



Law Council
OF AUSTRALIA

Mr Peter Hallahan
Secretary
Senate Standing Committee on Economics
P O Box 6100
Parliament House
Canberra ACT 2600
Email: economics.sen@aph.gov.au

Dear Mr Hallahan,

**Inquiry into the Corporations Amendment (NZ Closer Economic Relations) and
Other Legislation Amendment Bill 2007**

I refer to your letter of 3 April 2007 in which you invited the Law Council of Australia to lodge a submission to the Senate Standing Committee on Economics' Inquiry into the Corporations Amendment (NZ Closer Economic Relations) and Other Legislation Amendment Bill 2007.

I have pleasure in enclosing a submission of the Corporations Committee of the Business Law Section of the Law Council of Australia ('the Committee') on the Corporations Amendment (NZ Closer Economic Relations) Bill 2006 which was submitted to the Treasury on 2 November 2006. This submissions continues to represent the views of the Committee.

Yours sincerely,

Peter Webb
Secretary-General

12 April 2007

Enc.

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Dear Sirs

Corporations Amendment (NZ Closer Economic Relations) Bill 2006

Enclosed for your consideration is the submission of the Corporations Committee of the Business Law Section of the Law Council of Australia on the Corporations Amendment (NZ Closer Economic Relations) Bill 2006. Please note that this submission has been endorsed by the Business Law Section. Owing to time constraints, it has not been considered by the Council of the Law Council of Australia.

There is one issue concerning the Bill and corporations reform generally that the Corporations Committee wishes to specifically raise with you. That issue is the time allowed for public consultation on corporations law matters in the current environment.

This Bill was released for public exposure on 11 September 2006. The Exposure Draft was dated 16 August 2006 but we understand it did not receive public exposure at that time. Submissions on the Bill were invited by 13 October 2006. The Bill was introduced into Parliament on 18 October 2006.

The Corporations Committee welcomes the draft legislation. However, it is finding it challenging to provide proper submissions on this material in the time frame that

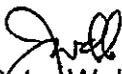
Department of the Treasury
Treasurer of the Commonwealth of Australia
Parliamentary Secretary to the Treasurer of the Commonwealth of Australia

has been allowed. Members of the Committee are busy legal practitioners and significant commitment is required to assist the Committee in its workings. The Law Council of Australia believes it has a valuable contribution to make in the formulation of these types of matters and that sufficient time should be allowed for its voice to be heard.

The Corporations Committee feels it had a similar experience in the exposure of the Consultation Paper for the Corporate and Financial Services Regulation Review in early 2006. The Consultation Paper was exposed for public comment on 7 April 2006. Comments were sought by 19 May 2006. The proposals are extensive and cover 56 disparate issues. The Law Council submission sought to cover all the proposals, but we found that a real challenge in the time available. Our introductory comments to our submission of 24 May 2006 make the same observations concerning consultation as we are making in this letter.

The Law Council of Australia looks forward to working with the government in the improvement of Australia's corporations and securities laws. We trust that our views on the issue of timing are taken into account in the future.

Yours faithfully,


Peter Webb
Secretary-General

2 November 2006

**CORPORATIONS COMMITTEE OF THE BUSINESS LAW SECTION OF
THE LAW COUNCIL OF AUSTRALIA**

**SUBMISSION ON CORPORATIONS AMENDMENT
(NZ CLOSER ECONOMIC RELATIONS) BILL 2006**

This paper contains the submissions of the Corporations Committee of the Business Law Section of the Law Council of Australia on the Corporations Amendment (NZ Closer Economic Relations) Bill 2006.

1 Support for option 3

The Exposure Draft for the Bill discusses the merits and demerits of 3 alternative options to implement a Trans Tasman mutual recognition arrangement for offers of securities and managed investment scheme interests. The Bill reflects Options 3.

The Corporations Committee supports the enactment of legislation consistent with Option 3 over the two alternative options canvassed in this Exposure Draft. The reasons for adopting that view are the same as those set out in the Explanatory Memorandum. The Corporations Committee further agrees that Option 3 creates a less complex framework than the current regime that operates in Australia and New Zealand for the recognition of Trans Tasman offerings.

2 Review of underlying regulatory regimes

The Corporations Committee is concerned to ensure that the creation of mutual recognition regimes as set out in proposed chapter 8 of the Corporations Act does not lead to regulatory arbitrage between recognised jurisdictions.

Under the draft legislation, the issuer of securities receives mutual recognition provided (among others) the person is incorporated by or under the law of the recognised jurisdiction. When a decision is being made to proceed with an offering in one of two jurisdictions, it will be open to the promoters of the offering to establish an incorporated entity in either jurisdiction and therefore choose between the regulatory regime in each jurisdiction with which it will comply. This will be particularly so for structured financial products.

For the long term integrity of these regimes to be supported it is important that there be clearly understood symmetry between jurisdictions both in the policy basis for particular structures of regulation and in the enforcement regimes that are created.

It is not clear to the Corporations Committee that all the detailed work that should be undertaken in relation to review of the Australian and New Zealand regulatory regimes for securities offerings and offerings of managed investment schemes has been undertaken. There is a role in this area for government and regulators, as well as for industry bodies like the Law Council

of Australia and its New Zealand equivalent. The experience of members of the Corporations Committee is that the Australian and New Zealand offering regimes can differ quite fundamentally in their workings and policy basis in some areas.

By way of analogy the Corporations Committee notes the work of the European Union over many years in developing mutual recognition principles for securities offerings. The current prospectus directive Directive 2003/71/EC (4 November 2003) reflects enhanced disclosure requirements for mutual recognition purposes over that contained in the prior prospectus directives. Much could be learned through the processes adopted in Europe on mutual recognition - see for example the 2003 discussion paper "CESR's Advice on Level 2 Implementing Measures of the Proposed Prospectus Directive" (June 2003, CESR/03-162) that preceded the new directive.

In summary it is not clear to the Corporations Committee that the underlying work on regulatory regimes and enforcement mechanisms has been undertaken to ensure that the long term integrity of the arrangement is sustained. The Corporations Committee encourages that work to be undertaken to the extent it still needs to be done.

3 Allow more time for consultation

The Corporations Committee remains troubled by the amount of time allowed for industry consultation in relation to recent proposals, such as the Bill. This is also a concern raised by the Corporations Committee in May 2006 in connection with the Paper for the Corporate and Financial Services Regulation Review (see our Introductory Comments about Process in our submission of 24 May 2006).

The Exposure Draft is dated 16 August 2006 but was not generally available until released by the Parliamentary Secretary to the Treasury by press release dated 11 September 2006. It did not generally reach our members for consideration until the end of September. Submissions were required by 13 October 2006.

The Bill contains complicated proposals that are new to the scheme of regulation in Australia. It is important that there be adequate time for general consultation with industry. The Corporations Committee understands that there has been much greater time for industry consultation at the New Zealand end in developing these proposals.

The Corporations Committee believes that it has a valuable role to play in this connection. It feels with both proposals released this year the period of time allowed for consultation has been inadequate.

2 November 2006