

# Institute has wins with CLERP 9

The proposed CLERP 9 Bill has created some controversy but the Institute had some wins.

The Institute has had a number of important regulatory matters on which we lobbied incorporated into the CLERP 9 exposure draft legislation on audit reform and corporate disclosure.

Key reforms contained in the draft Bill cover measures to enhance auditor independence including audit oversight arrangements, auditor registration, proportionate liability and incorporation of audit firms, CEO/CFO sign-off of accounts, management discussion and analysis in the Director's report, establishment of a Financial Reporting Panel, whistleblowing protection for employees reporting breaches to ASIC, continuous disclosure and infringement notices, executive remuneration disclosure, managing conflicts of interest and disclosure of fundraising documents.

The Institute believes the CLERP 9 draft Bill goes a long way towards improving disclosure and transparency in the financial reporting process and therefore the efficiency of the Australian capital markets.

In late October, the Institute discussed key aspects of the draft legislation with the Company Reporting Subcommittee and the Markets Policy Group before lodging a formal submission on the Bill. The Institute has also been invited to appear before the Parliamentary Joint Committee on Corporations and Financial Services to present our views on the draft Bill.

## Superannuation concerns raised with new Inspector-General of Taxation

The Institute has written to the newly appointed Inspector-General of

Taxation, David Vos, following an invitation seeking our input into the setting of his work program.

The Inspector-General of Taxation Act 2003 stipulates that the primary objective of the Inspector-General's role is to improve the administration of the tax laws for the benefit of all taxpayers. Examples of administrative matters include the process of assessing, collecting, paying or recovering amounts under tax law, or the enforcement of a tax law.

Coverage of the major issues raised by the Institute's Retirement Incomes Subcommittee is to be found on page 25 (Policy) of this issue. The Institute looks forward to the Inspector-General's examination of these important matters.

## Institute comments on application of international financial reporting standards

The Institute has made further submissions to the Australian Accounting Standards Board and International Accounting Standards Board, following discussions at the September and October meetings of the Institute's Company Reporting Subcommittee.

The first submission related to the AASB Exposure Draft ED 115 seeking comments on the Australian application of IAS 19: Employee Benefits. We endorsed the AASB's proposed approach to remove from the revised IAS 19 Australian equivalent the option of applying the corridor approach and its gradual recognition over the average remaining service life of employees.

The Institute also submitted comments to the AASB on the preferred approach for the presentation currency



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of Australian financial reports. Our submission evaluated the three alternative approaches proposed on the basis of reporting consistency, comparability and transparency, primarily from a report user perspective, and endorsed the option of mandating the Australian currency as one of the presentation currencies (Approach 3).

The Institute prepared a submission to the AASB on three Exposure Drafts (ED 118, ED 119 and ED 120) released by the Board on the respective application of existing IASB standards, IAS 11: Construction Contracts, IAS 14: Segment Reporting and IAS 16: Property, Plant and Equipment, to the Australian environment. In a joint response of general support, the submission made some general comments and addressed the AASB's specific questions in turn, highlighting some areas of practical concern.

We noted the finding of inadequate segment disclosures in the recent review of AASB 1005 compliance under ASIC's reporting surveillance program and stressed the importance of achieving consistency in segment reporting. In adopting an Australian equivalent IAS14 for reporting financial information by reportable segments, the ED 119 submission highlighted the practical need for better restatement of part period comparatives for transparency purposes.

Under ED 120, implementing an Australian equivalent to IAS 16: Property, Plant and Equipment would involve a significant major change to existing practice in relation to the revaluation of property, plant and equipment, as it overlaps with a number of Australian standards: AASB 1015 acquisition, AASB 1021 depreciation and AASB 1041 revaluations.

In relation to IAS 16 accounting for revaluation increments and decrements separately on an asset-by-asset basis (rather than AASB 1041's allowing them to be offset against one another within a class of non-current assets), we expressed concern that this different treatment would result in lower reported profit and entail increased cost and effort in recording this detail. In addition, it would have to be brought

to the attention of report preparers and users on first-time application.

Continuing our previous stance on requiring application of one option for the Australian IFRS equivalent where a choice of alternative options to apply is provided in the existing IAS, in relation to revalued assets, we endorsed the ED 120 proposal not to allow the choice of option to restate accumulated depreciation on revaluation.

Our submission expressed general agreement with the following proposals:

- not to allow an entity to carry forward the revalued carrying amount when they cease to use the fair value basis;
- to allow reassessment of the residual value of an asset at every reporting date, based on conditions at that date;
- to include the estimated costs of dismantling and removing the asset and of restoring the site in the cost of an item of property, plant and equipment.

