CHARTERED SECRETARIES
AUSTRALIA

Keeping good companies

10 November 2003

Mr M Rawstron
General Manager
Corporations & Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Michael

CLERP (Audit Reform & Corporate Disclosure) Bill 2003

Chartered Secretaries Australia (CSA) welcomes the opportunity to comment on the provisions contained in the Government's CLERP (Audit Reform & Corporate Disclosure) Bill 2003 (CLERP Bill). CSA has made previous submissions on these matters and has a substantial interest in and consistent view of the changes proposed. For your reference I have attached as follows:

- **Attachment 1 –** submission on CLERP 9 – Corporate Disclosure: Strengthening the financial reporting framework; 22 November 2002, and
- **Attachment 2 –** letter to M. Rawstron – Shareholder participation under CLERP 9 – use of technology; 16 April 2003.

CSA is Australia's peak membership body for corporate governance and compliance, and considers itself fully qualified to respond to this matter. In Australia, CSA has over 8000 members and affiliates representing the majority of public companies listed on the Australian Stock Exchange (ASX). Members of CSA regularly deal on a day-to-day basis with the ASX, the Australian Securities and Investment Commission (ASIC) and the Australian Competition and Consumer Commission (ACCC) and have a thorough working knowledge of the operations of the markets, the needs of investors and the law and regulation relating to market practices and independence. In addition, representatives from the ASX, ASIC and the ACCC regularly address members at our seminars and conferences.

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Executive summary

The main points of CSA's submission are as follows:

- **Chapter 1: Part 5 – Auditors and AGMs**

  CSA supports the requirement for the auditor or their representative to be required to attend the AGM, but for operational reasons asks that the questions submitted have a closing time of not less that five business days prior to the AGM.

- **Chapter 2: Part 4 – Financial Reporting Panel**

  CSA commends the adoption of a model for resolving disputes that is '…an alternative to court proceedings…' CSA has long advocated an alternative dispute resolution mechanism via its background paper, 'The Need for a Corporations Panel', released in September 2002.

  CSA applauds the Government for introducing a Financial Reporting Panel (FRP) with many of the same principles as the Corporations Panel, in particular the need to be expeditious and informal, the parties not needing legal representation, and that the panel is designed to be less expensive and will allow matters to be heard by persons with particular experience.

- **Chapter 4: Part 1 – Protection for employees reporting breaches to ASIC**

  CSA supports the proposed protection for persons reporting suspected breaches of the corporations legislation to ASIC. However, CSA wishes to see the protection extended to protect employees and others raising matters within the organisation. Addressing this deficiency would be consistent with the recently released Australian Standard AS 8004-2003. In addition, CSA supports protection for disclosures regarding contravention of other legislation – however, the relevant authority in these cases should not necessarily be ASIC.

- **Chapter 4: Part 3 – Civil penalty provisions**

  CSA believes that there are some fundamental problems with increasing the pecuniary penalties from $200 000 to $1 million when there is still so much uncertainty as to their operation. As yet, there has been little research of this type of penalty and its regulatory impact, or of the costs that are associated with these actions. It would be more prudent for the existing laws to be consolidated before introducing further amendments.

- **Chapter 6: Part 2 – Infringement notices**

  CSA does not support the proposal that ASIC have the power to issue infringement notices. A penalty regime of this nature will not achieve 'a quick regulatory response' primarily because of the procedural aspects and the compliance period. If a penalty regime is to be introduced these powers should be with the ASX and not the ASIC. The ASX is closer to the market and better placed to make market-related decisions.

  Furthermore, if the infringement notice regime is introduced, CSA strongly recommends that the legislation should include provision for review of the operation of the regime 18 months after enactment.

- **Chapter 8 – Shareholder participation**

  - **100 member rule**

    CSA is disappointed that the CLERP Bill did not include proposed changes to s 249D that had been included in the Corporations Amendment Bill 2002 – Exposure Draft and on which CSA has made a submission.

    The 100 members/five per cent of votes 'rule' has been a longstanding issue and CSA has made numerous submissions on the matter. CSA supports the removal of the 100-member rule for the calling of meetings and reiterates its argument that this rule has the effect of placing substantial expense on companies and their memberships.

  - **Voting by the chairman**

    Recent court cases have highlighted the need for clarity in the obligation to vote proxies as directed. CSA's primary interest is in ensuring that the voting intentions of shareholders are carried out and as such proposes an amendment to s 250A(4)as follows:

    > '(c) if the proxy is the chair, a director or a secretary of the company, the proxy must vote as instructed on a poll, and will be deemed to have voted that way, even if the proxy fails to vote or fails to vote as instructed on the poll; and'

    CSA is of the view that the inclusion of a director or a secretary will allow action to be taken, under the *Corporation Act's* provisions for breach of directors'/officers' duties, against an offending proxyholder who either fails to vote or votes in a manner contrary to instructions.

  - **Company Secretaries – subsection 300(10)**

    CSA believes that the CLERP Bill should take the opportunity to required listed entities to list the qualification of their company secretary in the annual report. Not withstanding this, CSA reiterates its recommendation made in March 2000 that the company secretary of a public company be required to have formal qualifications prescribed by the Act such as membership of one of the major accounting bodies, state law bodies or CSA.

General comments

In this submission CSA has not attempted to provide detailed comment on all aspects of the proposed legislation; other professionals dealing with particular matters on a day-to-day basis are best able to address a number of these. CSA therefore focuses on those issues for which its members have significant responsibilities. In preparing this submission CSA has drawn on the expertise of the members of two internal national policy committees and the results of CSA surveys conducted with those members who are Company Secretaries in the Top-200 listed public companies in Australia.

In general, CSA and its members believe that the proposed provisions in the CLERP Bill will make a significant contribution to restoring investor confidence in Australia. The proposals are seen as reinforcing existing good practices, rather than imposing a straitjacket on corporate behaviour.

CSA would also like to note that, in our view, many of the provisions outlined in the CLERP Bill are relevant to all disclosing entities, not just listed public companies, in particular, in regard to the provisions for audit reform, CEO and CFO sign-off, disclosure of executive and director remuneration and shareholder participation. In many cases this submission will refer to this in the relevant chapter; however we ask that the Government consider extending many of the provisions to all disclosing entities.

Chapter 1: Audit reform

- **Part 1 Auditing standards**

  In relation to the information-gathering powers of the Financial Reporting Council, CSA cannot understand why the papers of an individual company's audit must be released if requested, yet the information gathered by an accounting body in relation to that audit, stemming from a review of the auditors' activities, are not available, notwithstanding that the accounting body does have the right to refer its concerns to ASIC. Both pieces of information should be available.

  Otherwise, CSA is supportive of the remaining provisions as drafted in this section.

- **Part 2 Qualification of auditors**

  CSA recommends that, in the area of non-audit services and the disclosure of non-audit services, these proposals apply not only to listed companies but to all disclosing entities.

- **Part 3 Auditor appointment, independence and rotation requirements**

  CSA supports the provisions as drafted.

