

**KEYNOTE ADDRESS TO ASIC SUMMER SCHOOL**

**MELBOURNE**

**19 FEBRUARY 2008**

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**SECRETARY TO THE TREASURY**

**ON BEHALF OF SENATOR THE HON NICK SHERRY  
MINISTER FOR SUPERANNUATION AND CORPORATE LAW**

The Minister extends his apologies for being unable to attend the Gala Dinner tonight and deliver the key note address. The Minister has asked me to speak to you on his behalf. For those of you who don't know me, my name is Ken Henry and I am the Secretary to the Treasury which, in broad terms, is charged with improving the wellbeing of Australian people.

You may, however, be more interested to learn about the Minister's background, rather than mine! Minister Nick Sherry is a naturalised Australian, who was born in London in 1955. He grew up in Hobart where he attended the University of Tasmania and obtained a Bachelor of Arts majoring in Political Science and Administration.

In 1979, at the age of 24, he became State Secretary of the Tasmanian Branch of the Federated Liquor and Allied Industries Union. Minister Sherry held that position for eleven years, until he was elected as a Senator for Tasmania in 1990. The Minister is based in Devonport on Tasmania's North West Coast, where he

follows the Forth and Geelong Football Clubs, enjoys the occasional hit of golf ... a good history book ... and, dare I say it, the very occasional premiership win!

He has had over 8 years experience as the Shadow Minister responsible for superannuation before becoming the Minister.

He served as the Parliamentary Secretary for Primary Industry, Energy and Resources during the Keating Government. The Minister also held a number of key party roles including Deputy Leader of the Opposition in the Senate, and has been a member of Labor's tactics, strategy, economic and policy committees.

As a Senator, he chaired the Senate Select Committee on Superannuation in the Hawke and Keating Governments and was later Deputy Chair of the Senate Select Committee on Superannuation and Financial Services for 6 years.

The Minister for Superannuation and Corporate Law was sworn in on the third of December 2007. As the first Minister for Superannuation in any Australian Government, he brings together a range of areas in both Treasury and Finance.

These include:

- Policy and administration, including taxation and prudential regulation, in relation to superannuation;
- Corporate governance encompassing administration of the Australian Securities and Investments Commission and representation on the Ministerial Council for Corporations;
- Financial literacy;
- The Royal Australian Mint; and
- The Australian Government Actuary.

## ***Superannuation***

I'd like to say a few words about the Government's policy priorities for superannuation before turning to corporate law matters.

Superannuation is a significant issue for many Australians. It is the Government which makes it compulsory to save for retirement, and compulsion brings with it a strong 'duty of care' to all individuals with superannuation savings.

Issues such as governance, dispute resolution and compensation, safety and operational costs are important concerns for the Government.

The central question for all participants in our system, regardless of their particular interest, should be what is in the best interests of the member and maximises their retirement income?

## ***Principles***

There are a number of interlinked principles that the Minister has enunciated over the past few years. They are worthwhile

recounting because they will guide how the Rudd Government will examine issues going forward.

- Adequacy - Achieving higher retirement incomes delivered over time through a combination of the age pension plus superannuation set against a clear goal;
- Simplicity - each fund member should be able to understand at least the general features of the system and the particular features of their own fund.

Safe, high quality default mechanisms may be desirable where individuals fail to make an informed decision.

- Safety and certainty - features to ensure people maintain confidence that contributions will be made, that their future income is not at risk from theft and fraud, and that they can predict with reasonable certainty the income available to them on retirement;
- Choice and competition - the provision of a level of choice so that individuals can have input into selecting superannuation options that best suit their particular needs for retirement,

whether it be a particular fund, investment category, lump sum or pension/annuity, or age of retirement;

There is a need to ensure a careful balance in a system which denies individuals the choice not to participate, but requires them to make what can be a range of complex choices within the system.

- Affordability - superannuation should be a cost effective savings vehicle with operating costs kept to a minimum; and
- Improved incentives - superannuation should be taxed in a fair and equitable manner, and we need a range of measures to ensure that both retirement savings are increased and that individuals are given additional incentive to contribute regularly to those savings. Any such measures need to be carefully designed and targeted.