The Institute also endorsed ED 120 additional disclosures relating to revalued assets, including requirements to provide equivalent historical cost information, as well as additional guidance relating the extent to which certain revenue can be capitalised.

Additionally, the Institute presented submissions to the International Accounting Standards Board on two new important proposed standards under the IFRS program: ED 4: Disposal of non-Current Assets and Presentation of Discontinued Operations and ED 5: Insurance Contracts. In response to ED 4, the Institute supported in principle the IASB's two-phase approach to converging with SFAS 144: Accounting for the Impairment or Disposal of Long-lived Assets.

While acknowledging the challenges involved in harmonisation of international accounting standards, the Institute supports this strategy in principle.

### **Institute welcomes ASX exposure draft on capital raisings**

The Institute welcomed the Australian Stock Exchange's issue of the Exposure

Draft: Capital Raising Mechanisms in a Disclosure-Based Market, which proposes amendments to Chapter 7 of the ASX Listing Rules including Listing Rule 7.1 and the timetable of pro rata issues.

The ASX has proposed the following key amendments:

- Increasing the percentage of issued capital that may be issued without investor approval from 15% to 20%;
- Giving investors the ability to confer a general mandate on an entity to issue securities with an unlimited discretion for a period of 13 months. [The period of 13 months has been chosen to permit the mandate to be refreshed at subsequent annual general meetings, and corresponds to the 13-month life of a prospectus under section 711(6) of the Corporations Act;
- Creating a new exception from the rule for securities issued under a security purchase plan that does not require a prospectus or Product Disclosure Statement;
- Creating a new exception from the rule for securities issued with investor approval under the takeover provisions of the Corporations Act;
- Reducing the timetable for both renounceable and non-renounceable pro rata rights issue by 42% from a total of 40 business days to a standard total of 23 business days;
- Relaxing constraints on timing of opening of a non-renounceable pro rata offer to existing shareholders where the offer document is lodged with ASIC and given to ASX at least seven days before the offer opens.

The Institute believes that the proposed Listing Rule amendments will assist small cap companies by providing a spectrum of capital raising forms, and that the ASX Exposure Draft successfully deals with many of the current capital raising inefficiencies and constraints.

The Institute also believes that with the timetable being reduced from 40 to 23 days, rights issues are more likely to be utilised by companies as a viable avenue for capital raising. Overall, one of the biggest advantages of these

initiatives is that companies will now have greater choice and more flexibility as to the form of capital raising.

To familiarise the industry with the ASX Exposure Draft details, the Institute conducted a series of national seminars with the ASX during November 2003.

### **Institute meets with Minister for Justice and Customs**

The Institute attended a meeting in Canberra in mid-August with the Minister for Justice and Customs, Senator the Hon. Christopher Ellison. The main purpose of the meeting was to discuss the best way to engage the financial services industry in dialogue about the Financial Action Task Force's revised 40 recommendations that create a new framework for national anti-money laundering and terrorist financing regimes.

The Task Force's revised recommendations introduce significant changes intended to encourage the strengthening and tightening of methods for combating money laundering and terrorist financing. The Minister advised that he wanted to liaise closely with the finance industry to ensure that the new regime is not only effective but also does not create excessive administrative procedures or inefficiencies for industry.

### **Institute Affairs**

#### **Professional development**

At a seminar event conducted with BT Financial Group on 22 September 2003, the Hon. Dr David Kemp MP, Minister for the Environment and Heritage, launched the Mays Report on Corporate Sustainability—an Investor Perspective. The Report's Chair, Shaun Mays of BT, gave an overview of the eight case studies of Australian businesses that had adopted sustainability principles in order to improve their bottom line. The case study businesses featured in the report ranged from listed property trusts through to mining, bio-tech and miscellaneous services.

On 9 October 2003, the Institute held a seminar to mark the release of the

APRA Mortgage Stress Testing Report in association with APRA. The APRA Chairman, John Laker, made a presentation on the report findings of the APRA mortgage 'stress testing' project that tested the ability of Australia's residential mortgage lenders to withstand a downturn in the property market.

The Institute is rolling out its popular Compliance at Work workshop training around the country to provide essential information to responsible officers, executives and compliance managers about their obligations under the Financial Services Reform Act (FSRA). Additional workshops are on offer for financial advisers and planners who require knowledge and skills about their obligations under FSRA in terms of disclosure, the 'know your client' rule and avoiding disputes with clients.

I encourage you to check out the revamped Professional Development section on the Institute's website for national and regional overviews, polling features and news on recent events. You can register for upcoming events directly online.

