

Executive Summary: Submission on Exposure Draft CLERP 9 (Audit Reform and Corporate Disclosure) Bill

The Finance Sector Union of Australia (FSU) is pleased to have the opportunity to submit its views on the draft Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the exposure draft.

The FSU represents the interests of 65,000 members employed across all sectors of the finance sector, including the banking sector, insurance and superannuation. Our interest in the proposed reforms stems from our members' interest in working in soundly managed, accountable companies. We have seen first hand the impact on employees when companies fail as our members were directly affected by the HIH collapse. Our members' difficult experience of the working within a company with such inadequate corporate governance practices demonstrates to us the fact that good corporate governance is as much an issue for stakeholders as it is for shareholders.

In addition, several of the largest companies in the finance sector are good examples of the need for greater accountability in relation to executive remuneration. We know through our members of the negative effects on morale of such excesses at the top of the corporate tree, particularly when it occurs within a context of cost cutting at the lower levels of the organisation.

Our key areas of interest in the proposed reforms are:

Chapter 1: Audit Reform

Chapter 4: Enforcement: – Protection for employees reporting breaches to ASIC
 - Part 2 Disqualification of directors

Chapter 5: Remuneration of Directors and Executives

Chapter 8: Shareholder Participation (including board composition)

FSU generally supports the majority of the proposed reforms put forward in the CLERP (Audit Reform and Corporate Disclosure) Bill. The submission does not touch on many aspects of the Bill as we limit our focus to our main areas of concern. Representing as we do many of those at the lower end of the salary scale in the finance sector, it is primarily in the area of executive remuneration that we believe the reforms need to be much stronger. We call for greater accountability to stakeholders, rather than just greater disclosure to shareholders, because we believe it is time for publicly listed corporations to be more responsible to those on whom their longer term viability depends. That is, their employees, customers and the communities in which they operate.

We believe that the Government must act now and not waste the opportunity offered within the context of the broader reforms to corporate governance in Australia.

Chapter 1 - Audit Reform

FSU supports most of the reforms set out in the exposure draft Bill in relation to Audit Reform. However, FSU believes the reforms are not strong enough in relation to auditor independence in the area of non-audit services provided the audit firm [Chapter One – Part 3]. In this area, FSU believes that while disclosure of non-audit services and the requisite statement of independence would go some way to improving independence, it is not sufficient.

Recommendation 1: These services must not be provided to a company by the audit firm:

- **Preparing accounting records and financial statements;**
- **Internal audit services;**
- **IT system services;**
- **Broker or dealer services**
- **Investment advice**
- **Investment banking services; and**
- **Legal work**

Chapter 4: Enforcement - Protection for employees reporting breaches to ASIC

We support the proposed changes to provide protection from adverse consequences for employees who report suspected breaches to ASIC. We call for the extension of the reforms to other legislation and for clear guidelines for employees to assist them in understanding the scope of the protection offered.

Recommendation 2: That the protections for whistleblowers to be offered in relation to the Corporations Law be extended to other legislation.

Recommendation 3: That the ASIC produce clear guidelines for employees explaining their rights and responsibilities in relation to the protection available for whistleblowers.

Chapter 4: Enforcement - Part 2 Disqualification of director

It has been the sad experience of working people in Australia that companies collapse and workers' entitlements are lost. However, we often see company directors maintain their assets and lifestyle.

Recommendation 4: That the provision to disqualify directors apply where they have failed to meet their liabilities (not just debts) including employee entitlements and superannuation contributions

Chapter 5: Remuneration of Directors and Executives

We draw on our members' experience of working in an industry where excessive rewards are offered to executives within a context of cost cutting at the expense of stakeholders

such as employees, customers and communities. We argue that the time has come to for the Government to act to make directors of publicly listed corporations responsible to stakeholders as well as shareholders. This responsibility must be factored into performance measures set for executives. FSU makes a number of recommendations aimed at introducing a broader responsibility to stakeholders and for greater shareholder power in relation to executive remuneration and termination payments.

Recommendation 5: The Corporations Law must be amended to require that the responsibilities of the directors of publicly listed companies include a responsibility to stakeholders such as employees and customers. There needs to be a fairly broad discretion for companies to develop their own processes to meet this responsibility, however any performance measures set for executives should reflect this responsibility.

