accounting & Reporting Advisory Committee	16
Jardine Flemming Capital Partners Ltd	1	Australian National Audit Office	9
North Ltd	1	Australian Council of Auditors-General	8
ADTRANS	1	Australian Securities & Investment Commission (ASIC)	3
PEPTECH	1	Australian Prudential Regulatory Authority (APRA)	1
CPS Credit Union [SA] Ltd	1	Commonwealth Department of Finance & Administration	1
Compostella Pty Ltd	2		38
Australian Direct Property Investment Association	1		
	27	Government Departments - State	
Local Government Departments and Councils		State Rail: NSW	9
Western Australia Department of Local Government	2	Auditor General of Queensland	8
Department of Local Government & Planning - Qld	1	Department of Treasury and Finance - South Australia	8
South Australian Office of Local Government	1	Treasury - Queensland	6
Manningham City Council	1	Department of Treasury and Finance - Western Australia	4
Darwin City Council	1	Department of Treasury and Finance - Victoria	4
Shire of Yarra Ranges	1	Department of Treasury and Finance - Tasmania	3
Devonport City Council	1	New South Wales Treasury	3
City of Swan	1	Auditor General of Western Australia	3
Rockhampton City Council	1	Queensland Government	2
Bathurst City Council	1	Treasury - New South Wales	1
Brisbane City Council	1	Audit Office of New South Wales	1
	12	Auditor General of Victoria	1
		Department of Transport - South Australia	1
Individuals: Educationalists / Institutions		Tasmanian Audit Office	1
Ian Langfield-Smith	16	Queensland Department of Primary Industry - Forestry	1
Graham Peirson	11	Forest Products Commission Western Australia	1
Keith Alfredson	9	Government	1
Craig Deegan	5	Forestry Tasmania	1
J.B. Ryan	3	Western Australia Water Corporation	1
Sue Wright	1		59
John H. Black	1	Individuals: Other	
Isabel Gordon	1	Tom Ravlic	7
John Quiggan	1	Athol J. Warman	5
Andrew Read, Mark Wilson, Mark Hughes	1	Confidential	4
University of Melbourne	1	Bob Buchanan	1
University of Sydney	1	Stuart Keene	1
Brian Howieson	1	David T. Greenall	1
Ken Leo	1	David Sauer - Chartered Accountant	1
Warren McGregor	1	Warren Wilton	1
	54		21

**APPENDIX C: Submissions ED 99 – ED141:
Government (Excluding ED 100/104)**

Exposure Draft	Commonwealth Government	State Government	Local Government	Input
141	0	0	0	NO
140	1	2	0	
139	0	0	0	NO
138	0	0	0	NO
137	0	0	0	NO
136	0	0	0	NO
135	0	0	0	NO
134	0	0	0	NO
133	0	0	0	NO
132	2	0	0	
131	2	0	0	
130	0	0	0	NO
129	1	1	0	
128	0	1	0	
127	1	1	0	
126	0	1	0	
125	2	1	9	
124	2	2	0	
123	0	1	0	
122	0	3	0	
121	1	1	0	
120	1	4	1	
119	0	3	0	
118	1	3	0	
117	0	2	0	
116	2	3	0	
115	1	5	0	
114	2	3	0	
113	2	0	0	
112	1	0	0	
111	2	0	0	
110	3	0	0	
109	2	3	0	
108	0	1	0	
107	0	3	0	
106	1	0	0	
105	2	5	0	
103	0	1	0	
102	1	2	0	
101	3	3	2	
99	2	4	0	
Total	38	59	12	

APPENDIX D: **Submissions ED 99 – ED141:**
(Excluding ED 100/104)