### **Securities Institute code of conduct in development**

The Institute is developing a corporate Code of Conduct and examining its current corporate governance practices, with a view to ensuring that it satisfies the ASX Principles of Good Corporate Governance and Best Practice Recommendations. The ASX Corporate Governance Council, of which the Institute is an inaugural member, released these earlier this year.

Over coming months, the Institute will develop its Code of Conduct in consultation with members and staff and align its provisions with our Brand Values. A Code of Conduct will provide clear and unambiguous guidance on how to maintain a high standard of conduct and professionalism in our dealings with each other within the Institute and with our stakeholders.

The Code will apply to everyone in our organisation, including National Council and the Executive, who have

both already shown that they attach great importance to this initiative.

### **Education—financial planning open-entry relaunch**

Following an extensive review with industry, the Institute has relaunched its open-entry financial planning courses to enable planners to achieve ASIC adviser competencies sooner. These flexible programs are designed to meet the professional needs of financial planning practitioners and take students well beyond ASIC's minimum requirements. Additionally, they provide a faster pathway to the Institute's comprehensive postgraduate programs.

The 2004 courses are structured around core knowledge and skills areas using practical case studies to ensure the learning outcomes are meaningful and relevant to the workplace, as well as having flexible approaches to assessment and substantial online learning resources.

### **Online handbook launch**

The 2004 Handbook is now available via the Institute's website for the information of current and potential students. This is the first time the handbook has been available online. Information is presented either on downloadable PDF pages or via links to relevant sections of the website. Visit [www.securities.edu.au/handbook](http://www.securities.edu.au/handbook) to view and search the handbook.

### **Educational and membership alliances**

The Institute has been involved in discussions with several locally based associations in the financial sector concerning educational and compliance support and professional development programs.

At a joint ICAA/SIA luncheon in Sydney on 16 October 2003, the Hon. Justice Neville Owen spoke about the recently released HIH Commission Report and presented his views on what the government, regulators, educators

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# Taxing questions

The new Inspector-General of Taxation, **DAVID VOS**, has the unenviable job of fixing the systemic problems within the tax system. The Institute recently wrote to him to express its concerns with aspects of the system.

**T**he Institute has written to David Vos following an invitation from him seeking our input into the setting of his forward work program.

The Inspector-General of Taxation Act 2003 stipulates that the primary objective of the Inspector-General's (IGOT) role is to improve the administration of the tax laws for the benefit of all taxpayers. Examples of administrative matters include the process of assessing, collecting, paying or recovering amounts under tax law, or the enforcement of a tax law. With this in mind, the Institute's Retirement Incomes Subcommittee considered that two matters in particular warrant further examination by IGOT.

## Reasonable Benefit Limits (RBL) Reporting

RBLs are clearly a taxation matter. A person's RBL determines the amount of superannuation benefits the person may take on a concessionally taxed basis. Amounts received in excess of the person's RBL are not taxed concessionally.

Funds (and employers, in respect of Employer Eligible Termination Payments or ETPs) are required to report benefits paid to taxpayers to the ATO. Benefits may be in the form of an Eligible Termination Payment taken in cash, or the commencement of an income stream. Certain rollovers are also required to be reported.

The ATO then determines whether the current benefit is in excess of the person's RBL by adding the RBL amount of the current benefit to any benefits previously taken by the taxpayer (indexed, where necessary to a current value). When benefits are reported, the ATO stores the details on its database. It is required to make a determination in respect of every benefit reported, but only has to inform the taxpayer if that determination is that the taxpayer is in excess of their RBL.

A taxpayer can ask the ATO to send details of their current RBL position. This shows all benefits which have been reported to the ATO. Financial advisers sometimes find that the document sent by the ATO does not reflect the actual benefits taken by the client (determined by other documents in the client's file).

This could arise from benefits having been taken (e.g. an ETP of \$50,000 in 1995), and then not showing up on the document received from the ATO. Conversely, it could be that a particular benefit has been reported twice, thus inflating the amount of benefits taken by the taxpayer.

Financial advisers may attempt to sort out the ATO records by informing the ATO about the mistakes. Such mistakes can occur because the original provider has reported the benefit, but the benefit has not found its way onto the ATO database; or it could be that the fund has never actually reported it.

The ATO can only make a determination if the provider has reported a benefit. The only action a financial adviser can take is to seek to have the fund report the benefit. However, this can be very difficult, if not impossible, where the provider no longer exists or the fund has been merged with another fund.

The process the ATO must follow is set out in Subdivision D of Division 14 of the ITAA, 1936. The Commissioner can only make a determination if it has received a notice under section 140M (the requirement for a fund to report the benefit).

The Institute believes two possible solutions to the above scenario that warrant further exploration by the IGOT are:

- Implementing a means of forcing the funds to report. The ATO has the power to enforce compliance with a

tax law, but it must first know that something has not been reported.