Recommendation 6: The processes developed, and the way that they are reflected in the performance measures must be approved by shareholders in the form of a three year plan put by the directors to the company members.

Recommendation 7: All the detail must be disclosed in the annual report and include the information listed above (the ratio between highest and lowest paid, employment levels and performance in relation to stakeholders.)

Recommendation 8: Proposed sub-section 250R(2) should require the directors to put and allow the shareholders a vote on a binding resolution as to whether to adopt the remuneration report.

Recommendation 9: Termination entitlements must be disclosed to the market at the time they are agreed as well as the time that they are paid. This is currently reflected in the ASX Principles, Principle 9: Remunerate Fairly and Responsibly, Commentary and Guidance¹. FSU recommends that the Corporations Law be amended to reflect this requirement.

Recommendation 10: The proposed changes to Division 2, Part 2D.2 governing the payment of termination benefits should be broadened to include each and all payments made to executives as well as directors where the payment exceeds an amount as calculated according to the formula in subsection 200G(3). Termination payments above this amount to either directors or executives would need first to have shareholder approval.

Chapter 8: Shareholder Participation

FSU generally supports the measure contained in the Bill to facilitate shareholder participation. However we call for stronger measures in relation to voting by trustees of super funds and fund managers.

¹ ASX Corporate Governance Council, Principles of Good Corporate Governance and Best Practice Recommendations, March 2003

Recommendation 11: The company must disclose to company members how undirected proxies will be exercised. This must be contained in the notice of meetings.

Recommendation 12: Trustees of super fund must direct their proxies in relation to resolutions in the listed companies that they invest in.

Recommendation 13: Fund managers must be required to disclose on a public website how they voted and, where possible disclose, the reasons for their vote.

In relation to board composition, we call for a number of measures designed to improve board performance and independence.

Recommendation 14: FSU argues that the Corporations Law must be amended to ensure the following:

- **A prohibition on multiple chair holdings of listed companies**
- **Directors of ASX listed companies should not sit on more than four other ASX listed boards**
- **CEOs of ASX listed companies should not sit on more than one ASX listed company**
- **ASX listed companies boards should be comprised of independent non-executive directors. The definition of independence should be that set out by the Australian Council of Super Investors.²**
- **All ASX companies should be required to establish remuneration and nomination committees comprised of independent non-executive directors.**
- **All audit committees must be comprised solely of independent non-executive directors.**

² ACSI, Corporate Governance Guidelines, March 2003. The definition states that an independent non-executive director of a listed corporation generally should:

- Not be a substantial (5% or more) shareholder of the Corporation
- Not have been employed with the last five years by the corporation in an executive capacity or an associated entity
- Not be a principal or employee of a professional advisor to the Corporation or related entity
- Not be a substantial supplier or customer
- Not have a material contractual relationship with the corporation or other group member (other than director)
- Be free from any interest, business or relationship that could be perceived to interfere with ability to act in best interests of the corporation
- Not be on the board for more than 9 years
- Not participate in share option or performance related remuneration schemes applying to executives
- Not hold other directorships that could impede proper discharge of responsibilities
- Not serve as Director or employee of a corporation that has a notifiable holding
- Not serve as an executive director or employee or have a notifiable holding in a significant competitor
- Not be related through blood or marriage to other Directors or advisors to the Corporation
- Not benefit from any related party transaction.

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Submission on Exposure Draft CLERP 9 (Audit Reform and Corporate Disclosure) Bill

The Finance Sector Union of Australia (FSU) welcomes the opportunity to submit its views on the draft Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the exposure draft.

The FSU represents the interests of 65,000 members employed across all sectors of the finance sector, including the banking sector, insurance and superannuation. Our interest in the proposed reforms stems from our members' interest in working in soundly managed, accountable companies.

We have seen first hand the impact on employees when companies fail. One thousand finance industry workers were directly affected by the HIH collapse. Our members' difficult experience of the working within a company with such inadequate corporate governance practices demonstrates to us the fact that good corporate governance is as much an issue for stakeholders as it is for shareholders.

