CHARTERED SECRETARIES
AUSTRALIA

Keeping good companies

22 November 2002

Mr. M Rawstron
General Manager
Corporate Governance Division
Department of the Treasury
Langton Crescent
PARKES ACT 2600

Dear Michael

CSA welcomes the opportunity to comment on the significant issues raised in the Government's CLERP 9 paper – Corporate disclosure: Strengthening the financial reporting framework.

CSA is Australia's peak membership body for corporate governance and compliance, and firmly consider ourselves as fully qualified to respond to this matter. In Australia CSA has over 8,000 members representing the majority of public companies listed on the Australian Stock Exchange. Members of CSA regularly deal on a day-to-day basis with the ASX, ASIC and the ACCC and have a thorough working knowledge of the operations of the markets, the needs of investors and the law and regulation dealing with market practices and independence. In addition, representatives from the ASX, ASIC and the ACCC regularly address members at our seminars and conferences.

Government's CLERP 9 discussion paper.

In this submission CSA does not attempt to provide detailed comment on all of the 41 proposals; the professionals dealing in them on a day-to-day basis best address a number of these. CSA therefore focuses on those issues for which its members have significant responsibilities. In preparing this submission CSA has conducted a survey of those members who are company secretaries of the top 200 listed companies in Australia.
In general, CSA and its members believe that the proposals in CLERP 9 take a significant step in improving corporate governance in Australia. The proposals are seen as reinforcing existing good practices, rather than imposing a straitjacket on corporate behaviour.

REFORM PROPOSALS

AUDIT – PROPOSALS 1-18

CSA and its members believe that the audit proposals are sensible and well thought out for our environment in Australia.

Proposal 1 – Financial Reporting Council

CSA supports the expansion of the responsibilities of the Financial Reporting Council and recommends that membership of the Council include professionals and stakeholders outside the accounting and audit professions to provide a balanced view on independence.

Proposals 2-5 – Independence of auditors

CSA supports the proposed amendments strengthening the independence of auditors.

Proposals 6-7 – Non-audit services

CSA supports the proposed measures to disclose and control non-audit services.

Proposal 8 – Audit committees

CSA supports the mandating of audit committees for the top 500 listed companies – 90% of the companies in CSA's survey already have an audit committee. CSA recommends that audit committees be encouraged for all listed companies, where board size permits. In many smaller companies the full board effectively carries out the same duties as an audit committee. CSA also believes that significant large proprietary companies should also be encouraged to establish audit committees. In all cases audit committees should be encouraged to prepare a charter of responsibilities and membership, including restricting membership to non-executive directors (where this is possible) and to make this available to shareholders. CSA will support the ASX Corporate Governance Council in developing best practice standards for audit committees.

Proposal 9 – Rotation of Auditors

CSA supports the compulsory rotation of audit engagement and review partners after five years.

Proposal 10 – Auditors at AGMs and questions to the auditor

CSA supports the attendance of the auditor to the annual general meeting of a listed company and answering reasonable questions from shareholders on the audit. Our recent survey indicated that the auditor attended the AGM of 95% of the companies surveyed, with statements being made by the auditor at 67% of the AGMs

Whilst CSA supports the proposal allowing shareholders to submit questions by email or otherwise to the company, whether in respect of the audit or the affairs of the company, CSA does **NOT** support the proposal to post these questions on the company's website. From experience, CSA members are aware that questions from shareholders can be defamatory, based on incorrect information or plain abusive. Rather than providing a productive tool of corporate governance, such a measure could merely provide a forum for defamatory gripes. To allow such questions to be placed on the company's website without monitoring or response by the company could open the company to action by defamed parties. Similarly unsubstantiated and mischievous comment could be placed on the website which might be used by ASX or ASIC to require an unwarranted comment by the company under the continuous disclosure provisions in the Act and Listing Rules which would confuse rather than inform the market.

Proposal 11 – Qualification of auditors

CSA supports the proposal for accountants seeking registration as company auditors to meet agreed competency standards. CSA recommends that such a proposal be extended to company secretaries of listed companies and that membership of CSA or any of the accounting and legal professional bodies or registration as legal or accounting professionals be regarded as appropriate qualifications.

Proposals12-13 – Auditor liability

CSA has no comment on auditor liability.

Proposal 14-16– International accounting standards

CSA supports the adoption of international accounting standards and notes the proposal to introduce the IASB standard on expensing of share options. We would however reserve our views on the contents of the standard until there is a clear statement.

Proposals 17-18 – analyst disclosures

CSA supports the full disclosure of any financial interest by analysts, financial service licensees and proper authority holders in subjects on which they advise or provide recommendations and supports the proposal that ASIC provide guidance on the level and manner of such disclosure.

CONTINUOUS DISCLOSURE - PROPOSALS 19-29

CSA and its members have continually worked with ASX in establishing a clear consistent interpretation of the Listing Rules and associated Guidelines and made a detailed submission to ASX in respect to its recent proposed amendments to the Listing Rules on enhanced disclosure. A copy of that submission is attached. CSA recognises that ASX seeks to ensure an informed and orderly market and its members likewise seek to ensure that the market is kept informed.

