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5 November 2003  
The General Manager  
Corporations & Financial Services Division  
The Treasury  
Langton Cres  
PARKES ACT 2600

Dear Sir/Madam

### **AASB submission on Draft CLERP 9 Bill**

In response to the Treasury's request for comments on the Draft *CLERP (Audit Reform and Corporate Disclosure) Bill 2003*, the Australian Accounting Standards Board (AASB) has prepared the attached submission commenting on proposals relevant to the AASB in the following areas:

1. Disclosures of Remuneration of Directors & Executives
2. True and Fair View
3. Financial Reporting Panel
4. ASIC's role in publishing accounting standards
5. Definitions: Officer (amended) and Senior Manager (new)

Our concerns in relation to these proposals are explained in the attached submission, together with some minor editorial suggestions in section 6.

The Board hopes these comments explaining its concerns will assist Treasury when revising the Draft Bill prior to its introduction into Parliament.

In addition, the AASB would like to advise that work is proceeding with the project on parent entity reporting, addressing issues on the content in relation to the consolidated entity. The AASB plans to make recommendations to Treasury on parent entity reporting that may be relevant to the next stage in the CLERP process.

Yours sincerely

Ruth Picker  
Acting Chairman



AASB Submission to Treasury on Draft CLERP 9 Bill  
5 November 2003

# Draft CLERP (Audit Reform and Corporate Disclosure) Bill 2003

Issued 8 October 2003  
Comments close 10 November 2003

*The comments in the first five sections of this submission by the Australian Accounting Standards Board (AASB) address only proposals considered relevant to the work of the AASB. Section 6 contains minor editorial comments.*

## 1. Disclosures of Remuneration of Directors & Executives

*[Schedule 5, Commentary, Chapter 5]*

The proposed amendments to Section 300A of the *Corporations Act 2001*, are of the greatest concern to the AASB. The earlier proposals last year in the *Corporations Amendment Bill 2002* have been expanded, to prescribe the location of the remuneration disclosures, extend the number of individuals covered (adding the 5 most highly remunerated senior managers in the consolidated group) and widen the reference to regulations specifying how to value options (to cover valuation of all 'elements', prescription of other details and disclosure of prior period amounts).

The AASB is concerned that these proposals will increase the reporting burden for listed companies and have a high potential for differences to emerge between the information disclosed in the unaudited Directors' Report and the information that will be required (under forthcoming accounting standards) in the audited financial report. Creation of new regulations, covering not only measurement but classification and level of detail required, by a body other than the AASB will overlap and almost certainly differ from the forthcoming accounting standards, AASB 2 *Share-based Payment* (the Australian equivalent of IFRS 2 *Share-based Payment*) and AASB 104X *Director and Executive Disclosures by Disclosing Entities*.

In the Commentary, it is stated that, prior to the commencement of the Bill, "*the progress of ED 106 will be monitored to determine how the actual regulations will be framed.*" This does not acknowledge the importance of the proposed standard on share-based payment, and gives no assurance as to whether the regulations might differ. No indication is given of which body will write the regulations or whether it is intended these should have the same status as the accounting standards of the AASB. It is noted that, under section 334(1) *Corporations Act 2001*, the AASB cannot make accounting standards that are "*inconsistent with this Act or the*

*regulations*". If the regulations are made before the expected issue date of AASB 2 *Share-based Payment* and the requirements are not identical to the IASB's standard (proposed IFRS 2), the AASB would be unable to issue AASB 2. If this situation eventuated, it would put at risk the achievement of the strategic direction of the Financial Reporting Council (July 2002) on the adoption of IASB Standards.

It seems the regulations are intended to cover only remuneration and not the full range of information proposed to be disclosed in ED 106. However, when ED 106 is referred to in the Commentary, it is stated that the intention is the same information be disclosed and "*a company that meets the requirements in the accounting standards will also be in compliance with the requirements in the regulations*". This does not solve the location problem (and inevitable duplication of the disclosures). Accounting standards can only specify in relation to the audited financial reports, and may not even prescribe that something can be omitted from a financial report if the information is given elsewhere in the annual or half-yearly report. The duplication of reporting will cause an increase in preparation costs for listed companies that is likely to exceed any potential benefit. There does not appear to be a pressing demand for expanding this part of the (unaudited) Directors' Report.

The proposal in the Draft Bill to increase the number of individuals subject to remuneration disclosures is an attempt to fix problems arising from the lack of specification in the previous amendment. The problem was resolved in the proposals in ED 106, without the need to increase the number of individuals well beyond that currently required overseas. If the number of individuals proposed in ED 106 were to remain unchanged when AASB 104X is issued, it is difficult to see how the aim in the Commentary ("*a company that meets the requirements in the accounting standards will also be in compliance with the requirements in the regulations*") could be achieved.