- **Part 4 Registration of authorised audit companies**

  CSA supports the provisions as drafted.

- **Part 5 Auditors and AGMs**

  CSA is supportive of a requirement for the auditor, or their representative, to be required to attend the AGM.

  In relation to proposed subs 250 PA2 and the proposed requirement that questions be submitted no later than the closing time for the receipt of proxies for the AGM, CSA has some concerns of a practical nature. If the meeting is held on a Monday or Tuesday there are likely to be a number of practical and logistical issues associated with referring the questions to the auditors over the weekend. In order to ensure that answers to shareholder queries are of a high quality, CSA recommends that the proposed subs 250 PA2 be amended to require that questions be submitted no later than five business days prior to the AGM.

  In relation to auditors and AGMs, CSA is also of the view that this provision should apply to all disclosing entities, not just listed public companies.

- **Part 6 Qualified privilege**

  CSA is supportive of the proposed sections in relation to qualified privilege.

- **Part 7 Expansion of auditors' duties**

  CSA supports the provisions as drafted.

- **Part 8 Companies Auditors and Liquidators Disciplinary Board**

  CSA supports the provisions as drafted.

Chapter 2: Financial reporting

CSA supports the provisions as drafted.

In addition CSA commends the adoption of a model for resolving disputes that is '…an alternative to court proceedings…' CSA has long advocated an alternative dispute resolution mechanism via its background paper, 'The Need for a Corporations Panel', released in September 2002.

CSA applauds the Government for introducing a Financial Reporting Panel (FRP) with many of the same principles as the Corporations Panel, in particular the need to be expeditious and informal, the parties not needing legal representation, and that the panel is designed to be less expensive and will allow matters to be heard by persons with particular experience.

Chapter 3: Proportionate liability

CSA supports the provisions as drafted.

Chapter 4: Enforcement

- **Part 1 Protection for employees reporting breaches to ASIC**

  CSA supports protection for whistleblowers.

  It is noted that the ASX Corporate Governance Council's recommendation for a code of conduct includes a suggestion to include in the code encouragement of the reporting of unlawful/unethical behaviour – active promotion of ethical behaviour and protection for those who report violations in good faith.

  Australian Standard AS 8004-2003 on Whistleblower Protection Programs for Entities sets out elements for establishing, implementing and managing an effective whistleblower protection program. AS 8004-2003 recommends the appointment of a Whistleblower Protections Officer, to safeguard the interests of the whistleblower, and a Whistleblower Investigations Officer, to investigate the substance of the complaint. It recommends that both officers should have a direct line of report to the CEO or other senior executive and, if one is appointed, the audit, ethics or compliance committee or equivalent.

  However, while the proposed legislative provisions provide protection for reporting to ASIC, they do not extend to protect employees and others raising matters within the organisation, and accordingly do not encourage such reporting. It is recommended that this deficiency should be addressed and that to do so would also be consistent with the Australian Standard. It is also recommended that internal reporting should be a prerequisite to reporting to ASIC.

  The Commentary in the Bill raises the issue of whether protection should be extended in relation to disclosures of breaches of other legislation. In principle, there is no reason to

make a distinction between various legislative regimes in providing protection for whistleblowers. Also, from the perspective of a whistleblower, the simplest approach is for there to be one authority to whom to report suspected contraventions. However, there is an issue of the jurisdiction of ASIC and its appropriate extent. It may be more appropriate for there to be some other body whom whistleblowers should contact (for example, the Commonwealth Ombudsman or National Crime Authority) for breaches of legislation other than the corporations legislation, for referral to the appropriate authority. Accordingly, in response to issue 4.1, CSA is of the view that if there is to be protection in relation to disclosures regarding contraventions of other legislation, the authority to whom the whistleblower reports should not be ASIC.

A final issue in relation to the protection provided is that the relationship with the various State's Evidence Acts requires consideration. For example, under s 128 of the *Evidence Act 1995* (NSW), the court *may* give a certificate to prevent the use of information provided in evidence by a person where the evidence may tend to prove that the witness has committed an offence or is liable to a civil penalty. It would be helpful if the Commentary to the Bill were to evidence an intention that, if the whistleblower protection applies, a certificate should be granted under such provisions. The amendment of the Evidence Acts to provide for the granting of a certificate or providing for the protection in the Evidence Acts, where whistleblower protection applies, without the need for a certificate should also be raised with the States.

Where a whistleblower does make a disclosure they qualify for protection under proposed s 1317AA(1)(b). The protection does not go far enough as it does not protect subcontractors and their employees. Solely the contractor is protected. CSA feels that anyone in the chain should receive protection.

- **Part 2 Disqualification of directors**

CSA supports the proposed floor of five years for directors who allow a company to trade while insolvent and the proposal to increase the maximum period of disqualification from 10 to 20 years. While the disqualification is from managing a corporation as set out in s 206A, there is a question of whether the disqualification goes far enough. Some words could be added to the preamble to this section to give strong direction to the court to delve below the form of the company's board and management to ensure that, while the disqualification is in place, the disqualified director is truly not in a position to manage the company in a de facto senior manager's role, thus ensuring the substance of the disqualification is adhered to. This could be achieved by giving some examples in the preamble, such as, a person will be considered to have been involved in the management of the company where the board's capabilities are not sufficient to allow the company to continue in the manner in which it has been trading.

It is proposed that ASIC has a register of disqualified company directors and other officers (proposed s 1274AA). The relevant section nominates all persons who are disqualified as a result of breaches of ss 206C,D,E and F but does not mention disqualifications under s 206B. It seems odd to exclude one section. As there does not appear to be a explanation in the Explanatory Memorandum, CSA believes this requires clarification.

- **Part 3 Civil penalty provisions**

There are some fundamental problems with increasing the pecuniary penalties from $200 000 to $1 million when there is still so much uncertainty as to the operation of the civil penalty provisions. Since civil penalties were introduced in February 1993, they have

slowly developed as an alternative to criminal actions and traditional civil actions. The introduction of financial services civil penalties in March 2002, as part of the *Financial Services Reform Act 2001*, has added greater confusion to Part 9.4B of the *Corporations Act 2001* (Cth). Thus, at this point in time, it is not wise to impose both an on-the-spot fine provision for ASIC nor increase the civil pecuniary penalties until further empirical research supports a finding to increase them. As yet, there has been little research of this type of penalty and its regulatory impact, or of the costs that are associated with these actions. It would be more prudent for the existing laws to be consolidated before introducing further major amendments.

Chapter 5: Remuneration of directors and executives

CSA supports the provisions as drafted but asks that disclosure of executive remuneration be relevant to those 'senior managers' that have actual strategic and managerial control of the company as opposed to the five highest paid executives.

Chapter 6: Continuous disclosure

- **Alternative to ASIC infringement notices**

  As outlined in greater detail below, CSA does not support the issuing of infringement notices by ASIC. CSA does support an alternative dispute resolution mechanism via a 'Corporations Panel' that was circulated for public comment in September 2002.

