

# AUSTRALIAN SHAREHOLDERS' ASSOCIATION LTD

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10 February 2003

The Secretary  
Economics Legislation Committee  
Department of the Senate  
Suite SG.64  
Parliament House  
CANBERRA ACT 2600

Dear Dr Dermody

## **Corporations Amendment (Repayment of Directors' Bonuses) Bill 2002**

The following comments are made in response to your letter dated 16 December 2002.

We appreciate your agreeing to accept these comments after the advertised closing date for submissions.

The ASA strongly opposes the enactment of the above Bill in its present form for the following reasons:

1. The Bill appears to be a knee-jerk, political reaction to public outcry at the bonuses paid by One.Tel Limited to Messrs Jodee Rich and Brad Keeling but it does nothing to facilitate the recovery of those payments.
2. As pointed out in the submission dated 24 January 2003 from the Treasury, the *Corporations Act 2001* already contains a range of measures that allow a liquidator access to moneys paid out by a company. We understand that the liquidator of One.Tel has already commenced action pursuant to these measures.
3. The proposed provisions only apply in cases of liquidation and not to other forms of external administration of insolvent companies
4. There are drafting defects in the Bill as outlined in other submissions that have been received by the Committee.

We believe that there should be a full review of the provisions of the *Corporations Act 2001* dealing with insolvency and the administration of insolvent companies before any further amendments are made to these provisions.

Such review should take into account the findings of and any recommendations made by the HHH Royal Commission.

In this regard we note that the Parliamentary Joint Committee on Corporations and Financial Services is currently conducting an inquiry into Australia's insolvency laws.

We believe it is more appropriate to prevent, or at least discourage, the payment of unreasonable remuneration, including bonuses and severance payments and the entering into arrangements to make such payments, rather than to seek to recover them after they have been made, and then only in the case of a company that is subsequently placed in liquidation.

In this regard we would draw the attention of the Committee to the *Directors' Remuneration Report Regulations 2002*, Statutory Instrument 2002 No 1986, which came into force in the United Kingdom on 1 August 2002 and have effect in respect of United Kingdom companies' financial years ending on or after 31 December 2002. A copy of these regulations can be obtained from Her Majesty's Stationery Office United Kingdom website:  
<http://www.legislation.hmsso.gov.uk/si/si2002/20021986.htm>.

In general we support the views expressed by the AICD in their letter to the Committee dated 14 January 2003.

We would be glad to discuss these issues with the Committee.

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## Background

The Australian Shareholders' Association is the peak national body representing the interests of retail investors in shares and other financial investment products including managed investments, superannuation and life insurance.

The ASA is an independent, not for profit body financed principally by members' subscriptions. We receive no government or industry funding.

We currently have over 7,000 members. The national office is in Sydney and we have active branches in all Australian mainland States.

We maintain active liaison with other industry bodies such as ASIC, ASX, AICD, IFSA, ASFA, SIA, Chartered Secretaries Australia and the Accounting Bodies and have representatives on such bodies as the Financial Reporting Council, ASIC's Consumer Advisory Panel, the AASB's Urgent Issues Group and the ASX Corporate Governance Council.

Yours sincerely

*Ted Rofe*

A E F Rofe  
Chairman