



CHARTERED SECRETARIES
AUSTRALIA

Leaders in governance

22 February 2007

Mr David Sullivan
The Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Suite SG.64
Parliament House
CANBERRA ACT 2600

By email: corporations.joint@aph.gov.au

Dear Mr Sullivan

Exposure Draft of the Corporations Amendment (Insolvency)
Bill 2007 and related draft regulations

Chartered Secretaries Australia (CSA) welcomes the opportunity to comment on the Exposure Draft of the Corporations Amendment (Insolvency) Bill 2007 (the Bill) in response to the Parliamentary Joint Committee's inquiry into the Bill.

CSA is the peak professional body delivering accredited education and the most practical and authoritative training and information on governance, as well as thought leadership in the field. We represent over 8,000 governance professionals working in public and private companies, as well as in the public and not-for-profit sectors. CSA welcomes the reforms proposed in the Bill.

Inquiry into the Bill

Recommendation 10

In relation to the Parliamentary Joint Committee on Corporations and Financial Services' (the Committee's) Inquiry into the Bill, CSA notes that the Committee's 2004 report *Corporate Insolvency Laws: a Stocktake* recommended (in Recommendation 10) that the law be amended to permit an administrator or a liquidator to recover from directors who have failed to ensure that company records are complete and up-to-date the costs and expense of reconstructing the company's financial records in order to prepare a full and complete report on the affairs of the company.

As the persons responsible for the accountability mechanisms of companies, CSA members believe that good record keeping is an essential feature of sound corporate governance. The requirement to keep written financial records that correctly record and explain a company's transactions and financial position and performance, and enable true and fair financial statements to be prepared and audited, is a fundamental obligation and legal requirement of every company.

However, in relation to Recommendation 10 as proposed by the Committee, CSA does not support amending the law. CSA agrees with the government that a provision along the lines proposed would be subject to uncertainty both as to the liability of individual, non-culpable directors and the quantum of any potential liability.

CSA notes that in the report, *Personal Liability for Corporate Fault*, published last year, CAMAC recommended that imposing personal liability for corporate fault:

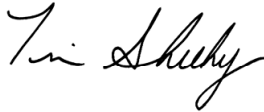
- detracts from good corporate governance by reducing the understanding of individuals of their legal responsibilities in performing their corporate functions and the sanctions they may face for breach
- complicates the efforts of corporate decision makers to ensure corporate compliance
- increases compliance costs for businesses in identifying and responding to complex legal requirements
- acts as a general disincentive for individuals to undertake corporate roles.

The report also recommended that a more consistent and harmonised approach to personal liability for corporate fault would reduce complexity, confusion and the cost of compliance; assist companies to adopt consistent compliance approaches and programs across their various activities; and assist corporate officers to understand fully what is expected of them.

CSA believes that the government's recommendation in relation to Recommendation 10 as proposed by the Committee is consistent with the approach recommended by CAMAC on this issue.

In preparing this submission, CSA has drawn on the expertise of its national Corporate and Legal Issues Committee.

Yours sincerely



Tim Sheehy
CHIEF EXECUTIVE