The issue of needing to encourage and broaden corporate responsibility in this country is nowhere better exemplified than in the finance industry, and not solely because of the HIH disaster.

Several of the largest companies in the finance sector are good examples of the need for greater accountability in relation to corporate governance and specifically executive remuneration. We know through our members of the negative effects on morale of such excesses at the top of the corporate tree, particularly when it occurs within a context of cost cutting at the lower levels of the organisation.

We have witnessed the disregard adopted by the leaders of our industry for their employees, their customers and their community as a direct consequence of massive remuneration packages being based solely on shareholder return. The race to outbid one another, particularly in the banking sector during the mid to late nineties, on the amount of jobs they would shed and the amount of branches they would close to gain an immediate positive response from the 'market' was done without thought for the social impact of such decisions.

Only in response to public outcry and political pressure have some banks been forced to admit that they have gone too far in their cost reduction strategies. It is the FSU's contention that continued scrutiny of the impact of executive and directorial strategies on all stakeholders be mandatory in relation to good corporate governance for the benefit of all those associated with our industry and stop the short-term madness of a single focus on costs.

Our key areas of interest in the proposed reforms are:

Chapter 1: Audit Reform

Chapter 4: Enforcement - Protection of employees reporting breaches
- Disqualification of directors

Chapter 5: Remuneration of Directors and Executives

Chapter 8: Shareholder Participation (including board composition)

Chapter 1 - Audit Reform

FSU supports most of the reforms set out in the exposure draft Bill in relation to Audit Reform. However, FSU believes the reforms are not strong enough in relation to auditor independence in the area of non-audit services provided the audit firm [Chapter One – Part 3]. In this area, FSU believes that while disclosure of non-audit services and the requisite statement of independence would go some way to improving independence, it is not sufficient.

The HIHRC looked at the issue of auditor independence in relation to Andersons. The report said,

“That an auditor must be independent both in fact and in appearance is fundamental to an effective audit. The concept of ‘appearance’ of independence is similar to the well-known adage that justice must not only be done but be seen to be done. If the appearance is affected this can undermine the confidence that a user of the accounts may attach to the audit opinion.”³

FSU believes that in relation to the listed services below, statement of independence cannot overcome the perception that independence **might** be compromised. In line with the best practice recommendations in the Australian Council of Super Investors Guidelines, the following services, which might compromise the independence of the auditor, must not be allowed to be provided by the audit firm.

Recommendation 1: These services must not be provided to a company by the audit firm:

- **Preparing accounting records and financial statements;**
- **Internal audit services;**
- **IT system services;**
- **Broker or dealer services**
- **Investment advice**
- **Investment banking services; and**
- **Legal work**

Chapter 4: Enforcement - Protection for employees reporting breaches to ASIC

³ HIHRC, Vol 1, op cit at page 37

FSU strongly supports the proposed changes to provide protection for whistleblowers. FSU has often been involved in seeking to protect members who have had their employment relationship terminated when they raised a compliance matter relating to their employer. A recent example involved a fairly senior manager in a superannuation company who had spoken to a member of the board with a compliance concern relating to his manager and who had been subsequently dismissed due to the complaint.

We support the proposal to provide protection offered to employees and others who report suspected breaches of the law to ASIC. We also support the strengthening of the obligation for auditors to report breaches to ASIC.

In relation to the legislation to be covered by the proposed protection for whistleblower, FSU believes that the protections it offers for disclosure should be extended to other legislation. Our members work in an industry regulated by a wide range of legislation and many of the members we have assisted in the past have been sacked or otherwise unfairly treated for disclosures relating to legislation other than the Corporations Act. If a culture of compliance is to be encouraged, it is important that all relevant legislation is covered by the protection.

FSU also believes that the changes need to be accompanied by clear guidelines for employees about their rights and responsibilities in relation to reporting suspected breaches. Employees in a vulnerable position will be able to take advantage of protection provisions only if they are very clear what their rights and responsibilities are. Given that the proposed Part 9.4AAA- Protection for Whistleblowers will use concepts such as 'good faith' and 'reasonable grounds', it will be important that explanatory material is issued for employees providing information and examples of what these terms mean and the sorts of information disclosures that may be covered.

Recommendation 2: That the protections for whistleblowers to be offered in relation to the Corporations Law be extended to other legislation.

