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The Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Room SG.64
Parliament House
CANBERRA ACT 2600

Dear Sir/Madam

CLERP 9 – POLITICAL DONATIONS BY AUSTRALIAN COMPANIES

I refer to your letter dated 20 April 2004, relaying Senator Andrew Murray's request for the views of the Legislative Review Task Force of the Commercial Law Association of Australia on the matter of political donations by Australian companies.

The Task Force makes the following submissions:

- the real politic for many if not most Australian companies in making political donations is to seek a degree of influence.
- a degree of influence in the Australian political scene is not a per se concern; inordinate or undue influence is however.
- in seeking an appropriate degree of influence, Directors are already obliged by the *Corporations Act 2001* and by their common law fiduciary duties to act for a proper purpose, not act for private gain from their position or information they held as a Director, and to act in the best interests of the company in which they hold office as a whole.
- Australian publicly listed and widely held companies are loath to put resolutions to their members that are overly controversial or are not to a relatively high degree of assuredness likely to be passed.
- Australian politicians are, according to at least one recent survey, not held in particularly high regard.
- it is therefore likely that resolutions for the approval of political donations by Australian companies would either not be put at all or would not be passed, in our view irrespective of the level or amount of the political donations that might be sought to be approved, with the consequence that Australian companies would, should a member approval requirement

be introduced, be practically prohibited from making political donations. An example: what impetus would there be for an institutional shareholder in an Australian listed public company to support a resolution to permit the company in which they hold shares to make political donations? – they would not wish to court or be embroiled in the potential controversy.

- the practical outcome that Australian companies would not make political donations is not our preferred outcome.
- figures quoted by Ramsay, Stapleton and Vernon at p vii of the Executive Summary to their 2000 Research Paper, *Political Donations by Australian Companies*, published by the Centre for Corporate Law and Securities Regulation at The University of Melbourne, in respect of a selected period in the 1990s, disclose a then low level of political donations even amongst Australia's largest listed companies – the top donor was listed as Westpac at a little over \$1.2 million.
- we are concerned too for a Commonwealth law to operate to prohibit donations made to State Parliamentary parties and to registered industrial organisations (unions); in the former case, due to "Federal issues", in that the measure would adversely impact on the State political process and, in the latter case, due to there not being introduced a similar prohibition on donations to industry or other lobbying or representative groups seeking influence with the Australian political system.
- instead, *increased disclosure regimes are supported*.
- to this end, we would support the introduction of mandatory requirements for Australian incorporated companies and their controlled entities to include in their annual accounts disclosure of the amount and recipients of their political donations to Australian political parties, State Parliamentary political parties and unions.
- we would also support the introduction of mandatory requirements for Australian incorporated companies and their controlled entities to include in their annual accounts disclosure of the amount and recipients of donations to charitable organisations.
- an example of after-the-fact discovered donative largesse arose in the recent Royal Commission into the failure of the HIH group of companies
- should it nevertheless be desired to regulate excessive donations, *de minimis* or normative exemptions from the requirement to obtain member approval, such as operate in ss 210 and 213 of the *Corporations Act 2001* in respect of related party benefits, are considered appropriate. The critical issue would then be to identify the tests or limits for such exemptions.
- we also support the strengthening of disclosures under the Commonwealth *Electoral Act* along the lines recommended in the *Political Donations by Australian Companies* Research Paper referred to



above. Similar strengthening should also occur in respect of registered industrial organisations, State political parties and most particularly at the local Government level.

- in the above regards, a wide but appropriate net of what constitutes a donation should be cast. It should cover briefing sessions, dinners and the like at inflated prices, funding of affiliated think tanks and foundations, and over arm's length terms commercial arrangements. The funding or reimbursement of traditional and other donations by shareholders, directors, employees, controllers and associates of companies should also be covered and reported on. Donations, however, from these sources from funds not sourced from the company should not be attributed as a donation by the company.
- reporting should occur on a whole of corporate group basis.

On behalf of the Task Force, I trust that these submissions are of assistance to the Committee in its deliberations.

Yours faithfully



Daren Armstrong
Secretary

Legislative Review Task Force
Commercial Law Association of Australia Ltd