



**CHARTERED SECRETARIES
AUSTRALIA**

Keeping good companies

17 May 2002

Senator the Hon. Ian Campbell
Parliamentary Secretary to the Treasurer
Manager of Government Business in the Senate
Parliament House
CANBERRA ACT 2600

Dear Senator,

**A partnership with Chartered Secretaries Australia
to deliver clarification of continuous disclosure guidelines**

As you are aware there has been considerable debate in recent months on the adequacy of Australia's continuous disclosure regime. I am writing to express the concerns of members of Chartered Secretaries Australia (CSA) about some aspects of the current debate, and in particular, the remedies some are advocating that penalise companies that do not appear to be meeting continuous disclosure standards. We believe there are other means to ensure compliance without resorting to additional compliance penalties.

Chartered Secretaries Australia is Australia's peak membership body for corporate governance and compliance and its members are fully qualified to comment on this matter. In Australia CSA has over 8,000 members representing the majority of public companies listed on the Australian Stock Exchange (ASX). Members of CSA deal on a day-to-day basis with the ASX and the Australian Securities and Investments Commission (ASIC) and have a working knowledge of the operations of the markets, the ASX Listing Rules and the law and regulation dealing with continuous disclosure and market practices.

The matter of continuous disclosure is particularly important to the Company Secretary given the nature of their relationship with the ASX. An exhaustive Benchmarking Company Secretariat Functions¹ survey of Australia's Top-200 listed companies (conducted in November and December of 2001) revealed that 97.3% of Company Secretaries in the survey have primary responsibility for 'managing' continuous disclosure within their company - second only in importance to managing the needs of the Board. Our survey revealed that 91% of Company Secretaries act as the primary contact for the ASX with only 5.5% of companies delegating this responsibility to another company officer.

CSA is on the record as strongly supporting Australia's system of continuous disclosure as outlined in, and required by, ASX Listing Rule 3.1 and the Corporations Act. CSA believes that the listing rules are adequate and comprehensive and that the vast majority of companies take their obligations seriously. While CSA acknowledges issues do arise on occasion, for example, on the best method of disseminating information to shareholders or the best way to respond to press speculation, the regime is operating effectively.

However, CSA is concerned that there is widespread confusion over interpretation of the rules and guidelines and that a move to black letter law and penalties at this time would be extremely premature.

In fact, CSA is concerned that to move too quickly to penalties or other similar measures would only lead to many more unnecessary releases to the market and more confusion than currently exists. What is needed at this time is greater clarification, particularly for the smaller listed public companies, and a collaborative approach between regulators and companies.

Let me provide some evidence.

- A recent survey² of our members on continuous disclosure practices revealed that:
 - Nearly two-thirds of companies have a formal written policy on the disclosure of information to the ASX and investors.
 - Nearly two-thirds of companies have set parameters on the nature of information to be disclosed and 73% of those companies only release material that is regarded as potentially price sensitive.
 - Where a company did receive an informal enquiry from the ASX, the matter was resolved without an announcement needing to be made in 83% of instances. In those instances where an announcement was made, in many cases the announcement did not include any more information than was already available.
 - Nearly a third of all respondents find the ASX's continuous disclosure rules difficult to interpret with most responding that improvement may be achieved from better dialogue between the ASX and ASIC and better dialogue with companies.

- A survey³ by the Centre for Corporate Law and Securities Regulation at the University of Melbourne highlighted the following conclusions:
 - Many companies appear to regard Listing Rules 3.1.1, 3.1.2 and 3.1.3 as three distinct exceptions rather than components of one exception.
 - There may need to be some consideration given to the current formulation of the typical Query question posed by the ASX in light of the adequacy of the answers offered.
 - Education is a further key requirement for the effective operation of the continuous disclosure regime.

What is clearly emerging is that the majority of companies are endeavouring to comply with the continuous disclosure rules and guidelines, but there is concern that the rules and guidelines are neither clear enough nor practical enough and may be subject to misinterpretation. Making the continuous disclosure regime work depends upon a collaborative approach between regulators and companies and education of the market: co-operation, rather than more legislation, will ensure the best result for shareholders. Improving and refining the current system would be a more practical and cost-effective solution than heading straight toward penalties.

On 9 April 2002, CSA hosted a symposium entitled: Continuous Disclosure: A Corporate Governance Fundamental in order to assist in improving the standard of compliance by Australian Companies. The points put forward by Mr Richard Humphry (ASX), Ms Karen Wood (BHP Billiton), Mr Ted Rofe (Australian Shareholders Association) and Mr. Peter Morgan (Perpetual Investments) added substantial clarity to the debate. CSA's National Legislative Review Committee subsequently met with Ms Karen Hamilton (ASX) to progress discussions on continuous disclosure.

As one of the key stakeholder groups in this area we would be pleased to have the opportunity to make representations on this aspect of the law before any changes are considered. We believe we can offer not only valuable insight into the manner in which the law operates, but also assistance in the collaboration and education process necessary to improve compliance

If you have any questions please do not hesitate to contact me on 02-9223-5744.

We look forward to meeting with you.

Yours faithfully,

Tim Sheehy
CHIEF EXECUTIVE

cc: Richard Humphry, Australian Stock Exchange Limited
John Hall, Australian Institute of Company Directors
Kathleen Farrell, Law Council of Australia Corporations Law Committee
Ian Neal, Securities Institute of Australia

¹ Benchmarking Company Secretariat Functions; conducted by Chartered Secretaries Australia; December 2001

² Rapid Response Survey No 6: Continuous Disclosure; conducted by Chartered Secretaries Australia, March 2002

³ 'Please Explain': ASX Share Price Queries and the Australian Continuous Disclosure Regime; Centre for Corporate Law and Securities Regulation; University of Melbourne; 2001; pgs 43-44