Recommendation 3: That the ASIC produce clear guidelines for employees explaining their rights and responsibilities in relation to the protection available for whistleblowers.

Chapter 4: Enforcement - Part 2 Disqualification of director

It has been the sad experience of working people in Australia that companies collapse and workers' entitlements are lost. However, we often see company directors maintain their assets and lifestyle.

Recommendation 4: That the provision to disqualify directors apply where they have failed to meet their liabilities (not just debts) including employee entitlements and superannuation contributions.

Chapter 5: Remuneration of Directors and Executives

This is an emotive issue for many of our members who have been engaged in battles about three or four percent pay rises while their employer companies earn hundreds of millions or billion dollar profits and remunerate their CEOs and senior executives with millions of dollars in fixed salaries and performance bonuses.

In fact, the finance sector is the exemplar of the corporate excess that is so detested by working people in this country. To support this assertion, a 2002 report found that overall, average weekly earnings in the finance sector were 74 times less than executive pay. For customer service staff, who earn considerably less than average weekly earning in the sector, the ratio was about 188:1 in 2002. The worst example of excess was the Commonwealth Bank of Australia where CEO David Murray earned 307 times the salary of a customer service representative.⁴

In the AFR 2003 Salary Review finance sector company executives are heavily represented with 18 executives among the 85⁵ highest paid executives. This survey compared the real salary levels of the CEOs of five finance sector companies in 1984 with today's CEOs and found the following increases.

Bank	1984 salary (given in 2003 equivalent)	2003 salary	% increase
CBA	\$213,305	\$3,599,945	1588%
AMP	\$325,000	\$2,095,000	545%
NAB	\$300,000	\$2,620,266	773%
ANZ	\$362,000	\$2,898,520	1093%
Macquarie Bank (then Hill Samual)	\$500,000	\$5,963,661	1093%

Source: AFR, Salary Review 2003, Wednesday 5 November 2003

In relation to HIH our members suffered the indignity of having to fight for basic entitlements to be secured while those at executive level had ensured that generous entitlements had been secured.

The HIHRC revealed how inadequate the remuneration practices were in that group⁶. The human resources group met annually in its official role to review the performance and remuneration of various officers and senior employees. The Chief Executive attended all meetings by invitation and all proposals seem to have come from him and been accepted by the committee. Eventually the role of review was removed from the terms of reference of the human resources group and by March 1999, all remuneration reviews and bonus allocation was at the sole discretion of the Chief Executive.

⁴ Shields, O'Donnell & O'Brien, "The Buck Stops Here: Private Sector Executive Remuneration in Australia" A report prepared for the Labor Council of New South Wales, 2003 at page 37

⁵ The Australian Financial Review, Salary Review 2003, Wednesday 5 November 2003

⁶ HIH Royal Commission, The Failure of HIH Insurance, Volume 1, A corporate collapse and its lessons, April 2003 at page 24

As discussed earlier, equity components of remuneration make up large parts of executive packages in the finance industry. For some time no performance test was attributed to the granting of shares and the dilution of equity. In 1993, Bob Joss was granted 1 million shares in Westpac as an incentive to take on the CEO role.

The introduction of subsequent performance hurdles set for the exercise of share options are focussed solely on share price or shareholder return. It is not difficult to determine what motivates decision making for executives who have so much to gain by implementing short term decisions that push up share prices.

Over the past decade we have seen 55,000 full time jobs shed and more than 2000 branches closed by the big four banks alone as directors and executives have focussed on cost cutting and the market (mainly led by institutional investors) have provided short term rewards for their vigour.

But the cuts and closures have not come without a price and the backlash amongst stakeholder groups is now becoming something that the sector can no longer afford to disregard.

FSU members would support any measures that provide any additional controls and/or scrutiny of executive and non-executive director remuneration. In general, the FSU supports the proposed reforms to the Corporations Act to the extent that they increase transparency and accountability in relation to remuneration of directors and management.

However, we also argue that the time has come for the government to require companies to use broader measures of performance that incorporate the interest of stakeholders such as employees, not just shareholders.