CSA supports ASX as the prime regulator of the Australian stock market. ASX is seen as closer to the market and better placed to make market-related judgements. CSA does not support the proposed extension of the regulation and enforcement of the market to ASIC. The discussion paper contains a number of proposals regarding civil penalties and infringements notices in relation to contraventions of the continuous disclosure regime. CSA does not believe that ASIC should be granted such powers. In many cases the issue of whether to disclose or not will involve reasoned discussions between ASX and the company. Such discussions do not and should not lend themselves to an “on the spot fine” regime conducted by ASIC, as prosecutor, judge and jury. CSA however recognises that the current weapon available to ASX, that of suspension from trading, tends to hurt the shareholders rather than the offenders.

CSA and its members surveyed support an increase in the maximum civil penalty for market manipulation and insider trading from $200,000 to $1 million. Such actions are deliberately intended to create an unfair market and should be penalised as such. CSA does not however support the increase in the maximum fine for contravention of the continuous disclosure regime. Little evidence has been given to support the view that such fines are effective deterrents. ASX’s recent survey in its discussion paper on enhanced disclosure revealed few cases where further action was required. In any event many of the continuous disclosure issues demonstrate that there can be genuine differences of opinion made in good faith and with substantial external legal advice. Fines for non-disclosure should not be regarded as akin to speeding fines where there is no doubt a limit has been breached.

24 CSA does not support the extension of the continuous disclosure regime to allow individuals to seek compensation from corporations or individuals involved. CSA believes that current legal rights in section 1325 are sufficient. If action is to be permitted against individual office holders, this should be confined to those senior officers directly involved, chief executive or chief financial officer. In this regard we note the recent changes to US law requiring the Chief Executive and Chief Financial Officers to certify as to the accuracy of financial statements.

25 CSA agrees that all investors should have access to materially price sensitive information disclosed by listed entities and its members have been working closely with ASX in the development of ASX OnLine. It is our view that the use of eLodgement will contribute to a better-informed market through the provision of more current, accurate and accessible information, which can be readily disseminated without the integrity of the information being jeopardised.

26 CSA supports and is working with ASX in providing education and guidance to promote compliance with the continuous disclosure provisions of the Listing Rules.

27 CSA has made a substantial submission on the matter of ASX determining whether speculation is having a significant impact on the market and requiring the company to respond. CSA believes that the substantial majority of issuers and their advisors seek to comply with both the spirit and the letter of the Listing Rule on continuous disclosure and that they work with ASX at all times to ensure that disclosure is made at the earliest appropriate time. CSA is particularly concerned that the "false market" could be created, not through any undisclosed action by the Issuer, but through unsupported media speculation over which neither the Issuer nor the ASX have any control.

CSA notes in the examples given in the ASX discussion paper that ASX would take the nature and standing of the persons promoting the speculation into account when deciding whether a false market could be created. CSA does not believe that merely because information appears in a newspaper, however credible, it is necessarily sufficiently accurate to require ASX to force a company to respond. CSA's greatest concern is that there is as great a risk in creating a false market by forcing companies to respond to unsubstantiated rumours as there is in their taking an entirely plausible and supportable "no comment" stance. CSA suspects that practices may develop which will allow companies to make bland non-committal statements merely to satisfy ASX'.

CSA believes that much of the current uncertainty can be addressed by encouraging companies to "develop a disclosure regime that meets legal requirements and its own needs and circumstances" (ASIC Guidance Principles August 2000) and in developing a more positive relationship with and promoting active confidential discussions between ASX and the issuers.

COMMUNICATION ASPECTS - PROPOSALS 36-41

Proposal 36 Establishment of a Shareholders and Investors Advisory Council

CSA queries the need for such a council given the representation of shareholders through the ASA and IFSA on the ASX Corporate Governance Council.
Should the proposal proceed consideration should be given to the representation on the council to ensure it fairly represents the interests of all shareholders. Consideration should also be given to including a representative from listed companies and institutional investors to introduce their perspective on issues relating to shareholders.

Proposal 37 Shorter, more comprehensible notices of meetings.

It is a core component of good corporate governance practice that shareholders should be given the opportunity to participate and vote in general meetings. Necessarily, it follows that to make a rational and effective decision how to vote, shareholders need to be armed with all relevant information to help them in this process. The form and content of notices of meeting, therefore, is vital to ensure good corporate governance.

Notices of meeting that fail to adequately convey to shareholders the nature of the proposed business of the meeting will not be effective in encouraging shareholders to attend or participate, even though they may meet legal requirements. Accordingly, it is essential that companies endeavour to achieve best practice in the form and content of notices of meeting.

CLERP 9 suggests that a means to address this issue may be the development of best practice guidelines to promote a common sense approach encouraging companies to include in their notices of meetings only information that is useful in the circumstances. Such guidelines "could be of assistance in encouraging more comprehensible notices of meetings whether or not a legislative change were to be made".

