

# AUSTRALIAN CONSUMER LAW (TPA & ASIC Act Amendments 2010)

## Implications from a Business Perspective

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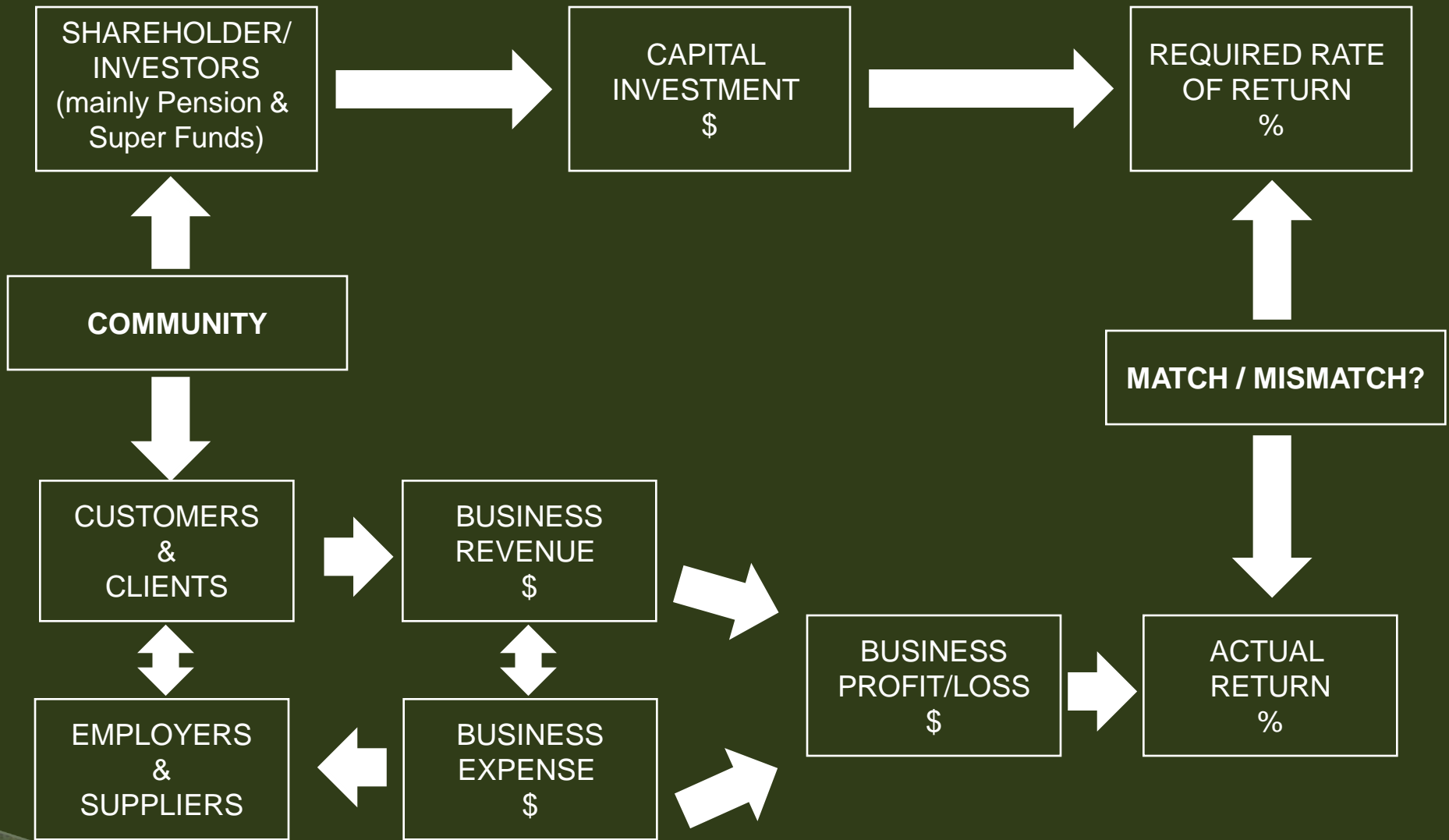
# 1. Introduction

- role of the corporation in society
- role of regulatory intervention in the affairs of business
- laudable motive of “consumer protection”
- risk of unintended consequences
- getting the balance right

