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Mr John Kliver
Executive Director
Corporations and Markets Advisory Committee
Level 16, 60 Margaret Street
SYDNEY NSW 2000

24 February 2006

Dear Sir

SUBMISSION REGARDING PROPOSAL FOR CHANGE: INQUIRY INTO DIRECTORS' DUTIES AND CORPORATE SOCIAL RESPONSIBILITY

It is my respectful submission that the Committee have regard to a proposal for change contained in a submission made to the Parliamentary Joint Committee (PJC) on Corporations and Financial Services for its Inquiry into Corporate Responsibility. That submission was made by the Law Student Community Support (LSCS) organisation, composed of law students from the University of Western Australia, of which I was President when the submission was made. That submission can be found on the PJC's website.¹

It is only a proposal for change. But it should, at least, be considered as a means of effecting corporate social responsibility. It is a system which would be imposed upon corporations when making decisions. It imposes an obligation to consider a statutory defined list of factors (social and environmental, among others) and to document that due consideration has been given in the companies boards' minutes. Depending on the company (its size, industry, location, etc), different factors could be considered. The decisions to which this method of reporting would be applicable would be any of those that affect the company's operations in a significant way. The details of the system could be particularised and perfected by a Corporate Law Economic Reform Program inquiry.

As minutes have to be lodged with the Australian Securities and Investments Commission, records would show that important points of corporate social responsibility have been respected for that particular board decision. This still permits complete autonomy for corporate decision making. It does, however,

¹ See *Law Student Community Support*, Submission 64, Inquiry into Corporate Responsibility (APH website, URL: http://www.aph.gov.au/senate/committee/corporations_ctte/corporate_responsibility/submissions/sub64.pdf (As at Tuesday 20 December 2005)).

document the corporate intention to disregard a social responsibility of the corporation or its directors. Irresponsibility being documented can have two important consequences. First, negative publicity for those concerned and, secondly, a documentation of the bad corporate intention which may be used as evidential material in prosecutions under completely separate offence provisions to the *Corporations Act 2001* (Cth) (like corporate environmental offences, corporate workplace safety offences and the like).

It would seem that it is a proposal unlike the others suggested. It is also unlike anything adopted in any other nation's system of corporate regulation. It does not portray policy makers' disregard for the issue of corporate social responsibility, because it is 'too hard' or 'too troublesome for the economy', by simply leaving it to financial-data-like indexes. It is also not a practically flawed and impossible suggestion like attempting to amend the directors' duties in the *Corporations Act 2001* (Cth) to cater for corporate social responsibility. Instead, it strikes a balance between legitimate concern for corporate social responsibility and avoiding immense burden on the corporate world that could lead to the negative financial and economic consequences that many currently fear.

Of course, the proposal would have to be more fully considered. I respectfully provide this submission for the Committee's consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anthony Papamatheos', with a stylized flourish at the end.

Anthony Papamatheos
Articled Clerk to Mr Thomas Percy QC, Albert Wolff Chambers, Perth

[The views expressed in this submission are those of the author and not of his Principal or his Principal's Chambers.]