  It is noted in the CLERP Bill that many of the principles of the Corporations Panel have been adopted for use by the FRP, and CSA is of the view that the same mechanisms can be put in place for disputes over a company's potential breach of continuous disclosure obligations.

- **Extended application of civil penalty provisions**

  In relation to the extension of the civil penalty provisions to a person involved in the contravention of the continuous disclosure provisions, CSA is of the view that it is important for a due diligence defence to be available.

  In extending liability to individuals, the significant impact on the individual's reputation and financial circumstances needs to be kept in mind.

  While s 1317S provides for a person to be 'excused' for a contravention in limited circumstances, this is not the same as a contravention not being established.

  A point made in previous submissions in relation to infringement notices is that establishing a breach of the continuous disclosure provisions is not the same as establishing a traffic offence, such as speeding. As discussed below in relation to infringement notices, there will often be different views as to whether or not there has been a contravention (such views being assisted potentially in hindsight). Significant judgment is often required to determine whether or not information will have a material effect on the price or value of securities. Likewise, there is significant scope for judgment in applying the exceptions to ASX Listing Rule 3.1. Accordingly, there is scope for individuals acting in good faith to reach different views.

Decision making in the continuous disclosure context is arguably more onerous than in a fundraising context, often requiring an immediate decision, rather than the opportunity afforded in the fundraising context for due diligence meetings and considerable debate on the issues to be held over a lengthy period of time. In the fundraising context, a person does not commit an offence and is not subject to civil liability if the person made all inquiries (if any) that were reasonable in the circumstances and, after doing so, believed on reasonable grounds that there was not an omission or the relevant statement was not misleading and deceptive (s 731), nor is the person liable if they placed reasonable reliance on information given to them by someone other than their agent (s 733). It is unreasonable for a higher standard to be imposed in the context of continuous disclosure.

In the context of continuous disclosure, there should be a defence if appropriate procedures are in place for compliance, the procedures are followed and the persons involved had a reasonable belief that disclosure is not required.

- **Infringement notices**

1. Proposal

CSA made a submission to Treasury on 22 November 2002 and, along with other representative groups, met with Senator Campbell on 28 May 2003, in relation to CLERP 9. In the submission it was stated that CSA did not support a proposal for ASIC to have power to issue infringement notices and the reasons were further elaborated in the meeting with Senator Campbell.

Confidence in the market requires consistency in decision making, and this is better achieved by one body administering the continuous disclosure regime. CSA remains of the view that the continuous disclosure regime is more appropriately managed by ASX, which is closer to the market and better placed to make market-related judgments. CSA also remains of the view that provision for the imposition of a penalty for an alleged contravention, when there will often be different views as to whether or not there has in fact been a contravention, is inappropriate. A penalty regime of this nature will not achieve 'a quick regulatory response to contraventions of the continuous disclosure provisions',[1] having regard to procedural aspects (which are supported, including the opportunity for a hearing), the compliance period (it is not suggested this should be any shorter as an entity needs to have time to make an assessment of the appropriate action to take) and that an entity may well chose to take its chances in court. However, if a penalty regime is to be introduced, as stated in our earlier submission and in the discussion with Senator Campbell, the power should be with ASX, not ASIC.

2. Review of infringement notice regime

Assuming an infringement notice regime is introduced, CSA strongly recommends that the legislation should include provision for a review of the operation of the regime 18 months after enactment. It is recommended that the review should be by the Corporations and Markets Advisory Committee (CAMAC).

This would be consistent with the review following the introduction of statutory backing for the continuous disclosure regime in 1994. Section 148A of the *Australian*

[1] One justification by ASIC for a fining power was noted by J Segal, Deputy Chair, ASIC, in 'Current areas of concern to ASIC regarding corporate disclosure', Address to the Australasian Investor Relations Association, Corporate Disclosure Practices Seminar, Sydney, 20 March 2002

Securities Commission Act 1989 required the Minister to request the Companies and Securities Advisory Committee (as it was called at the time) to review the effectiveness of the provisions (including statutory backing for continuous disclosure and related enforcement and information-sharing arrangements between ASC and ASX) within 18 months after their introduction.

An advantage of the referral to CAMAC of the infringement notice regime is that this would involve a review by the same body that previously reported on continuous disclosure.

3. Need for ASIC and ASX to work together

The proposed regime also raises an important issue about the relationship between ASIC and ASX. For listed entities, the primary disclosure obligation is imposed by the Listing Rules. The rules are administered by ASX. The ASIC role should be seen as secondary. It is worth bearing in mind that debate in the early 1990s on whether there should be a statutory continuous disclosure regime administered by ASIC or a Listing Rule continuous disclosure regime administered by ASX was decided in favour of the latter and this is reflected in the current legislation.

If there is an issue of compliance with the continuous disclosure rules, this will generally be resolved between ASX and the listed entity. Issues of timing generally affect whether the infringement notice regime will be a part of the process of ensuring information is disclosed. It is more likely that disclosure will be achieved by ASX in a much shorter time period, for example, through discussions with the entity, a price query letter or suspension.

CSA is of the view that the infringement notice regime should recognise the importance of the role of ASX. In the ASIC *Annual assessment (s794C) report*, dated June 2003, ASIC stated in relation to ASX:

'All listed entities are assigned a Company Adviser. The Company Adviser is responsible for monitoring disclosure by and liaising with their assigned listed entities….The background knowledge of the individual Company Adviser and the relationship developed between them and the listed entities for which they are responsible, is a significant element in the supervisory strategy adopted by the Companies Department.' (page 33)

This understanding of the companies it regulates, together with its understanding of the market granted to it by virtue of its role as the market operator, means that ASX is in the best position to monitor disclosure and make assessments of whether there has been a breach and, if so, the seriousness of that breach.

Accordingly, CSA recommends first that the infringement notice regime should only be triggered if ASX refers a matter to ASIC for this purpose. If this recommendation is not accepted, CSA recommends secondly that the infringement notice regime should require ASIC to consult with ASX before issuing an infringement notice. While the proposed provisions include a requirement to have regard to relevant ASX guidance notes (s 1217DAC(4)(a)), this does not bring to bear ASX's knowledge of the circumstances of the specific company, the alleged breach, and the history of disclosure by that company.

CSA recommends that arrangements between ASX and ASIC in relation to the infringement notice regime should be documented in a Memorandum of Understanding

(MOU) and that the MOU should be made public. In this regard, it is noted that ASX Supervisory Review[2] recommends the revision of the existing MOUs with ASIC, which it commented were well out-of-date, and that the revision should be completed in 2003 and 2004. ASX Supervisory Review said that ASX had informed it that 'It is likely that, following CLERP 9, ASIC will be given the ability to use administrative penalties in the regulation of breaches of continuous disclosure. This is [sic] significant departure from the current regulatory structure and ASX Companies considers it appropriate to wait until these latest amendments can also be included in any update of the Companies [sic] MOU'. ASIC agreed that the MOUs were out-of-date and said that it expected the MOUs to be updated and renegotiated this year.[3]

In any event, it is recommended that the Explanatory Memorandum should reinforce the role of ASX, with ASX being recognised as having primary responsibility for the administration of the continuous disclosure regime, and recognise the need for close cooperation between ASIC and ASX in relation to continuous disclosure, including the infringement notice regime. This is important for consistent decision making and confidence in the market.