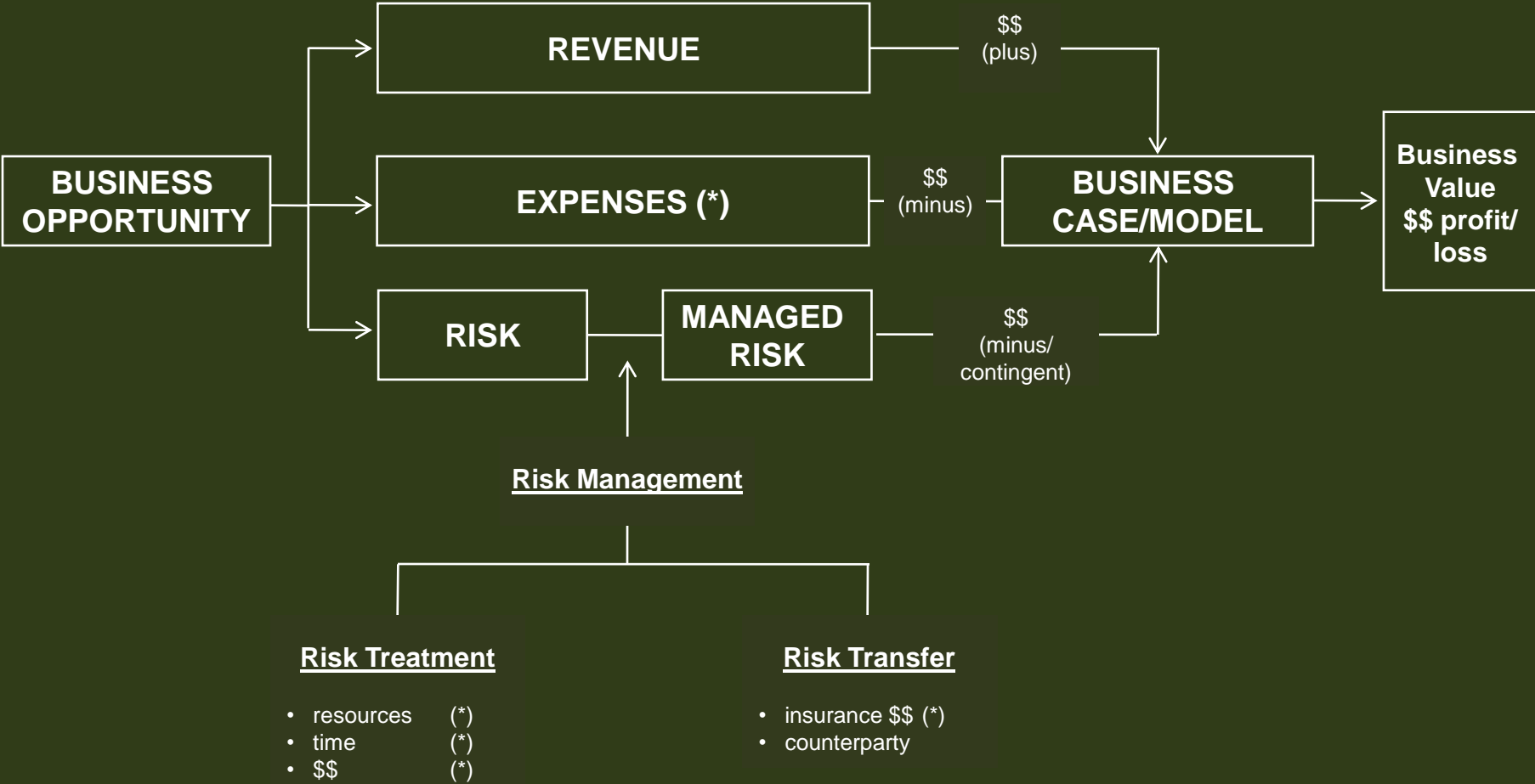
## 2. Business Principles

- deliver an appropriate return on invested capital (ROIC)
- promote efficiency and contain business expenses relative to revenue
- maintain appropriate product/service standards relative to price
- deliver customer value (price/quality/service interface)
- develop competitive advantage and product/service offering differentiation
- drive revenue growth and market share
- foster brand reputation to facilitate