- An amendment to Subdivision D of Division 14 of the ITAA to allow the Commissioner to make a determination pursuant to other documents provided by the taxpayer.

## Audits of Self-Managed Superannuation Funds (SMSFs)

A further matter that the Institute considers the Inspector-General of Taxation should examine relates to audits of self-managed superannuation funds.

The ATO audits SMSFs not only for compliance with taxation obligations, but also for compliance with non-taxation obligations under the Superannuation Industry (Supervision) Act 1993. Where practical, the approach adopted should be consistent with the published guidelines issued by the Australian Prudential Regulation Authority (APRA), the primary regulator of superannuation funds, unless the ATO has issued its own guidelines on the relevant topics.

An area that has created concern for Institute members relates to the audit of investment strategies. Section 52 of the SIS Act requires that all superannuation funds (including SMSFs) formulate appropriate investment strategies. The primary APRA circular is "Superannuation Circular II.D.1 Managing Investments and Investment Choice" (April 1999).

The ATO has not issued detailed replacement guidance on investment strategies, although it has included some general comments in its fact sheet: "Self managed superannuation funds—A guide for trustees running a self managed superannuation fund (2002)".

Paragraphs 28 & 29 of the APRA Circular state:

"28. One widely used method of expressing an investment strategy is

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to set formal asset allocation ranges. While this is not the only approach, APRA encourages its use. It involves the setting of formal asset allocation ranges (minimum and maximum exposure permitted for each asset class) with an associated benchmark for each asset class.

29. An example: The fund objective is to return, on average over a five-year period, at least 2% above the Consumer Price Index and have a negative return no more than once

every five years. The associated investment strategy to achieve this objective might be to invest in a balanced portfolio exposed to all major domestic asset classes as Table 1 shows.”

The Institute has advised the Inspector-General that some ATO audits are requiring a more prescriptive approach to this obligation (e.g. by discouraging the use of broad ranges of allocating investments across the various

investment sectors and encouraging the use of narrower ranges) than is envisaged in the SIS Act or APRA circular. APRA includes one example (shown above), but this should not be used as a basis for rejecting strategies with broader ranges.

The Institute believes that trustees and their investment advisers (who are licensed by ASIC) are well informed and therefore in a better position than regulators to exercise discretion in the important area of investment strategy and execution. A more prescriptive approach will constrain this discretion and lead to sub-optimal investment decisions. It will also discriminate against SMSFs regulated by the ATO compared to funds that are regulated by APRA.

The Institute looks forward to the Inspector-General’s examination of these important matters. J

TABLE 1 MAJOR DOMESTIC ASSET CLASSES

Asset Class	Range	Benchmark
Cash	0% – 20%	10%
Fixed interest	20% – 40%	25%
Australian equities	50% – 70%	50%
Listed or unlisted property trusts	10% – 30%	15%

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## BRAND VALUES PROJECT

Earlier this year, extensive external research into the Institute’s brand was conducted among the Institute’s key stakeholders, including students, members, opinion leaders, professional development customers and corporate customers. The research was aimed at:

- Identifying our current brand image, brand personality and brand values
- Ascertaining views on desired brand values and personality
- Evaluating brand positioning and brand imagery.

From this research, recommendations were then presented to the Executive team in June 2003. These recommendations highlighted some very interesting results and focused primarily on three key areas:

- Clarifying the core business of the Institute

- The Practitioner Model we use that sets us apart from our competitors
- Areas for improvement in service delivery to our customers.

Brand values were another significant component of the recommendations. Institute staff around the country discussed the brand values and what they mean to us in practice as individuals, as a collective group and as servants to our stakeholders. The external research found remarkable similarities with what our internal staff group identified.

The six brand values adopted are:

- Collaboration
- Commitment
- Agility
- Integrity
- Leadership
- Professionalism.

It is important that these values are meaningful and relevant for all at the Institute and for our customers. To further this end, the values are being more clearly defined and associated with appropriate behaviours that support them.

A brand strategy is being developed that covers:

- Brand vision—what the brand stands for
- Brand personality—what makes the brand distinctive
- Brand values—qualities our stakeholders attach to the brand
- Emotional rewards—how using the brand makes stakeholders feel
- Functional benefits—what the brand does
- Physical attributes—tangible products, features and symbols.

and the business community need to do to maintain a high level of corporate governance in Australia.

The Institute participated in a number of association conferences over the last

quarter, including the ICAA/SIA Financial Planning Conference in November 2003.

The Institute will provide gap training to AIMR members for its Certified

Financial Analyst (CFA) program to cover ASIC compliance requirements. Preparations for the second Australasian Investment Management Conference are well underway for September 2004. J