4. Detail of proposal

In relation to the detail of the proposal, the following comments are made.

- CSA has concerns relating to the provision for publicity in relation to an infringement notice where the penalty has been paid. It is stated that, in paying the penalty, the entity is not regarded as contravening the provision or having been convicted of an offence. Accordingly, it is inappropriate for adverse publicity about an entity to occur in a case where a breach has not been established. Furthermore, the potential for publicity will not encourage an entity to choose to comply with the infringement notice. Accordingly, CSA recommends that there should be no right to publicity by ASIC in relation to an infringement notice (whether or not the entity chooses to pay the penalty).

- The proposed legislation provides limited protection for companies from new and existing proceedings in relation to a contravention (s 1317DAF(5) and (6). It is essential for this protection to cover others exposed to liability, including a person involved in the contravention.

- It is proposed that, in deciding whether to issue an infringement notice, ASIC should have regard to any guidelines issued by market operators (s 1317DAC and Commentary para 463). The Commentary to the Bill notes that guidelines to the Listing Rules do not have the same status as Listing Rules and are not subject to disallowance and, while ASIC is to take the guidelines into account, it is not bound by them. ASX practice, despite the legislation not requiring it to do so, has been to consult publicly on rule amendments. CSA is of the view that ASX should also be encouraged to consult publicly on new guidance notes and amendments to guidance notes. While this is particularly important in the case of continuous disclosure, given that the guidance note on continuous disclosure is to have

[2] Annual Report of ASX Supervisory Review Pty Limited to The Board of the Australian Stock Exchange Limited, dated September 2003

[3] ASIC, Annual assessment (s784C) report – Australian Stock Exchange Limited, ASX Futures Exchange Pty Limited, June 2003

legislative recognition under the proposed infringement notice provisions, it would be desirable as a matter of transparency and best practice in any event.

Chapter 7: Disclosure rules

CSA believes the Government should take the opportunity to legislate in the area of employee share and option plans. This is an area where issues remain to be addressed - some of which have only been temporarily dealt with by a number of ASIC-issued class orders. CSA accepts that this was not referred to in the issues raised in the Explanatory Memorandum.

CSA wishes to voice its support for the direction taken in the Law Council of Australia's submission in this area, in particular the proposed sections dealing with secondary trading of shares.

Chapter 8: Shareholder participation

CSA agrees with the initiative to improve shareholder participation in both meeting attendances and voting on company resolutions.

In addition, CSA supports the proposals to remove legislative hurdles to the use of technology allowing enhanced shareholder participation through electronic means, including electronic proxy voting and Internet broadcasts. CSA's views were thoroughly outlined in our letter of 16 April 2003 (Attachment 2) and we are encouraged that some of these provisions have now come forward.

- **Notices of meetings**

  CSA agrees with the proposed new sub-clause 249L(2) and encourages the incorporation of material in the notice of meeting by reference.

  CSA agrees with the proposal to include a new subs 249J(3A), enabling companies to offer members the option of accessing notices by a wider range of electronic facilities and the ability of members to nominate electronic access.

- **Electronic distribution of annual reports**

  CSA encourages the proposal to permit members to receive distribution of annual reports by electronic means in the same manner as notices of meetings (new subss 314 (4) and (5)).

- **Proxy voting**

  CSA supports the provision to appoint a body corporate as a proxy (new subs 249X(1A)), subject to appropriate clarification as to the appointment. Furthermore, it is important that the body corporate is obliged to nominate an individual to exercise its powers and that the authentication of the proxy appointment is by way of a Power of Attorney or Representation Letter.

  CSA supports new subs 250A(1), which will facilitate authentication mechanisms for appointments of proxy other than signatures.

CSA supports replacement of subs 250B(3), permitting companies to offer a facility for electronic submission of proxy appointment forms and related appointment authorities.

- **Listed companies: notification of directorships**

  New paragraph 300 (11) (e) proposes to include details of directorships of other listed companies held by the director in the three years before the end of the financial year to which the report relates. While CSA supports open disclosure, it is our view that the three-year period is excessive. It is submitted that disclosure of directorships of listed companies held in excess of one year is likely to be irrelevant to most investors. Accordingly, CSA recommends that the period be reduced to one year.

  If the proposal of disclosure of past directorships is considered important, consideration should be given to expanding the disclosure to include large unlisted public companies, as a substantial number of unlisted public companies can be larger and more significant than many ASX Listed Companies.

  CSA believes the current annual report disclosure requirements of subss 300(10) and (11) are adequate. If it were deemed necessary to expand this level of disclosure, it would be sufficient to disclose directorships of other listed companies or large public companies for one year before the end of the financial year to which the report relates.

While CSA largely supports the provisions outlined in Chapter 8, three important matters have been omitted that should be included in the CLERP Bill.

1. **Voting by the chairman**

   Recent court cases have highlighted the need for clarity in the obligation to vote proxies as directed. CSA's primary interest is in ensuring that the voting intentions of shareholders are carried out and as such proposes an amendment to s 250A(4)as follows:

   > '(c) if the proxy is the chair, a director or a secretary of the company, the proxy must vote as instructed on a poll, and will be deemed to have voted that way, even if the proxy fails to vote or fails to vote as instructed on the poll; and'

   CSA is of the view that the inclusion of a director or a secretary will allow action to be taken, under the *Corporation Act's* provisions for breach of directors'/officers' duties, against an offending proxyholder who either fails to vote or votes in a manner contrary to instructions. The inclusion of the deeming provision ensures that the intentions of the person giving the proxy will be put into effect, even if the proxyholder deliberately chooses not to vote or votes contrary to instructions.

2. **Calling of general meeting by directors when requested by members**

   CSA is disappointed that the CLERP Bill did not include proposed changes to s 249D that had been included in the Corporations Amendment Bill 2002 – Exposure Draft and on which CSA has made a submission.

   The 100 members/five per cent of votes 'rule' has been a longstanding issue and CSA has made numerous submissions on the matter. CSA supports the removal of the 100-member rule for the calling of meetings and reiterates its argument that this rule has the effect of placing substantial expense on companies and their memberships.

The current situation is unacceptable and, in our desire to bring this matter to a satisfactory conclusion, we have supported alternative proposals as a means of providing shareholders with an opportunity to express their views, such as the square-root rule..

In May 2001, CSA and a number of other professional bodies wrote to the then Minster for Financial Services and Regulation (Attachment 3) proposing an alternative solution. At the time the proposal had the support of Senator Stephen Conroy. The groups that signed the May 2001 letter are still in support of this proposal.