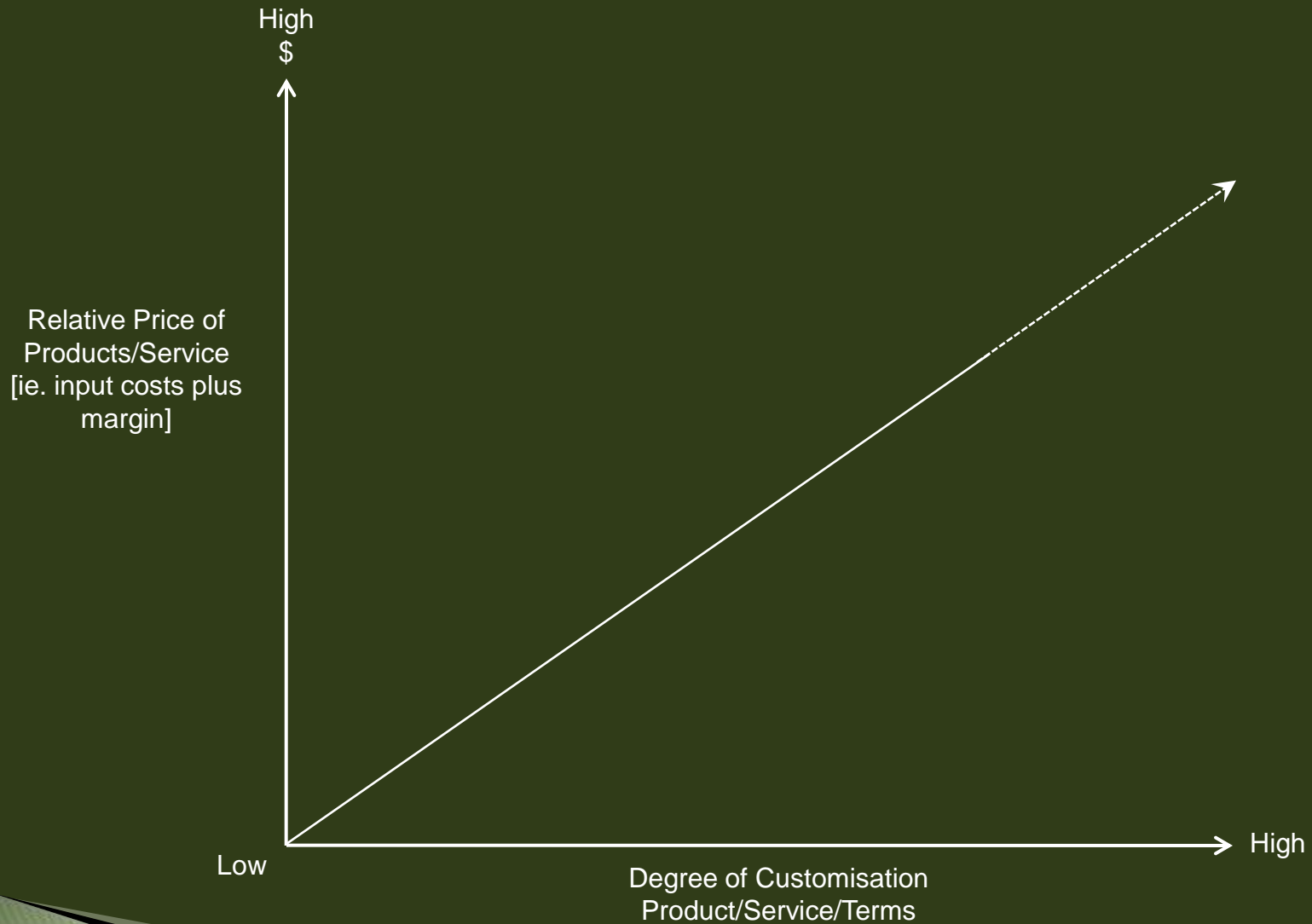
### 3. Dynamic Model of Community/Business Inter-Dependency



# 4. Business Value Model



## 5. Price: Customisation Relativity



## 6. Risk of Unintended Consequences

### 6.1 Limit the opportunity for business to:

- limit expenses;
- manage risk,

through RISK TRANSFER

### 6.2 Increase the relative price of products/services by:

- Increased risk treatment expenses
- Need to revise and review most documents at least for change of name of law (TPA/C & CA)
- Regulatory mandated greater customisation

### 6.3 Decrease competition in the market place by:

- Removing the opportunity for a low cost product/service differentiation through contract term risk transfer
- Some businesses vacating the market (should they determine the price/cost/risk equation is no longer sustainable for their business model and processes)

## **6. Risk of Unintended Consequences (cont)**

**6.4 Impact operational efficiency (time/cost/certainty/logistics) at point of sale with increased documentary burden for both:**

- the business;
- the consumer

**6.5 Prospective greater differential impact on SME businesses compared with big business due to greater compliance expenses relative to scale of operation**

**6.6 Consumer abrogation of responsibility for self and over reliance on regulation (“there should be a law against it and who is going to compensate me”)**



## 7. Equity, Balance and the Rule of Law

### 7.1 Consumer Law – Unfair standard form contracts

- Reversal of onus of proof – rebuttable presumptions
  - a consumer contract is a **STANDARD FORM CONTRACT**
  - a term is **NOT** reasonably necessary to protect legitimate business interests
- Onus is on business to prove “innocence”