In summary, the proposals of the Draft Bill in this area are likely to result in

- duplication of reporting requirements for disclosing entities;
- duplication of parts of accounting standards; and
- duplication of parts of the functions of the AASB.

In connection with the proposed change from the term 'emoluments' to the term 'remuneration', it is appropriate to repeat comments made previously by the AASB to Treasury on the weakness of the current definition of remuneration in Section 9 of the *Corporations Act 2001*:

*"A benefit given to an officer or employee of a corporation is **remuneration** if and only if the benefit, were it received by a director of the corporation, would be remuneration of the director for the purposes of an accounting standard that deals with disclosure in companies' financial reports of information about related parties. ...."*

There is no definition of remuneration in the current IASB standard, IAS 24 *Related Party Disclosures*, and thus, if this were adopted by the AASB, the definition in the Corporations Act would lose meaning. It would be preferable for the definition to be changed so as to avoid specific reference to a standard that, in the future, is unlikely to include director and executive remuneration disclosure requirements. It is suggested the reference be changed to :

*"for the purposes of an accounting standard that deals with such disclosures in companies' financial reports ~~of information about related parties~~. ...."*

It would be convenient for such a change to be included with the current proposals.

At its meeting in October 2003, the AASB decided to accelerate progress on issuing the forthcoming AASB 104X *Director and Executive Disclosures by Disclosing Entities*, by making it independent of other standards and able to be issued sooner. Progress on this project has been delayed by interaction with the IASB's proposed IFRS 2 *Share-based Payment* (now behind schedule) and the decision of the FRC, subsequent to the issue of ED 106, on Australian adoption of IASB Standards.

If Section 300A, *Corporations Act 2001*, is to be retained, a more efficient and effective resolution of the issues (and differences) would be to amend Section 300A to require remuneration for directors and executives to be measured and disclosed as prescribed in the relevant accounting standard. This would permit the principle to be set in the Act and the details located, more appropriately, in accounting standards. If this suggested resolution were to be adopted, the AASB would undertake to ensure the proposed accounting standard, AASB 104X *Director and Executive Disclosures by Disclosing Entities*, is issued in time to be effective for reporting periods beginning on or after 1 July 2004.

## 2. True and Fair View

*[Commentary to Draft Provisions, Chapter 2, Part 1]*

It is not proposed to change the current position in the *Corporations Act 2001*, where it is required that the financial report must observe accounting standards, and if this does not present a true and fair view then additional information must be provided in the financial report to make it true and fair. The AASB supports the continuation of this position.

However, it is proposed to require, when additional information is put in the notes to the financial statements, that the directors include in the Directors' Report:

- a statement on the reasons why they considered additional information is needed; and
- the location of the additional information in the financial report.

The AASB is concerned about this proposal because of:

- (i) the overlap between the proposed disclosure of the reasons for the addition in the (unaudited) Directors' Report and the disclosure of the same information proposed in the forthcoming (improved) version of IAS 1 *Presentation of Financial Reports* (since this will be repeated in the Australian equivalent, AASB 101);
- (ii) the lack of any perceived need for or benefit provided by the content of the proposed 'extra' disclosures or by their elevation to a specified item in the Directors' Report;
- (iii) the potential for directors, when stating why they believe a financial report in compliance with accounting standards does not present a true and fair view, to include in the (unaudited) Directors' Report information that may contravene accounting standards or comments that derogate from the financial report and undermine the authority of accounting standards; and
- (iv) if directors take advantage of the opportunity as noted in (iii), the creation of dilemmas for auditors.

The AASB considers it would be preferable to remove this proposal from the Bill.

### 3. Financial Reporting Panel

*[Commentary to Draft Bill, Chapter 2, Part 4]*

While the AASB supports in general measures designed to increase the efficiency and effectiveness of enforcing accounting standards, such activities are outside the scope of the work of the AASB and the AASB does not undertake to comment on whether the proposed Financial Reporting Panel (FRP) is likely to achieve these aims.

The AASB's concern in relation to the FRP arises from the potential for the decisions of the FRP to function as de facto implementation guidance on the interpretation and application of accounting standards. This is the case in the UK, where the public decisions of the Financial Reporting Review Panel (FRRP) are treated in practice as part of UK generally accepted accounting principles. The FRRP generally issues formal statements only where it has concluded that companies have deviated from existing requirements of the UK Companies Act 1985 or Accounting Standards. However, in some cases, the Panel's views have added to, or modified, the previous understanding of UK GAAP.