PROFESSIONAL ACCOUNTING BODIES					LARGE ACCOUNTING FIRMS					
Exposure Draft	CPA Australia	ICAA	NIA	Total	DTT	PWC	Ernst & Young	KPMG	Pitcher Partners	Total
141	1			1	1					1
140	1	1		2	1					1
139	1	1		2	1	1				2
138	1	1	1	3	1	1	1	1		4
137				0	1					1
136				0	1					1
135				0	1	1				2
134		1		1						0
133				0	1		1			2
132				0			1			1
131				0	1			1		2
130				0				1		1
129	1			1	1	1	1	1	1	5
128	1			1	1	1		1	1	4
127	1			1	1	1	1		1	4
126	1			1	1	1			1	3
125	1			1		1				1
124	1			1	1	1	1		1	4
123	1			1						0
122				0			1	1		2
121	1			1		1	1	1	1	4
120	1	1		2	1	1	1			3
119	1	1		2	1	1	1			3
118	1	1		2	1	1	1		1	4
117	1	1		2	1		1			2
116	1	1		2	1	1	1			3
115		1		1	1	1	1	1		4
114		1		1	1	1	1	1	1	5
113		1		1	1	1	1	1		4
112		1		1	1	1	1	1		4
111	1	1		2	1	1	1	1	1	5
110	1	1		2	1	1	1	1	1	5
109	1			1			1	1	1	3
108	1	1		2				1	1	2
107	1			1		1				1
106	1	1		2	1	1	1	1	1	5
105	1	1		2	1	1	1	1	1	5
103	1	1	1	3	1	1	1	1		4
102	1			1		1		1	1	3
101	1	1	1	3	1	1	1	1		4
99		1		1		1				1

BIBLIOGRAPHY

- Brown, P.R., (1982), "FASB Responsiveness to Corporate Input", *Journal of Accounting, Auditing and Finance*, Summer, pp.282-290.
- Cassinelli, C.W., (1958), "Some Reflections on the Concept of Public Interest", *Ethics*, 69(1), pp.48-61.
- Cochran, C.E., (1974), Political Science and "The Public Interest", *The Journal of Politics*, 36(2), pp.327-355.
- Coombes, R.J. and D.J. Stokes, (1985), "Standard-setters' Responsiveness to Submissions on Exposure Drafts: Australian Evidence", *Australian Journal of Management*, December, Vol. 10, pp.31-45.
- Cornwall, A., and J. Gaventa, (2001), "From Users and Choosers to Makers and Shapers: Repositioning Participation in Social Policy", Brighton: *Institute of Development Studies Working Paper*, No. 127.
- Currie, C., Robinson, P. and R.G. Walker, (1987), "Political Activity and the Regulation of Accounting: Gaps in the Literature", *University of New South Wales - School of Accountancy Working Paper*, No. 72.
- Deegan, C., Morris, R.D. and D. Stokes, (1988), "Audit Firm Lobbying on Proposed Disclosure Requirements", *University of New South Wales - School of Accounting, Working Paper*, No. 78.
- Dhaliwal, D.S., (1982), "Some Economic Determinants of Management Lobbying for Alternative Methods of Accounting: Evidence from the Accounting for Interest Costs Issue", *Journal of Business Finance and Accounting*, Summer, pp.255-265.
- Douglass, B., (1980), The Common Good and the Public Interest, *Political Theory*, 8(1), pp.103-117.
- Flick, G.A., (1984), *Natural Justice: Principles and Practical Application*, 2ed, Sydney: Butterworths.
- Francis, J.R., (1987), "Lobbying against Proposed Accounting Standards: The Case of Employers Pension Accounting", *Journal of Accounting and Public Policy*, Vol. 6, pp.35-57.
- Galligan, D.J., (1996), *Due Process and Fair Procedures*, Oxford: Oxford University Press.
- Gavens, J.J., Carnegie, G.D. and R.W. Gibson, (1989), "Company Participation in the Australian Standard Setting Process", *Accounting and Finance*, November, Vol. 29, pp.47-58.