In relation to the specific proposals our views are as follows:

Extending the disclosure requirements to the corporate group

We support the proposed extension of remuneration arrangements from the top five remunerated executives and all directors in the listed company to include the top five senior managers in the consolidated entity as well. FSU argues that disclosure should also be extended to the top ten most highly remunerated executives in the listed company.

Enhancing the specific disclosures that must be made.

FSU supports the proposed requirement to make companies set out the required remuneration disclosures in a dedicated section of the annual directors' report. We believe that although this is a small measure, it has the capacity to assist less financially literate shareholders with finding and understanding the relevant remuneration reports.

In relation to the specific disclosures that must be made, FSU argues that all options and other share incentive arrangements must be fully costed. The report on executive remuneration referred to earlier noted that none of the four major banks “charged the cost of options as an expense in their financial statements in 2002”⁷, although NAB and CBA noted that changes to accounting standards meant that changes would be made to this practice. The report found that had Westpac expensed the total cost of executive options, the expense would have been \$48 million – a figure that all stakeholders would be interested in, not the least the bank’s shareholders.⁸

We further believe that there is room for improved disclosure of total emoluments of executives where previous option allocations are made clear in the course of shareholders being asked to grant additional allocations. An upcoming example of this in our sector lies in Westpac where CEO David Morgan already has a large and valuable allocation of options and is seeking a further 3,500,000 over three tranches.

It is our understanding that the regulations will be based on the standards set in AASB ED 106 on Director, Executive and Related Party Disclosures.

The regulations must require the following to be disclosed⁹:

- Annual remuneration of each specified director and executive;
- Components of each individual’s remuneration for the year, under headings of (1) primary, (2) post employment, (3) equity compensation and (4) other benefits;
- Measurement of equity-based compensation benefits based on the net fair value of the equity instruments at the vesting date; the amount so calculated disclosed as remuneration in the year vesting occurs;
- Information on the terms and conditions of equity compensation grants and other bonuses; to be disclosed in the year granted and in subsequent years until fully vested, including high and low estimates of the value that remains to be earned.

In light of the proposal to give shareholders a vote on the directors’ report on remuneration, it is necessary to ensure that shareholders have as complete a picture as possible about the remuneration policies and practices less the vote become meaningless. This must include full disclosure of the performance conditions upon which the remuneration arrangements are based.

Performance Measures for the broader community

While more extensive disclosure of executive remuneration and performance conditions will improve accountability in relation to executive remuneration, as the organisation representing employees in the finance sector, FSU argues there must be the capacity for greater control over executive and non-executive director remuneration and performance measures. Too often, stakeholders such as employees and customers have paid the price

⁷ Id at page 40

⁸ Id at page 41

⁹ from AASB Media Release, ED 106 Director, Executive and Related Party Disclosures, 31 May 2002

with their jobs or the loss of their local branch while executives increased their wealth by meeting performance hurdles based solely on shareholder value.

FSU argues that it is time to require companies to set broader measures of performance than those based simply on shareholder return. This is not to undermine the importance of shareholder return as a measure of performance, but to ensure that executives consider the interests of all stakeholders in the company and the way that stakeholder satisfaction contributes to long term strength in company performance and growth.

One such broader measure is the balanced scorecard approach first introduced by Kaplan and Norton in 1992. A balanced scorecard approach recognises that financial measures alone are insufficient for modern organisations and generally includes measures in the areas of financial, customer satisfaction, internal business processes and learning and growth. FSU would argue for measures that include customer satisfaction, employee satisfaction and motivation, process improvement, corporate reputation and strategic development.¹⁰

To support this greater accountability to stakeholders there must also be greater disclosure requirements. Companies should be required to include in their annual reports the following information¹¹:

- The ratio between the highest and the lowest paid employee in the company;
- The growth or decline in employment in the company;
- The measures by which the company's performance in relation to stakeholders is judged (including employee satisfaction, training and motivation, employee retention and turnover, customer satisfaction).

FSU therefore argues that the following amendments must be made.

Recommendation 5: The Corporations Law must be amended to require that the responsibilities of the directors of publicly listed companies include a responsibility to stakeholders such as employees and customers. There needs to be a fairly broad discretion for companies to develop their own processes to meet this responsibility, however any performance measures set for non-executive directors and executives should reflect this responsibility.

