



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

The Secretary
Parliamentary Joint Committee on
Corporations & Financial Services
Room SG, 64
Parliament House
Canberra ACT 2600

Dear Dr Dermody,

CLERP 9 Exposure Draft Bill

Please find attached is a copy of the submission lodged by the Corporations Committee of the Business Law Section of the Law Council of Australia with The Treasury on 10 November 2003 on the CLERP 9 Exposure Draft Bill. The submission raises the details of the Corporations Committee's position. The submission has been endorsed by the Executive of the Business Law Section, but has not been considered by the Council of the Law Council.

In appearing before the Joint Committee, representatives of the Corporations Committee would be pleased to respond to any questions raised by members of the Joint Committee. Areas which the Corporations Committee would particularly like to address include:

Audit

- . the Committee's opposition to giving audit standards the force of law;
- . the Committee's concern over the level of details of the prescription of independence relationships and other aspects of the CLERP 9 Exposure Draft Bill;
- . the need for an expanded exemption/modification power for ASIC in part 2M of the Corporations Act;

- . the funding needs of the Financial Reporting Council.

Financial Reporting

- . structure for the Financial Reporting Panel;
- . some issues surrounding the CEO/CFO certification – although the Committee supports the proposal in principle.

Enforcement

- . the need to substantially remodel the “whistleblower” provisions.

Remuneration

- . the desirability of disclosing the remuneration of executives on a group basis only under s300A;
- . some conceptual concerns about the shareholder approval proposal.

Continuous Disclosure

- . the need to include due diligence style defences to the liability of officers of corporations, if liability is to be extended to them for breach of the continuous disclosure provisions;
- . the need to make it clear that those “involved in a contravention” of the continuous disclosure regime does not include advisors acting in their professional capacity;
- . the need to provide a review and sunset clause in relation to infringement notices, if that proposal is adopted by the Parliament, concerns about publicity in relation to the notices and discussion of our reasons for preferring the Attorney-General’s department guidelines to the use of infringement notices.

Disclosure Rules

- . the Committee’s support for the placements market and our reasons for preferring the pre-FSR regime.

Shareholder Participation

the Committee's support for the extension of the methods by which information can be disseminated to shareholders, in particular recognising the greater use of electronic communications.

If you have any queries about the submission or if you wish to make arrangements in relation to appearances before the Joint Committee, please contact Kathleen Farrell, Chair of the Corporations Committee on [02] 9225 5305 or by email to Kathleen.farrell@freehills.com.

Yours sincerely,



Michael Lavarch
Secretary-General

17 November 2003

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