- Gerboth, D., (1973), "Research, Intuition and Politics in Accounting Inquiry", *The Accounting Review*, July, Vol. 48, pp.475-482, In Hines, R., (1983), "Economic Consequences of Accounting Standards: A Good Reason for a Representative ASRB", *The Chartered Accountant in Australia*, July, Vol. 54, pp.24-25.
- Gifis, S., (1996), *Barron's Law Dictionary*, 4ed, New York: Barron's Educational Series Inc.
- Golding, M.P., (1987), *Philosophy of Law*, London: Prentice-Hall, pp.106-124.
- Gunn, J. (1969), *Politics and the Public Interest in the Seventeenth Century*, London: Routledge.
- Hart, H.L.A., (1991), *The Concept of Law*, 2ed. Oxford: Oxford University Press.
- Hines, R., (1983), "Economic Consequences of Accounting Standards: A Good Reason for a Representative ASRB", *The Chartered Accountant in Australia*, July, Vol. 54, pp.24-27.
- Hope, T. and R. Gray, (1982), "Power and Policy Making: The Development of an R & D Standard", *Journal of Business Finance and Accounting*, Winter, pp.531-558.
- Huang, S.J. and G. Tower, (1994), "A Power Analysis of the Development of the Differential Reporting Statement (SAC1)", *Murdoch University Working Paper*, pp.1-24.
- Hurst, G., (2004), *The Due process of Accounting Standard Setting in Australia – The Case of AAS27: Financial Reporting by Local Governments*, Ballarat: University of Ballarat.
- Jackson, P., (1979), *Natural Justice*, 2ed, London: Northumberland Press.
- Jordan, S.V., (2005), Public Participation in Delegated Decisions, [Internet Document created 21 January 2006] available from www.princeton.edu/~sjordan
- Kelly, L., (1982), "Corporate Lobbying and Changes in Financing or Operating Activities in Reaction to FAS No. 8", *Journal of Accounting and Public Policy*, Winter, pp.153-173.
- Kelly, L., (1985), "Corporate Management Lobbying on FAS No. 8: Some Further Evidence", *Journal of Accounting Research*, Autumn, pp.619-632.
- Kelly, J.M., (1992), *A Short History of Western Legal Theory*, Oxford: Clarendon Press.
- Lawson-Tancred, H.C, (Trans), (1991), Aristotle: *The Art of Rhetoric*, London: Penguin.

- MacArthur, J.B., (1988), "An Analysis of the Content of Corporate Submissions on Proposed Accounting Standards in the UK", *Accounting and Business Research*, Vol. 18, No. 71, pp. 213-226.
- Mill, J.S., (1952), *Considerations on Representative Government*, In Brittanica Great Books, Hutchins, R.M., (ed), New York: Benton, pp.341-350
- Morris, R.D., (1986), "Lobbying on Proposed Accounting Standards", *The Chartered Accountant in Australia*, March, Vol. 57, pp.46-57.
- Puro, M., (1984), "Audit Firm Lobbying Before the Financial Accounting Standards Board: An Empirical Study", *Journal of Accounting Research*, Autumn 4, pp.624-646.
- Rawls, J.A., (1971), *A Theory of Justice*, Oxford: Clarendon Press.
- Ryan, C., Dunstan, K. and T. Stanley, (2000), "Local Government Accounting Standard Setting in Australia: Did Constituents Participate?", *Financial Accountability and Management*, Vol. 16, No. 4, November, pp.373-396.
- Sims, M., (1994), "Will ED57 Improve Accounting Standard Setting in Australia?", *Charles Sturt University Working Paper*.
- Sutton, T.G., (1984), "Lobbying of Accounting Standard: Setting Bodies in the UK and the USA - A Downsian Analysis", *Accounting, Organizations and Society*, No.1, pp.81-95.
- Solomons, D., (1978), "The Politicization of Accounting", *Journal of Accountancy*, November, Vol. 146, pp.65-72.
- Sturm, D., (1978), On Meanings of Public Good: An Exploration, *The Journal of Religion*, 58(1), pp.13-29.
- Tower, G., and M. Kelly, (1989), "The Financial Accounting Standard Setting Process: An Agency Theory Perspective", *Massey University Discussion Paper*, No. 94, June.
- Tutticci, I., Dunstan, K. and S. Holmes, (1994), "Respondent Lobbying in the Australian Accounting Standard Setting Process: ED49. A Case Study", *Accounting, Auditing and Accountability Journal*, Vol. 7, pp.86-104.
- Varga, M., (2001), "Civic participation in the development of the political institution in Central and Eastern Europe", *IAPSS Journal of Political Science*, Issue 2, Set-Oct, pp.28-31.
- Walker, R.G., (1987), "Australia's ASRB. A Case Study of Political Activity and Regulatory Capture", *Journal of Accounting and Business Research*, Vol. 17, No. 67, Summer, pp. 269-286.