Recommendation 6: The processes developed, and the way that they are reflected in the performance measures must be approved by shareholders in the form of a three year plan put by the directors to the company members.

Recommendation 7: All the detail must be disclosed in the annual report and include the information listed above (the ratio between highest and lowest paid, employment levels and performance in relation to stakeholders.)

¹⁰ Id at page 44 quoting O'Neill and Perry 2002

¹¹ Id at page 49.

Giving shareholders greater capacity to hold directors accountable for their decisions regarding remuneration

FSU supports the proposed granting of the right of shareholders to vote on a resolution as to whether to adopt the remuneration report. We also support the requirement for reasonable opportunity for discussion of the remuneration report. As previously discussed, this must be accompanied by the required disclosure of extensive information about remuneration policy and procedures.

FSU however argues that the remuneration report must be put to a binding vote if shareholders are to have the capacity to hold the directors accountable for remuneration decisions.

Recommendation 8: Proposed sub-section 250R(2) should require the directors to put and allow the shareholders a vote on a binding resolution as to whether to adopt the remuneration report.

Providing shareholders with greater say in relation to the quantum of termination payments

FSU supports the proposed changes to Division 2, Part 2D.2 governing the payment of termination benefits to the extent that they limit the current extent of the exemptions in section 200F.

However FSU members work in an industry where there have been numerous examples of excessive termination payments for executives. The most stunning example is the golden handshake of \$32.75 million paid to former CBA executive (and Colonial First State) executive Chris Cuffe in early 2003.

At AMP former CEO George Trumbull's \$13 million was followed by a rumoured deal of more than \$20 million for sacked Paul Batchelor, although he was only paid \$2.1 million eventually. At Suncorp Metway, CEO Steve Jones received nearly \$30 million in his last year at the company, which included a \$2.45 million termination payment and he left with two years of his contract still to run.

We argue that shareholders need to be given firstly, the right to information about such payments both at the time they are negotiated and when they are paid and secondly, the power to approve or disapprove of such payments.

Recommendation 9: Termination entitlements must be disclosed to the market at the time they are agreed as well as the time that they are paid. This is currently reflected in the ASX Principles, Principle 9: Remunerate Fairly and Responsibly,

Commentary and Guidance¹². FSU recommends that the Corporations Law be amended to reflect this requirement.

Recommendation 10: The proposed changes to Division 2, Part 2D.2 governing the payment of termination benefits should be broadened to include each and all payments made to executives as well as directors where the payment exceeds an amount as calculated according to the formula in subsection 200G(3). Termination payments above this amount to either directors or executives would need first to have shareholder approval.

Chapter 8: Shareholder Participation

FSU is itself a shareholder and more importantly, has an increasing number of members who own shares in the companies for which they work. For the past few years we have been involved in the processes of shareholder participation currently facilitated by the Corporations Law, particularly in relation to section 249N members' resolutions and section 249P members' statements. These sections provide an important mechanism by which smaller shareholders can be active in their affairs of companies. Although there is nothing in the context of the current exposure draft Bill that threatens these provisions, in light of the recent activities of Boral, we believe it is important to take this opportunity to support the ALP's plan to amend the Corporations Act to ensure companies don't override these provisions.

In general, FSU supports the proposals aimed at facilitating shareholder participation, in particular the reforms designed to improve notices of meetings.

In relation to proxy votes, however we believe that there are changes that should be made to further facilitate active participation in company management, particularly by institutional investors. We recommend that:

Recommendation 11: The company must disclose to company members how undirected proxies will be exercised. This must be contained in the notice of meetings.

Recommendation 12: Trustees of super funds must direct their proxies in relation to resolutions in the listed companies that they invest in.

Recommendation 13: Fund managers must disclose on public websites how they voted and where possible disclose reasons for their vote.

Within this Chapter of reforms there is also the proposal that listed companies include information about the directorships held by each director in the three years to the end of the reporting period.

¹² ASX Corporate Governance Council, Principles of Good Corporate Governance and Best Practice Recommendations, March 2003

In light of the importance of the board to good corporate governance, FSU believes that stronger proposals for reform are necessary than mere disclosure of other directorships.