## 7. Equity, Balance and the Rule of Law (cont)

### 7.2 Enhanced Regulatory Enforcement Powers/Penalties Generally (NB. risk of adequate oversight of use of powers)

#### (a) Infringement Notice

- “speeding tickets” by regulator without court process

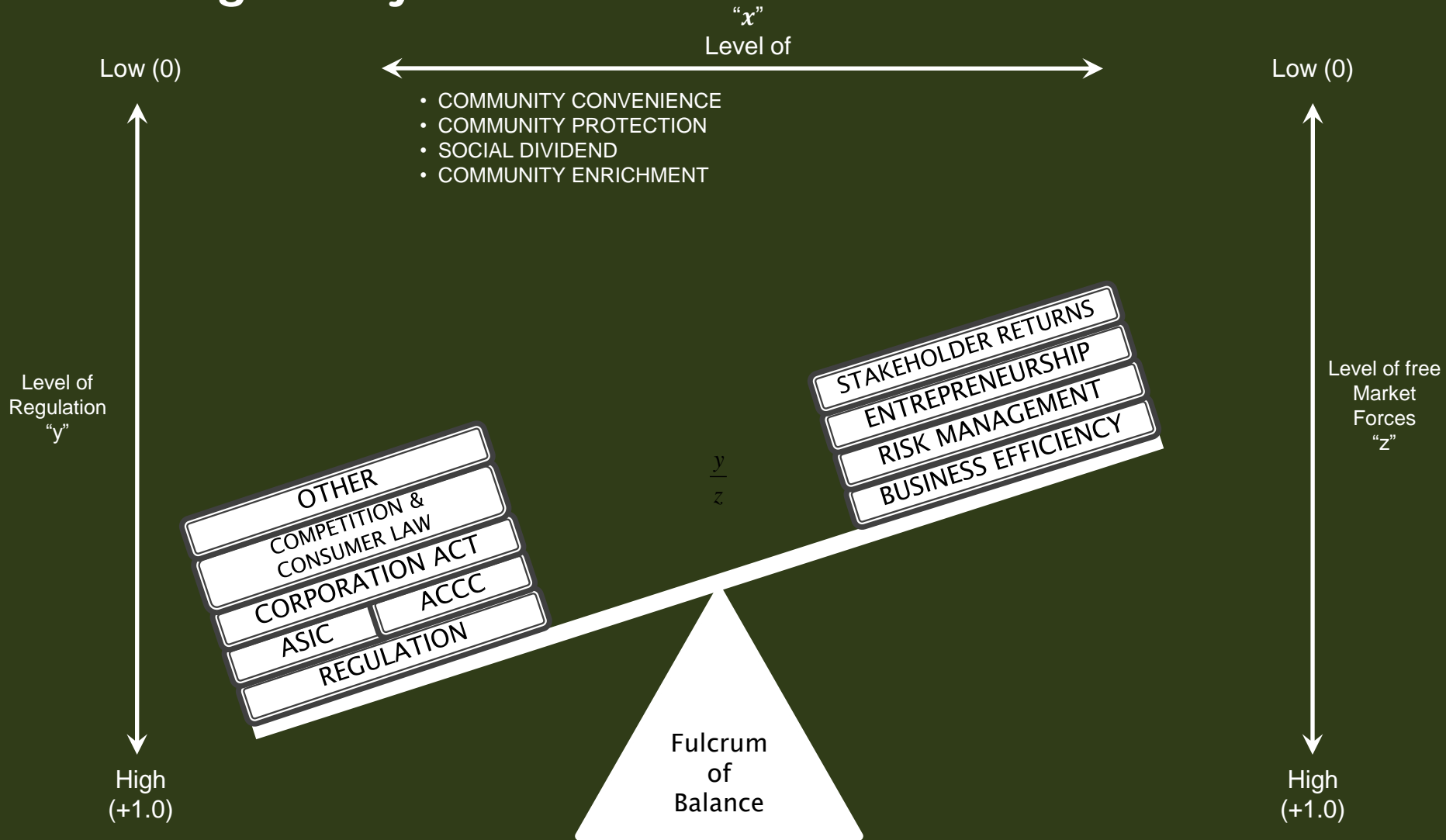
#### (b) Substantiation Notices

- notices to provide information/documents
- risks:
  - burden of compliance time/ cost
  - risk of offence if incorrect response or if non-compliance with notices

#### (c) Public Warning Notices

- regulator discretion without court process as to “in the public interest”
- “name and shame” / reputational and business risk

# 8. Regulatory Balance



The attainment of “x” is optimised where in the equation  $x = \frac{y}{z}$  the outcome approximates 1 implying the need for balance

## 9. Conclusion

- corporations do have a responsibility to respect their licence to operate
- Consumer protection from abusive conduct is laudable
- Risk transfer and business efficiency are proper and prudential business practices
- Business prosperity serves the whole community
- Regulatory intervention brings with it both cost and the risk of unintended consequences
- It is society that ultimately bears business compliance costs
- At all times should the principles of the Rule of Law be respected
- The fulcrum of balance must be maintained