Further to this matter, it should be pointed out that CSA has not, and will not, argue against the submission of resolutions by 100 members to be included on the notice of AGM, as we believe this is the optimum solution for members wishing to raise an issue before the members, without incurring an unnecessary expense.

CSA is of the view that the CLERP Bill is the appropriate mechanism to address this matter, either by adopting the five per cent threshold as is largely in use overseas, or by some form of proportional measure as advocated by CSA in its May 2001 letter.

3. Company Secretaries: subsection 300(10)

CSA believes that in the current climate the CLERP Bill should take this opportunity to progress with a proposal that was contained in the Corporations Amendment Bill 2002 - Exposure Draft Bill, released for consultation late in 2002.

CSA supported and welcomed this addition as recognition of the role of the Company Secretary in developing and ensuring implementation of appropriate corporate governance standards within companies. Listed entities in the United States and in Australia are increasingly creating the position of Chief Governance Officer or ensuring the Company Secretary is charged with implementing good corporate governance within their organisations.

In both the UK Higgs Review and the ASX Corporate Governance Council's guidelines, specific mention was made of the role of the Company Secretary in ensuring implementation of good corporate governance.

The provision in the Corporations Amendment Bill 2002 – Exposure Draft to require all listed entities to list the qualifications of their Company Secretary in their annual report, so that investors can make an informed decision on how serious their company takes good corporate governance, is long overdue.

Notwithstanding this, CSA would like to reiterate its recommendation made in March 2000 that the Company Secretary of a public company be required to have formal qualifications prescribed by the Act, such as membership of one of the major accounting bodies, State law bodies or Chartered Secretaries Australia.

Chapter 9: Officers, senior managers and employees

CSA is generally in support of the provisions contained in the CLERP Bill in relation to anomalies identified by the HIH Royal Commission.

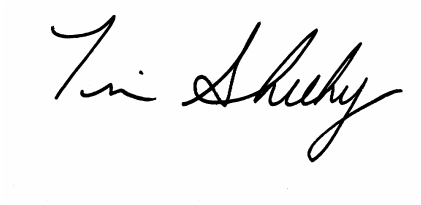
Chapter 10: Management of conflicts of interest by financial services licensees

CSA supports the provisions as drafted

Chapter 11: Miscellaneous amendments

CSA supports the provisions as drafted

Yours faithfully



Tim Sheehy
Chief Executive

ATTACHMENT 1

CHARTERED SECRETARIES
AUSTRALIA

Keeping good companies

22 November 2002

Mr. M Rawstron
General Manager
Corporate Governance Division
Department of the Treasury
Langton Crescent
PARKES ACT 2600

Dear Michael

CSA welcomes the opportunity to comment on the significant issues raised in the Government's CLERP 9 paper – Corporate disclosure: Strengthening the financial reporting framework.

CSA is Australia's peak membership body for corporate governance and compliance, and firmly consider ourselves as fully qualified to respond to this matter. In Australia CSA has over 8,000 members representing the majority of public companies listed on the Australian Stock Exchange. Members of CSA regularly deal on a day-to-day basis with the ASX, ASIC and the ACCC and have a thorough working knowledge of the operations of the markets, the needs of investors and the law and regulation dealing with market practices and independence. In addition, representatives from the ASX, ASIC and the ACCC regularly address members at our seminars and conferences.

Government's CLERP 9 discussion paper.

In this submission CSA does not attempt to provide detailed comment on all of the 41 proposals; the professionals dealing in them on a day-to-day basis best address a number of these. CSA therefore focuses on those issues for which its members have significant responsibilities. In preparing this submission CSA has conducted a survey of those members who are company secretaries of the top 200 listed companies in Australia.
In general, CSA and its members believe that the proposals in CLERP 9 take a significant step in improving corporate governance in Australia. The proposals are seen as reinforcing existing good practices, rather than imposing a straitjacket on corporate behaviour.

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REFORM PROPOSALS

AUDIT – PROPOSALS 1-18

CSA and its members believe that the audit proposals are sensible and well thought out for our environment in Australia.

Proposal 1 – Financial Reporting Council

CSA supports the expansion of the responsibilities of the Financial Reporting Council and recommends that membership of the Council include professionals and stakeholders outside the accounting and audit professions to provide a balanced view on independence.

Proposals 2-5 – Independence of auditors

CSA supports the proposed amendments strengthening the independence of auditors.

Proposals 6-7 – Non-audit services

CSA supports the proposed measures to disclose and control non-audit services.

Proposal 8 – Audit committees

CSA supports the mandating of audit committees for the top 500 listed companies – 90% of the companies in CSA's survey already have an audit committee. CSA recommends that audit committees be encouraged for all listed companies, where board size permits. In many smaller companies the full board effectively carries out the same duties as an audit committee. CSA also believes that significant large proprietary companies should also be encouraged to establish audit committees. In all cases audit committees should be encouraged to prepare a charter of responsibilities and membership, including restricting membership to non-executive directors (where this is possible) and to make this available to shareholders. CSA will support the ASX Corporate Governance Council in developing best practice standards for audit committees.

Proposal 9 – Rotation of Auditors

CSA supports the compulsory rotation of audit engagement and review partners after five years.

Proposal 10 – Auditors at AGMs and questions to the auditor

CSA supports the attendance of the auditor to the annual general meeting of a listed company and answering reasonable questions from shareholders on the audit. Our recent survey indicated that the auditor attended the AGM of 95% of the companies surveyed, with statements being made by the auditor at 67% of the AGMs
Whilst CSA supports the proposal allowing shareholders to submit questions by email or otherwise to the company, whether in respect of the audit or the affairs of the company, CSA does **NOT** support the proposal to post these questions on the company's website. From experience, CSA members are aware that questions from shareholders can be defamatory, based on incorrect information or plain abusive. Rather than providing a productive tool of corporate governance, such a measure could merely provide a forum for defamatory gripes. To allow such questions to be placed on the company's website without monitoring or response by the company could open the company to action by defamed parties. Similarly unsubstantiated

and mischievous comment could be placed on the website which might be used by ASX or ASIC to require an unwarranted comment by the company under the continuous disclosure provisions in the Act and Listing Rules which would confuse rather than inform the market.

Proposal 11 – Qualification of auditors

CSA supports the proposal for accountants seeking registration as company auditors to meet agreed competency standards. CSA recommends that such a proposal be extended to company secretaries of listed companies and that membership of CSA or any of the accounting and legal professional bodies or registration as legal or accounting professionals be regarded as appropriate qualifications.

Proposals12-13 – Auditor liability

CSA has no comment on auditor liability.

Proposal 14-16– International accounting standards

CSA supports the adoption of international accounting standards and notes the proposal to introduce the IASB standard on expensing of share options. We would however reserve our views on the contents of the standard until there is a clear statement.

Proposals 17-18 – analyst disclosures

CSA supports the full disclosure of any financial interest by analysts, financial service licensees and proper authority holders in subjects on which they advise or provide recommendations and supports the proposal that ASIC provide guidance on the level and manner of such disclosure.