It is proposed in the Draft Bill to require that the reports (decisions) of the FRP relating to publicly listed companies be published by ASIC and the 'relevant market operator' (ASX). It is stated in the Commentary (page 89):

*"ASIC's obligation in relation to publicising the report may involve the relevant information being made available on the internet (proposed subsection 323EG(4)). By publicising the report, the Panel's findings can serve as precedent or guidance for other companies as to the application of the accounting standards and the true and fair requirement in particular circumstances."*

The proposed role for FRP decisions appears likely to detract from the position of the Urgent Issues Group (UIG). More importantly, it could undermine international convergence of financial reporting requirements if a decision of the FRP were to conflict with a pronouncement by the International Financial Reporting Interpretations Committee (IFRIC) of the IASB.

It is assumed that the AASB would not be constrained from making an accounting standard that was inconsistent with an FRP report, since such a report (or decision) would not constitute a regulation (as referred to in Section 334(1) *Corporations Act 2001*).

The AASB recommends these proposals be amended to clarify the lower status of decisions of the FRP, ranking such decisions below (and having less authority than) guidance provided by the AASB and interpretations of accounting standards provided by the UIG and IFRIC.

### 4. ASIC's role in publishing accounting standards

*[Schedule 1 Part 1 Item 40]*

In this item, the existing Section 339 of the *Corporations Act 2001* (evidence of text of an accounting standard) is replaced with a new Section 338 (evidence of text of accounting standard or auditing standard). This includes documents purporting to be published by or on behalf of ASIC and setting out the text of "a specified standard as in force at a specified time under section 334 or 336", on the same level as AASB and AUASB documents, as providing proof of the text of standards in proceedings under the Corporations Act.

The AASB is concerned that this proposal creates the potential for discrepancies to arise between the two versions. It may lead to difficulties with the copyright arrangements established with the IASB. Further, it seems inappropriate to include ASIC, the body responsible for enforcing accounting standards, on the same level as the body empowered to make the standards, the AASB.

There is no stated intention to empower ASIC to issue accounting standards, and there appears no need for ASIC to be included in this section. The AASB recommends that, at least in respect of accounting standards, ASIC should not be given the power to publish documents that can be taken as proof of the text of an accounting standard in force under Section 334 of the *Corporations Act 2001*.

## **5. Definitions: Officer (amended) and Senior Manager (new)**

*[Commentary to Draft Provisions, Chapter 9]*

The amendments proposed in this area are intended to resolve differences between definitions of ‘officer’ and ‘executive officer’, currently located in various parts of the *Corporations Act 2001*, and introduce a new term ‘senior manager’, replacing ‘executive officer’.

The AASB is concerned about the proposed new term ‘senior manager’ because of:

- (i) the potential for increasing confusion by adding a term not common in business; and
- (ii) the increased complexity caused by adding further definitions to accommodate the new term in relation to the Section 300A proposals:
  - group executive *Schedule 5, Item 1*
  - relevant group executive *Schedule 5, Item 12*
  - company executive *Schedule 5, Item 12*.

The term ‘senior manager’ does not occur in the proposed change to section 300A(1)(c), where the individuals subject to the remuneration disclosures are identified. The terms used in the proposed Section 300A(1)(c) are required to be ‘translated’ into ‘senior manager’ and secretary and, variously, include or exclude directors. Further, the term ‘officer’ remains in the definition of remuneration (as noted in section 1 above). Interpolation of the new term ‘senior manager’ appears to increase, not decrease, complexity by adding more levels of translation and interpretation.

It is noted that in ED 106, and the proposed draft for AASB 104X, the term ‘officer’ is not used. The term ‘executive’ is used, together with ‘specified executive’ to distinguish those executives required to be named and included in disclosure requirements.

The AASB recommends these proposals be reconsidered, with a view to eliminating the convoluted levels of interpretation.

## 6. Editorial

Proposal	Comments
<p><b>Schedule 1 Part 1 Item 29</b>                      This repeals subsections 238(b) and (c) <i>ASIC Act 2001</i>, replacing them with new subsections 238(b) to (e). The next Item in Schedule 1, Item 30, then adds, at the end of section 238, new subsection 238(2) “<i>The money of the AUASB...</i>” followed by s.238(2)(a) to (e), effectively repeating the (a) to (e) for the AASB.</p>	<p><i>This leaves the existing Section 238 without a subsection (1). This is needed so that the subsections for AASB end up numbered s.238(1)(a) and so on to s.238(1)(e), consistently with the introduced sections for the AUASB, s.238(2)(a) and so on to s.238(2)(e).</i></p>
<p><b>Schedule 2 Part 3 Item 16</b>                      This extends the existing reference in Section 314(1)(a)(ii) <i>Corporations Act 2001</i> to sections relating to the contents of the Directors’ Report, from s.298 – 300 to s. 298 – 300A. Section 314(1) addresses the contents of an annual report.</p>	<p><i>The same amendment should also be made in respect of the Directors’ Report that is part of a Concise Report, that is, Section 314(2)(b).</i></p>