

Mr Peter Hallahan
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Senate Standing Committee on Economics
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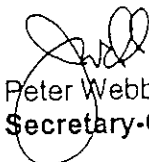
Dear Mr Hallahan,

Inquiry into Private Equity Investment

1. Thank you for the opportunity to make this submission to the Senate Inquiry into Private Equity Investment and its effects on capital markets and the Australian economy. This submission is made by the Taxation Committee and the Corporations Committee of the Business Law Section of the Law Council of Australia ("the Committees")
2. The Committees understand the terms of reference for the Inquiry are as follows:
 - (a) an assessment of domestic and international trends concerning private equity and its effects on capital markets;
 - (b) an assessment of whether private equity could become a matter of concern to the Australian economy if ownership, debt/equity and risk profiles of Australian business are significantly altered;
 - (c) an assessment of long-term government revenue effects, arising from consequences to income tax and capital gains tax, or from any other effects;
 - (d) an assessment of whether appropriate regulation or laws already apply to private equity acquisitions when the national economic or strategic interest is at stake and, if not, what those should be; and
 - (e) an assessment of the appropriate regulatory or legislative response required to this market phenomenon, if any.
3. The Committees presume that the Inquiry will receive submissions on the financial market trends and market consequences of private equity investment from relevant financial market and industry experts. The Committees submit however, that the stability of Australian financial markets generally is in part supported by Australia's stable regulatory environment and considered policies.

4. The Committees have not had the opportunity to examine the financial market trends and current phenomena surrounding private equity. Accordingly and without speculating on what market concerns the Inquiry may need to consider, we make this submission based on fundamental principles of equitable regulation.
5. In summary, the Committees consider that Private Equity investments do not require any special treatment under Australia's income tax laws or under Australia's financial market regulation.
 - (a) Australian investors into Australian Private Equity Funds receive the same capital gains tax and income tax treatment on their investment as an Australian investor into another financial product, property or other investment would receive;
 - (b) Australian Private Equity Funds receive the same capital gains tax and income tax treatment on their investment as other managed funds;
 - (c) Australia's thin capitalisation provisions apply to limit the level of interest that may be deducted for income tax purposes in the same way for Private Equity as for other taxpayers. Safe harbour debt thresholds (3:1 debt:equity) apply equally across all taxpayers with a foreign controller or with foreign controlled entities; and
 - (d) the Corporations Act, case law dealing with conflicts of interest of corporate officers and guidance issued by the Takeovers Panel all provide adequate mechanisms for disclosure and management of conflicts of interest, provided they are adequately enforced by the market and relevant regulators.
6. In the absence of a clear policy imperative, we consider that there should be no taxation or other regulatory reforms directed at Private Equity, but rather there should be appropriate application of existing laws of general application.
7. The Committees would be pleased to participate in ongoing consultation on these issues

Yours sincerely,


Peter Webb
Secretary-General

30 April 2007