CONTINUOUS DISCLOSURE - PROPOSALS 19-29

CSA and its members have continually worked with ASX in establishing a clear consistent interpretation of the Listing Rules and associated Guidelines and made a detailed submission to ASX in respect to its recent proposed amendments to the Listing Rules on enhanced disclosure. A copy of that submission is attached. CSA recognises that ASX seeks to ensure an informed and orderly market and its members likewise seek to ensure that the market is kept informed.

CSA supports ASX as the prime regulator of the Australian stock market. ASX is seen as closer to the market and better placed to make market-related judgements. CSA does not support the proposed extension of the regulation and enforcement of the market to ASIC. The discussion paper contains a number of proposals regarding civil penalties and infringements notices in relation to contraventions of the continuous disclosure regime. CSA does not believe that ASIC should be granted such powers. In many cases the issue of whether to disclose or not will involve reasoned discussions between ASX and the company. Such discussions do not and should not lend themselves to an "on the spot fine" regime conducted by ASIC, as prosecutor, judge and jury. CSA however recognises that the current weapon available to ASX, that of suspension from trading, tends to hurt the shareholders rather than the offenders.

CSA and its members surveyed support an increase in the maximum civil penalty for market manipulation and insider trading from $200,000 to $1 million. Such actions are deliberately intended to create an unfair market and should be penalised as such. CSA does not however support the increase in the maximum fine for contravention of the continuous disclosure regime. Little evidence has been given to support the view that such fines are effective deterrents. ASX's recent survey in its discussion paper on enhanced disclosure revealed few cases where further action was required. In any event many of the continuous disclosure issues demonstrate that

there can be genuine differences of opinion made in good faith and with substantial external legal advice. Fines for non-disclosure should not be regarded as akin to speeding fines where there is no doubt a limit has been breached.

24 CSA does not support the extension of the continuous disclosure regime to allow individuals to seek compensation from corporations or individuals involved. CSA believes that current legal rights in section 1325 are sufficient. If action is to be permitted against individual office holders, this should be confined to those senior officers directly involved, chief executive or chief financial officer. In this regard we note the recent changes to US law requiring the Chief Executive and Chief Financial Officers to certify as to the accuracy of financial statements.

25 CSA agrees that all investors should have access to materially price sensitive information disclosed by listed entities and its members have been working closely with ASX in the development of ASX OnLine. It is our view that the use of eLodgement will contribute to a better-informed market through the provision of more current, accurate and accessible information, which can be readily disseminated without the integrity of the information being jeopardised.

26 CSA supports and is working with ASX in providing education and guidance to promote compliance with the continuous disclosure provisions of the Listing Rules.

27 CSA has made a substantial submission on the matter of ASX determining whether speculation is having a significant impact on the market and requiring the company to respond. CSA believes that the substantial majority of issuers and their advisors seek to comply with both the spirit and the letter of the Listing Rule on continuous disclosure and that they work with ASX at all times to ensure that disclosure is made at the earliest appropriate time. CSA is particularly concerned that the “false market” could be created, not through any undisclosed action by the Issuer, but through unsupported media speculation over which neither the Issuer nor the ASX have any control.

CSA notes in the examples given in the ASX discussion paper that ASX would take the nature and standing of the persons promoting the speculation into account when deciding whether a false market could be created. CSA does not believe that merely because information appears in a newspaper, however credible, it is necessarily sufficiently accurate to require ASX to force a company to respond. CSA’s greatest concern is that there is as great a risk in creating a false market by forcing companies to respond to unsubstantiated rumours as there is in their taking an entirely plausible and supportable “no comment” stance. CSA suspects that practices may develop which will allow companies to make bland non-committal statements merely to satisfy ASX'.

CSA believes that much of the current uncertainty can be addressed by encouraging companies to “develop a disclosure regime that meets legal requirements and its own needs and circumstances” (ASIC Guidance Principles August 2000) and in developing a more positive relationship with and promoting active confidential discussions between ASX and the issuers.

COMMUNICATION ASPECTS - PROPOSALS 36-41

Proposal 36 Establishment of a Shareholders and Investors Advisory Council

CSA queries the need for such a council given the representation of shareholders through the ASA and IFSA on the ASX Corporate Governance Council.
Should the proposal proceed consideration should be given to the representation on the council to ensure it fairly represents the interests of all shareholders. Consideration should also be given to including a representative from listed companies and institutional investors to introduce their perspective on issues relating to shareholders.

Proposal 37 Shorter, more comprehensible notices of meetings.

It is a core component of good corporate governance practice that shareholders should be given the opportunity to participate and vote in general meetings. Necessarily, it follows that to make a rational and effective decision how to vote, shareholders need to be armed with all relevant information to help them in this process. The form and content of notices of meeting, therefore, is vital to ensure good corporate governance.

Notices of meeting that fail to adequately convey to shareholders the nature of the proposed business of the meeting will not be effective in encouraging shareholders to attend or participate, even though they may meet legal requirements. Accordingly, it is essential that companies endeavour to achieve best practice in the form and content of notices of meeting.

CLERP 9 suggests that a means to address this issue may be the development of best practice guidelines to promote a common sense approach encouraging companies to include in their notices of meetings only information that is useful in the circumstances. Such guidelines "could be of assistance in encouraging more comprehensible notices of meetings whether or not a legislative change were to be made".

The Introduction of Best Practice in good faith guidelines without legislative change is unlikely to encourage companies to reduce to content of notices. However, CSA believes that the introduction of best practice guidelines together with the enactment of a 'comfort provision' (see later) is likely to facilitate shorter, clearer and better structured notices of meeting. Clearly, and in CSA's firm view a "notice of meeting" includes any explanatory notes or explanatory statement which accompanies the notice.

Potential Guideline topics would embrace:

- Notices of Meeting should be honest and accurate and not be misleading
- Notices should clearly state and, where necessary, explain, the nature of the business of the meeting
- Notices should set a reasonable time and place of meeting
- Notices should encourage shareholders' participation through the appointment of proxies
- Companies should adopt Best Practice drafting methods for notices of meeting;
- Companies should combine or "bundle" distinct resolutions in a notice of meeting only in limited circumstances;
- Companies should ensure notices give clear guidance on directors' recommendations on resolution;
- Companies should ensure notices give clear guidance on shareholders' conflicts of interest and clearly state which shareholders will be excluded from voting or have their votes disregarded;
- Companies should give particular attention to notices containing complex resolutions;
- Companies should place the full text of notices and accompanying explanatory material on the company website; and
- Companies should give clear guidance in notices of meeting containing resolutions for the election or removal of directors

Further, CSA supports the introduction of a comfort provision to protect disclosures made in good faith in a short-form notice of meeting. Companies presently are required to provide full and fair disclosure in notices. In order to do so companies will feel obliged to provide sufficient information for shareholders to make fully informed decisions. As the information needs of shareholders vary, companies generally provide more rather than less information. In order for companies to feel comfortable about the provision of less information in the notice of meeting a 'comfort' provision would need to be enacted to protect company officers preparing short form notices in good faith.

