

# Finalising CLERP 9

The Institute expressed reservations about certain sections of the CLERP 9 Bill to a Parliamentary Joint Committee and ASIC.

## APPEARANCE BEFORE PJC

On 6 April 2004, the Securities Institute (represented by the then National President, Ian Neal, Company Reporting Subcommittee member Scott Marshall and National Policy Manager Julie Burke), appeared before the Parliamentary Joint Committee (PJC) on Corporations and Financial Services to advocate industry and members' concerns regarding selected proposed provisions of the CLERP 9 Bill.

The PJC was comprised of members of the Senate and the House of Representatives, including Senator Stephen Conroy, Senator Penny Wong and Mr Steven Ciobo.

Following an opening address by Mr Neal, which reiterated the main points made in the Institute's November 2003 submission on the draft Exposure Bill, the Institute's PJC delegation responded to panel questions on:

- Introducing the CEO/CFO sign-off of accounts;
- Including a management discussion and analysis commentary in the directors' report;
- Establishing the role, function and composition of the proposed Financial Reporting Panel;
- Extending the financial services licensee's duty to a conflict management obligation;
- Improving disclosure in fundraising documents.

The Institute's delegation highlighted the need for further debate and consideration of the practical application of certain initiatives proposed under the CLERP 9 legislation. For example, for the Financial Reporting Panel proposal, we supported extending the referral power to the reporting entity and auditor. As well, we advocated extending the Panel's power to resolve practical financial reporting applications and interpretation issues prior to the issue of the financial reports and suggested the

appointment of some Panel members who would approach the issue in contention from the report user perspective, rather than from the report preparer or report issuer perspective.

The Institute did not comment further on the proposal to grant ASIC the power to issue infringement notices and impose financial penalties for continuous disclosure contraventions, as the Government has indicated no significant changes will be considered. We are currently evaluating the recently released ASIC guide "Continuous Disclosure Obligations: Infringement Notices".

Parliamentary debate on the Bill resumed in the Senate in mid-June 2004 and the Institute is monitoring the ongoing debate in relation to significant amendments proposed. The Institute is also consulting with relevant industry bodies in preparing responses to the various ASIC proposed policy papers, and the development of regulations that may result from the passage of CLERP 9.

To date, the Institute has made submissions to ASIC on CLERP 9 policy papers on managing conflicts of interest, product disclosure, auditor registration and auditor and financial reporting obligations and provided comments to Treasury on the draft due diligence defence to the imposition of civil penalties on individuals involved in a continuous disclosure breach by a reporting entity.

## ***Fundraising: what is clear, concise and effective?***

In a submission to ASIC on its Policy Proposal Paper: Product Disclosure (CLERP 9 Bill), the Institute raised concerns about the detail and implementation of the product disclosure provisions contained in the proposed CLERP 9 legislation.

The Institute endorsed fundraising regulation aimed at ensuring offer documents contain accurate information

presented in a clear and non-ambiguous manner. However, we are concerned with the proposal to allow ASIC to issue a stop order on a prospectus on the basis of subjective criteria relating to presentational matters.

The presentation requirement has significant commercial implications and may unreasonably impede fundraising processes due to the subjective nature of the "clear, concise and effective" obligation. We believe that the subjectivity of the requirement will make it difficult for ASIC to implement and apply it consistently.

It is essential that regulation of the presentation requirement is appropriate – that is, ASIC policy provides practical and reliable guidance to industry and enforcement actions are reasonable, consistent and transparent. It is also crucial that product disclosure requirements do not stifle competition and commercial activity aimed at servicing investors' needs.

These comments were articulated by the Institute at our appearance before the Parliamentary Joint Committee on Corporations and Financial Services.

The Institute will continue to consult with ASIC to ensure we build a regime where issuers and investors can participate with confidence. J



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