The HIHRC report found that the inadequacy of the board in providing critical oversight of management strategy and direction was a contributing factor in the company's collapse. The report said, "...it is the board's responsibility to understand, test and endorse the company's strategy. In monitoring performance, the board needs to measure management proposals by reference to the endorsed strategy, with any deviation in practice being challenged and explained. This is what the HIH board failed to do."¹³

This failure led in part to the devastating consequences outlined in the HIHRC report of personal hardship of people left without their income protection payments, people and organisations left uninsured, more than 1000 employees left without jobs, and turmoil in the home-building insurance market.

There are other examples from the finance sector of problems with board composition particularly in relation to independence. A striking example occurred in relation to NAB when "unheard of in Australia"¹⁴ NAB had a problematic \$140 million exposure to a company, Pasminco, chaired by their chairman, Mark Rayner.

In relation to Suncorp Metway, there are questions in relation to the independence of a number of non-executive directors on the board due to their affiliation with professional advisors to the company. According to the most rigorous definitions regarding affiliations with service providers, the Suncorp Metway and the AMP audit committees are not comprised solely of independent, non-executive directors.

Again, there is strong and growing support from shareholder activist groups that no individual chair the board of more than one ASX top 200 listed companies. ANZ Chairman, Charles Goode is also the chairman of Woodside Petroleum. Both companies are in the ASX top 15.

Board composition, particularly in relation to independence and ensuring that all members of a board have sufficient time to fulfil their responsibilities is crucial. The proposal to require that the annual reports of listed companies include for each director, the details of directorships of other listed companies held in the three years to the end of the current financial year is insufficient in relation to this important area of corporate governance.

Recommendation 14: FSU argues that the Corporations Law must be amended to ensure the following:

- **A prohibition on multiple chair holdings of listed companies**

¹³ HIH Royal Commission, The Failure of HIH Insurance, Volume 1 A corporate collapse and its lessons.

¹⁴ According to crikey.com [www.crikey.com.au/business/2001/08/12-pasminco.html, accessed 5 November 2003]

- **Directors of ASX listed companies should not sit on more than four other ASX listed boards**
- **CEOs of ASX listed companies should not sit on more than one ASX listed company**
- **ASX listed companies boards should be comprised of independent non-executive directors. The definition of independence should be that set out by the Australian Council of Super Investors.¹⁵**
- **All ASX companies should be required to establish remuneration and nomination committees comprised of independent non-executive directors.**
- **All audit committees must be comprised solely of independent non-executive directors.**

Conclusion

FSU generally supports the majority of the proposed reforms put forward in the CLERP (Audit Reform and Corporate Disclosure) Bill. This submission obviously has not touched on many aspects of the Bill as we have limited our focus to our main areas of concern. Representing, as we do, many of those at the lower end of the salary scale in the finance sector, it is primarily in the area of executive remuneration that we believe the reforms need to be much stronger. We call for greater accountability to stakeholders, rather than just greater disclosure to shareholders, because we believe it is time for publicly listed corporations to be more responsible to those on whom their longer term viability depends. That is, their employees, customers and the communities in which they operate.

We believe that the Government must act now and not waste the opportunity offered within the context of the broader reforms to corporate governance in Australia.

For further information contact:

¹⁵ ACSI, Corporate Governance Guidelines, March 2003. The definition states that an independent non-executive director of a listed corporation generally should:

- Not be a substantial (5% or more) shareholder of the Corporation
- Not have been employed with the last five years by the corporation in an executive capacity or an associated entity
- Not be a principal or employee of a professional advisor to the Corporation or related entity
- Not be a substantial supplier or customer
- Not have a material contractual relationship with the corporation or other group member (other than director)
- Be free from any interest, business or relationship that could be perceived to interfere with ability to act in best interests of the corporation
- Not be on the board for more than 9 years
- Not participate in share option or performance related rem. Schemes applying to executives
- Not hold other directorships that could impede proper discharge of responsibilities
- Not serve as Director or employee of a corporation that has a notifiable holding
- Not serve as an executive director or employee or have a notifiable holding in a significant competitor
- Not be related through blood or marriage to other Directors or advisors to the Corporation
- Not benefit from any related party transaction.

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