Proposal 38 – Bundled Resolutions

CSA supports the development if best practice guidelines covering the use of 'bundled resolutions'.

Proposal 39 – Shareholder participation using new technologies

CSA encourages initiatives that improve shareholder participation both in meeting attendances and voting on company resolutions. Accordingly, we strongly support the proposal to remove legislative hurdles to the use of technologies that allow enhanced shareholder participation through electronic means including electronic proxy voting and internet broadcasting.

The paper notes that for participation over the internet to be equivalent to physical presence shareholders would need to be able to ask questions, participate in debate and vote. This raises a number of legal and technical issues, alluded to in the paper, that would need to be addressed before two-way electronic meetings become accepted practice.

Electronic proxy voting (EPV) has been embraced by only a few listed companies to date due in part to concerns regarding the legal validity of EPV and because authentication of shareholders and proxies is problematic. CSA would support Government actions that address these issues and remove unnecessary legislative hurdles to improved shareholder participation in Company meetings.

Proposal 40 – Disclosure of other directorships

CSA recognises that there may be some value to shareholder in the disclosure of other directorships in the Annual Report notes. It is common practise amongst listed companies to disclose details of significant other directorships in Annual reports. However, we do not see the need to report on other directorships held prior to the current reporting period, which will in due course be available from prior period annual reports.

CSA would also like to note the recommendation of the Companies & Securities Advisory Committee (CASAC) in August 2000 to the then Minister for Financial Services and Regulation regarding the qualifications and experience of Company Secretaries. It was the view of CASAC that:

> "Subsection 310(10) of the Corporations Law should be amended to require the annual report of public companies subject to that provision to disclose the qualifications and experience of their company secretaries."

CSA is of the view that the role of Company Secretary is integral to the effectiveness of a company's corporate governance and that this information may be relevant to shareholders in assessing the commitment a company makes to good corporate governance. Shareholders would take some comfort that Company Secretaries possess qualifications and experience necessary to ensure a company satisfies its compliance and other reporting obligations.

Proposal 41 – Electronic distribution

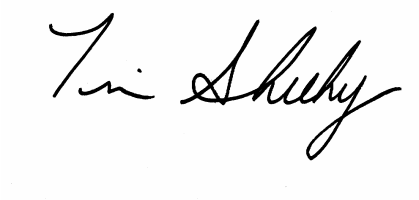
CSA supports the use of electronic technology as a means of distributing company information to shareholders and notes that many listed companies presently provide shareholders with access to annual reports and notices of meeting by electronic means. However, despite this trend concerns have been expressed that provision of company notices and reports in electronic format may not satisfy the requirements of Listing Rule 4.6 which requires annual reports to be "sent out" to shareholders. It has been suggested that this means a hard copy must be sent out. CSA therefore supports moves to clarify this position and implement any necessary changes to permit shareholders to receive reports and notices in electronic form.

Given the duplication in cost and resources of providing shareholders with both electronic and hard copies of shareholder publications and notices, CSA believes it should be up to individual companies to decide if they should allow shareholders to elect to receive publications and notices in *both* electronic and hard copy formats.

If companies elect to offer electronic distribution of notices and reports they need to ensure that the distribution process can cater for “rebounding emails” arising from non-delivery of electronic communications. If electronic reports and notices cannot be delivered successfully companies should ensure that hard copies are distributed instead.

CSA does support the development of best practise guidelines by the ASX Corporate Governance Council covering electronic distribution of annual reports.

Yours faithfully



Tim Sheehy
CHIEF EXECUTIVE

ATTACHMENT 2

CHARTERED SECRETARIES
AUSTRALIA

Keeping good companies

16 April 2003

Mr Mike Rawstron
General Manager
Corporate Governance Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Mr Rawstron

Shareholder participation under CLERP 9 - use of technology

I refer to your letter of 13 March 2003 to Richard Jones, Chairman of CSA's National Legislation Review Committee. The Committee has considered the discussion paper and the comments below reflect the views of the membership of CSA.

CSA's members are actively and deeply involved in matters concerning communication with shareholders, including general meetings. A number of the major companies represented on the Committee have already put much of the technology in place and have experienced the good and bad points about the various options discussed in the paper.

CSA supports the principles set out in the paper:
That shareholders require access to timely and comprehensible information to allow them to make informed decisions,
That new technologies be utilised not to replace but to supplement and facilitate physical general meetings.

In respect of the three sections of the discussion paper:

Electronic communications to shareholders

CSA supports giving shareholders the option of receiving notices of meetings, financial statements and reports and other related material by electronic means in preference to paper copies. There are clearly significant cost and environmental savings in such an option. At present some companies are prevented by their Constitutions from using other than traditional hard copy distribution. CSA supports the "opt-in" approach. We suggest however that, apart from forms or e-mail, there are a number of other possible alternative methods for shareholders to elect for electronic distribution including the use of the company's website for access to the share registry. If the law is to be changed we suggest that any amendment be sufficiently wide to allow companies to select the approach or approaches that best suit them. Such flexibility would allow for advancements in technology.

The paper proposes that the e-mail address be added to the share Register. Whilst a number of companies do retain e-mail addresses to permit easy communication with shareholders, they do not include those address on the register itself.

From a practical perspective, it is worth noting that e-mail addresses can become invalid very quickly as users change providers at frequent intervals. One company estimates that at any given time between 10 and 20% of e-mail addresses held for shareholders are invalid. However, over time, CSA expects that e-mail will become an increasingly common means of communicating with shareholders.

Share registers are currently freely available for public inspection and copies of the register may be obtained on payment of a fee not greater than the marginal cost of providing the copy. There has been recent media coverage of unscrupulous operators making use of the contact details available on share registers to offer to purchase shares from often in-experienced shareholders at prices well below the prevailing market price. There is also a more general concern amongst companies and their shareholders, that having share registers open for public inspection is completely inconsistent with the spirit of the Commonwealth's own privacy principles – namely that personal information provided to a company should not be used or disclosed by the company except in connection with the purposes for which the information was provided. While CSA would expect that the restrictions in section 177 of the Corporations Act would apply to contacting shareholders by e-mail, it seems likely that it would be harder to police the application of that provision to prevent unscrupulous operators from accessing the register with a view to sending unwelcome junk e-mails to shareholders.

Pending resolution of the broader privacy questions in relation to share registers, CSA suggests that one approach would be to require a company to keep on its public share register only the address that it primarily uses to communicate with a shareholder. This address might be a street address, a post office box or an e-mail address. This would allow persons legitimately wishing to contact shareholders as contemplated by section 177 of the Corporations Act to do so in the same way that the company contacts the shareholder. It would preserve the privacy of other information held by the company about the shareholder.

