



**CHARTERED SECRETARIES
AUSTRALIA**

Keeping good companies

2 May 2003

The Hon Peter Costello, MP
Treasurer
The House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Minister,

Re: The HIH Royal Commission

Chartered Secretaries Australia (CSA) prides itself on the corporate governance aims and objectives that it espouses.

CSA is Australia's peak membership body representing company secretaries and those responsible for ensuring good corporate governance is practiced in Australian organisations. In Australia, CSA has over 8,000 Members and Affiliates 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 many instances where good corporate governance is achieved, or practices reveal poor corporate governance, CSA takes an active interest. The HIH Royal Commission is one such situation.

CSA is pleased to see the Government taking a pro-active position on corporate governance. It has pre-empted a number of initiatives that will no doubt come up for further debate as a result of the HIH Royal Commission. In part, the work of ASX Corporate Governance Council has addressed many issues already. CSA is of the view that developing best practice guidelines on corporate governance through the ASX was an appropriate stance, rather than adopting a more hasty response to excesses with a move to legislation as seen in the United States. Greater flexibility has hopefully been achieved, which appears to be lacking as a result of the Sabannes-Oxley act.

With the HIH Royal Commission now complete, one could see during its progress the emergence of more and more revelations about the poor corporate governance that must have existed at both HIH and FAI. These revelations seem to be pointing to a number of matters that warrant comment:

1. Auditors: The seeming lack of independence (audit partners becoming board members), insufficient power to qualify the accounts, possibly through insufficient expertise.
2. Board Composition: Executives and past auditors seem to make up the majority of the board positions.
3. Board Education: It is arguable that the board members were not aware of their responsibilities or if they were they did not have the expertise or were not informed by management in sufficient candour to allow them to perform their function.

4. Honesty: Forthright explanations were not in evidence suggesting that information was deliberately withheld from the board.

The Government, through the CLERP 9 discussion paper last year addressed some of the issues raised above.

It has gone further by suggesting whistle blower legislation. CSA looks forward to what the legislation will say before making further comment but commends the government on this initiative as it will assist the release of information that may be being deliberately withheld.

To date there has been a desire to not legislate. CSA supports this approach and urges the Government to withstand the pressure to immediately enact legislation. As mentioned above, the US response has been shown to be too hasty and too restrictive and with many unintentional consequences.

For its part CSA is preparing a series of 'Good Governance Guides' to provide assistance to all types of companies on a raft of issues from managing a meeting, to notices of the meeting, to composition of the audit committee etc. These, coupled with the ASX Council's work in this area will set strong benchmarks for all companies to adhere to.

In other proposals made by the CSA we have proposed the creation of a Corporations Panel. This body would be able to receive information from whistle blowers and other parties on non adherence to the corporate governance framework. It would be able to act as quickly as the Takeovers Panel could act and thus enable quick attention to issues before they become unmanageable. Maybe even prevent a corporate collapse of the magnitude of HIH.

CSA's underlying comment is that no matter how thorough corporate governance guidelines are, or how much legislation or requirements are placed around corporate governance, it is still not necessarily going to prevent fraud or stop people who wish to manipulate the system for their own aims. In fact, more flexibility ensures that pernicky legal arguments cannot be used to justify why a particular organisation has adopted what would generally be regarded as a poor corporate governance position.

We commend the HIH Royal Commission on their work and suggest that recognition be given to the stance taken by the ASX Corporate Governance Council and that the Government adopt a measured approach to the report of the Royal Commission and not seek drastic legislation that would do more to inhibit business than to promote it.

CSA would be pleased to discuss further with you any of our thoughts should wish to do so.

Yours sincerely,



Tim Sheehy
CHIEF EXECUTIVE