



Premier of New South Wales  
Australia



08 DEC 2003

Senator Grant Chapman  
Chairman  
Parliamentary Joint Committee  
on Corporations and Financial Services  
Room SG 64  
Parliament House  
CANBERRA ACT 2600

Dear Senator

I refer to your letter inviting me to make a submission to the Parliamentary Joint Committee's inquiry into the exposure draft of the CLERP (Audit Reform and Corporate Disclosure) Bill.

Schedule 3 of the exposure draft Bill introduces proportionate liability for claims made under the *Australian Securities and Investments Commission Act 2001*, the *Corporations Act 2001* and the *Trade Practices Act 1974* for pure economic loss or property damage (but not damages for personal injury or death) arising out of misleading or deceptive conduct.

The New South Wales Government welcomes these reforms and urges the Commonwealth Parliament to enact them as quickly as possible.

The exposure draft Bill's proportionate liability provisions are largely modelled on the proportionate liability provisions of the New South Wales *Civil Liability Act 2002* and accord with the national agreement on proportionate liability reached by the Heads of Treasuries Insurance Issues Working Group.

New South Wales has not yet commenced the proportionate liability provisions it enacted in 2002. It is waiting for these equivalent Commonwealth provisions to commence.

Without proportionate liability reforms at the Commonwealth level, there could be a significant risk that litigants might attempt to circumvent the proportionate liability regime of the New South Wales *Civil Liability Act 2002* by recourse to the *Trade Practices Act 1974*. Given the nature of economic loss and property damage claims, there is a particular danger of “forum-shopping” in relation to professional negligence claims if complementary reforms are not enacted.

The proportionate liability reforms set out in the exposure draft Bill implement the Commonwealth’s undertaking to amend the *Trade Practices Act 1974* and other legislation to support the tort law reforms being undertaken by the states and territories.

The New South Wales Government believes that the introduction of proportionate liability for claims involving economic loss and property damage will go a long way towards creating certainty for insurers, and will result in an increase in the availability of affordable professional indemnity insurance. This will be of particular benefit to professions and small businesses that have been experiencing significant pressure from high premiums, forcing some to abandon holding any insurance at all. It is also an important consumer protection measure because the more affordable insurance is for business, the greater the uptake of insurance.

The New South Wales Government is eager to commence its proportionate liability provisions and encourages the speedy passage of Schedule 3 of the exposure draft Bill through the Commonwealth Parliament.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Bob Carr', written over a light blue horizontal line.

Bob Carr  
Premier