The paper canvasses the need to control the format of documents placed on websites or sent by email to ensure that information cannot be altered and to ensure that there is compatibility. The ASX has recently introduced ASX Online, which requires documents to be lodged electronically in a standard PDF format. Whilst many large companies can meet this requirement, some smaller companies have difficulty in affording the necessary software and thus ASX has, as an interim measure, agreed to accept documents in other formats and methods of transmission. This issue of format has international implications. Whilst ASX has mandated PDF, the London Stock Exchange and UK Listing authority will only accept documents in a form of HTML that will not accept tables and graphs and will only accept files of less that 4KB, thus requiring companies to break their financial results into bite size pieces. Whilst the New York Exchange accepts PDF, the SEC will only accept documents converted into its version of HTML, EDGAR. In short, there are a number of formats either available or mandated. The security of each has to be examined before mandating a format for making documents available on company websites. The lowest compatible form is not necessarily the most secure.

CSA supports a requirement that in the same way companies retain hard copies of material sent to shareholders, they be required to maintain copies of documents placed on the website for a specified period and that the location and period of availability of such documents be displayed on the website and in the annual report.

Electronic proxy voting

This section raises two distinct issues - the admission of bodies corporate to act as proxies and the matter of authorisation of electronic proxies.

The paper seeks to amend the law to permit a body corporate to act as a proxy. At present section 249X provides that members may appoint a "person" which would appear to preclude bodies corporate. The proposed change to include a body corporate should not be confused with the method of appointment, electronic or otherwise.
Whilst CSA has no objection to the concept of electronic lodgment of proxies subject to appropriate controls on authorisation discussed below or authority in the constitution of the company, we are not persuaded that the inclusion of companies as proxies is required.

As entities, companies cannot physically attend meetings - they must either appoint representatives or appoint proxies - physical persons to attend and vote for them. If the appointed company proxy or proxies (other than the Chairman of the meeting, which is often the fall-back appointment) could not attend the meeting, it could only vote by directing a representative or representatives to vote. CSA recognises that such organisations may be placed at a disadvantage if their nominated proxy or representative is unable to attend the meeting. In such circumstances a number of the companies which CSA's members represent have accepted as valid a nomination of "the appointed representative of the ASA (or other named organisation) at the meeting" where the company has received written advice from the organisation ahead of the meeting as to who its representative will be. We believe this negates the need to amend the law to permit the appointment of a body corporate to act as proxy, as we believe this could be fraught with difficulty.

To date, few companies have embarked on electronic proxy lodgment. There is therefore little precedent on which to change the law. The issue of authentication is clearly the matter that has prevented this measure proceeding. As the paper notes, companies allowing electronic lodgement use a variety of methods of authentication, including a combination of SRN/HINs, surnames and postcodes. Some companies have contemplated the use of PINs, but there does not appear to be any greater security in this measure. From a practical perspective, if a hard copy proxy form is sent in by the acceptable forma of delivery - mail or fax - the share registry checks only that the form has been signed - it does not check the signature for authenticity nor do registers have the means to do so. Transfer forms are no longer required and thus no signatures are held by the registry against which checks could be made. It could therefore be argued electronic lodgement should not require any greater degree of authentication. CSA agrees that the rate of technological change makes it undesirable that specific methods be mandated and that the ASX Corporate Governance Council and ASIC be asked to develop best-practice guidelines to assist companies in protecting their members.

Virtual meetings

From the experience of its members, CSA is not persuaded that there is adequate technology available to support the need for a legal frame- work for virtual meetings. As the frequency of such meetings increases, the ASX Corporate Governance Council and ASIC should maintain a close examination on the measures taken by the companies with a view to introducing appropriate legislative changes. CSA recognises that there are potentially some significant benefits in such virtual meetings, when conditions and technologies are available.

We welcome this opportunity to provide comment on such a significant part of practical corporate governance, the communication between companies and members.

Yours sincerely,

Tim Sheehy
CHIEF EXECUTIVE

ATTACHMENT 3

CHARTERED SECRETARIES
AUSTRALIA

Keeping good companies

25 May 2001

The Hon Joe Hockey MP
Minister for Financial Services and Regulation
Parliament House
Canberra ACT 2600

Dear Minister,

We the undersigned are keen to have the legislative requirements for calling an extraordinary general meeting under section 249D of the Corporations Law settled in a manner that will balance the rights of shareholders to have matters addressed against the importance of allowing directors to effectively run the company. While the 'square-root' rule goes a long way towards achieving this goal, we wish to suggest a modification to it.

It is generally accepted within much of the business and investment community, the Government and the Opposition that the current 100-member rule is unsatisfactory. A shareholder numerical test that accounts for the size of the company register, rather than relying on a single absolute number, is seen as being more equitable.

For the record, we suggest that the issued share capital test (the 5% rule), section 249D(1)(a), the proper purpose test, section 249Q, and the right of shareholders to put resolutions to scheduled shareholder meetings, section 249N(1), all be retained.

We support your proposal to replace the 100-member rule with a new 'square-root' rule. However, in order to make the test more equitable to companies and still preserve the principle of shareholder democracy we propose that for public companies:

- a 'cap' of 500 members and a 'floor' of 100 members be applied. This additional boundary will not lower the threshold of 100 that currently exists and will not require an overly onerous number of members in the larger and more widely held public companies;

- a minimum economic interest of $500 be required for each member of a public company seeking to call a meeting.

The addition of the cap recognises that the number of members required to call a meeting of a large company, such as Telstra, Qantas or NRMA, under the square-root rule may be far too difficult to secure, whilst a "floor" preserves the current 100-member test for smaller companies.

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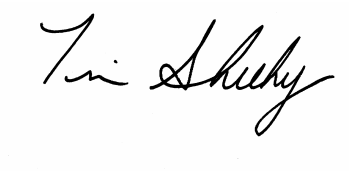
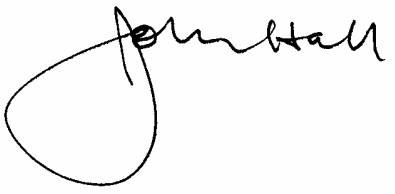
We believe the inclusion of a minimum economic interest test is an essential component for a fair and equitable test given the experience with the Wesfarmers and Rio Tinto meetings that were called in 1999. A minimum economic interest, combined with a 'cap' on the square-root rule, would mean that an investment of only around $190,000 would be required to call a meeting of a company such as Qantas, with a current market capitalisation of nearly $4 billion, or $250,000 for a company such as the Coles Myer with a current market capitalisation of just over $7.4 billion.

We realise that one of your objectives is to avoid '…an unnecessary level of complexity…' and we endorse that objective. However, we believe that these two additions are easy to understand, adopt existing market conventions and will not be difficult to administer.

To further this matter, one of the undersigned will contact you shortly to arrange a meeting between yourself and us.



Tim Sheehy
Chartered Secretaries Australia



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Australian Institute of Company Directors

Ted Rofe
Australian Shareholders Association

Lynn Ralph
Investment & Financial Services Association

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