The Introduction of Best Practice in good faith guidelines without legislative change is unlikely to encourage companies to reduce to content of notices. However, CSA believes that the introduction of best practice guidelines together with the enactment of a 'comfort provision' (see later) is likely to facilitate shorter, clearer and better structured notices of meeting. Clearly, and in CSA's firm view a "notice of meeting" includes any explanatory notes or explanatory statement which accompanies the notice.

Potential Guideline topics would embrace:

- Notices of Meeting should be honest and accurate and not be misleading
- Notices should clearly state and, where necessary, explain, the nature of the business of the meeting
- Notices should set a reasonable time and place of meeting
- Notices should encourage shareholders' participation through the appointment of proxies
- Companies should adopt Best Practice drafting methods for notices of meeting;
- Companies should combine or "bundle" distinct resolutions in a notice of meeting only in limited circumstances;
- Companies should ensure notices give clear guidance on directors' recommendations on resolution;
- Companies should ensure notices give clear guidance on shareholders' conflicts of interest and clearly state which shareholders will be excluded from voting or have their votes disregarded;
- Companies should give particular attention to notices containing complex resolutions;
- Companies should place the full text of notices and accompanying explanatory material on the company website; and
- Companies should give clear guidance in notices of meeting containing resolutions for the election or removal of directors

Further, CSA supports the introduction of a comfort provision to protect disclosures made in good faith in a short-form notice of meeting. Companies presently are required to provide full and fair disclosure in notices. In order to do so companies will feel obliged to provide sufficient information for shareholders to make fully informed decisions. As the information needs of shareholders vary, companies generally provide more rather than less information. In order for companies to feel comfortable about the provision of less information in the notice of meeting a 'comfort' provision would need to be enacted to protect company officers preparing short form notices in good faith.

Proposal 38 – Bundled Resolutions

CSA supports the development if best practice guidelines covering the use of 'bundled resolutions'.

Proposal 39 – Shareholder participation using new technologies

CSA encourages initiatives that improve shareholder participation both in meeting attendances and voting on company resolutions. Accordingly, we strongly support the proposal to remove legislative hurdles to the use of technologies that allow enhanced shareholder participation through electronic means including electronic proxy voting and internet broadcasting.

The paper notes that for participation over the internet to be equivalent to physical presence shareholders would need to be able to ask questions, participate in debate and vote. This raises a number of legal and technical issues, alluded to in the paper, that would need to be addressed before two-way electronic meetings become accepted practice.

Electronic proxy voting (EPV) has been embraced by only a few listed companies to date due in part to concerns regarding the legal validity of EPV and because authentication of shareholders and proxies is problematic. CSA would support Government actions that address these issues and remove unnecessary legislative hurdles to improved shareholder participation in Company meetings.

Proposal 40 – Disclosure of other directorships

CSA recognises that there may be some value to shareholder in the disclosure of other directorships in the Annual Report notes. It is common practise amongst listed companies to disclose details of significant other directorships in Annual reports. However, we do not see the need to report on other directorships held prior to the current reporting period, which will in due course be available from prior period annual reports.

CSA would also like to note the recommendation of the Companies & Securities Advisory Committee (CASAC) in August 2000 to the then Minister for Financial Services and Regulation regarding the qualifications and experience of Company Secretaries. It was the view of CASAC that:

> "Subsection 310(10) of the Corporations Law should be amended to require the annual report of public companies subject to that provision to disclose the qualifications and experience of their company secretaries."

CSA is of the view that the role of Company Secretary is integral to the effectiveness of a company's corporate governance and that this information may be relevant to shareholders in assessing the commitment a company makes to good corporate governance. Shareholders would take some comfort that Company Secretaries possess qualifications and experience necessary to ensure a company satisfies its compliance and other reporting obligations.

Proposal 41 – Electronic distribution

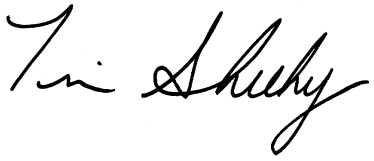
CSA supports the use of electronic technology as a means of distributing company information to shareholders and notes that many listed companies presently provide shareholders with access to annual reports and notices of meeting by electronic means. However, despite this trend concerns have been expressed that provision of company notices and reports in electronic format may not satisfy the requirements of Listing Rule 4.6 which requires annual reports to be "sent out" to shareholders. It has been suggested that this means a hard copy must be sent out. CSA therefore supports moves to clarify this position and implement any necessary changes to permit shareholders to receive reports and notices in electronic form.

Given the duplication in cost and resources of providing shareholders with both electronic and hard copies of shareholder publications and notices, CSA believes it should be up to individual companies to decide if they should allow shareholders to elect to receive publications and notices in *both* electronic and hard copy formats.

If companies elect to offer electronic distribution of notices and reports they need to ensure that the distribution process can cater for "rebounding emails" arising from non-delivery of electronic communications. If electronic reports and notices cannot be delivered successfully companies should ensure that hard copies are distributed instead.

CSA does support the development of best practise guidelines by the ASX Corporate Governance Council covering electronic distribution of annual reports.

Yours faithfully



Tim Sheehy
Chief Executive