### ***Self managed superannuation funds***

The Minister recently announced that the Government has commenced consultation with a range of industry organisations and practitioners about a range of practices in self managed superannuation funds (SMSFs).

Some individuals may be subject to aggressive marketing strategies and persuaded to establish a SMSF without being aware of their role and responsibilities, and without appreciating the costs involved.

Ensuring appropriate governance is necessary given the significant growth in the sector to more than 368,000 entities, over 700,000 thousand members, and a total of greater than \$300 billion in assets (one quarter of total assets).

The Government is closely monitoring developments in the SMSF sector to ensure that trustees, and potential trustees, are aware of the risks involved and provided the skills necessary to run a superannuation fund in a prudent fashion.

### ***Corporate Governance***

Turning now to corporate governance... I understand there was some discussion of this issue last night.



The Government believes that good corporate governance is fundamental to sustainable wealth creation. A sound corporate governance regime will ensure that our corporations continue to provide low-cost goods and services, generate revenue and provide jobs.

Australia's corporate governance framework is highly regarded, both domestically and internationally.

However, in recent years a cross-section of the business and legal community has suggested that the law could do more for corporate governance, such as making the standards required of our corporate leaders more precise. The specific concern is that our corporate regime is causing directors to be overly cautious when making decisions, particularly in fast-moving and complex business situations.

The decisions that directors make are central to the efficient operation of companies and the wellbeing of our economy.

Therefore, it is vital that directors' duties and the associated sanctions provide the right incentives to create value.

To this end, Treasury is examining these issues to improve and clarify the corporate governance regime and will consult widely with industry and the regulators to this end.

The Minister believes that it is important that this project looks beyond the Corporations Act to examine issues such as the emerging trend for other legislation to impose personal liability on company officers for corporate fault.

While it may be appropriate to use these types of provisions in exceptional cases, they now appear to be the norm. All governments should minimise these provisions and improve consistency in this area.

He also believes that it is important that the law imposes appropriate sanctions where a company or its officers fail to meet the required standards.

Accordingly, sanctions should be credible... flexible... and transparent. For example, if misconduct is addressed at an early stage through a tailored penalty, criminal sanctions may be avoided later in the piece.

It is important that corporate law reflect modern thinking about the use of criminal, civil and administrative sanctions for misconduct, while also permitting flexibility in decision-making.

The Minister has indicated to Treasury that this is a high priority project.

### ***Financial reporting***

As I have already mentioned, Australia's corporate regulatory framework promotes good corporate governance.

It also promotes good corporate reporting.

Yet, there are several ways that we could improve the financial reporting framework.

For example, we could improve the relevance of financial reports to investors and other financial report users.

One way to improve the relevance of financial reports is to review the range of information contained in Directors' reports.

We know that the information needs of users are continuously changing. This is due to rapid advances in technology...evolving community expectations... and a heightened awareness of environmental and corporate social responsibility issues.

These changes warrant an ongoing assessment of the information provided by companies to users.

This evening, I will highlight two key areas which the Government has identified as areas requiring review — executive remuneration and corporate sustainability reporting.

As you are aware, executive remuneration is an issue that generates much public and media interest. You would also be aware that investors — and the broader community — are demanding to know more about executive remuneration.

While the Government does not seek to intervene in setting remuneration levels — a task that is best left with management — it believes that executive remuneration should be linked to company performance.

The Government is also committed to promoting greater transparency and accountability with respect to executive remuneration packages.

The Government is also examining ways to strengthen disclosure regarding corporate sustainability reporting, without imposing regulatory burdens on business.

The Minister believes that companies which consider a broad range of social and environmental factors in their decision-making will see a marked increase in their long-term shareholder value. For this reason, he believes that it is important to encourage and facilitate this kind of corporate decision-making.

At the same time, the Government is aware that improving or otherwise strengthening reporting requirements does not necessarily mean making them more complex. In fact, in some cases, fewer reporting requirements would be more appropriate.

The Government is aware of the need to reduce the reporting burden imposed on the business community, and allow them to use resources more effectively. He has indicated the importance of this work to Treasury.

## ***Financial Services Disclosure***

Another area where the Minister is keen to achieve meaningful reform is Financial Services Disclosure.

The Government recently announced the formation of the Financial Services Working Group. The Group will be comprised of senior officers from Treasury, ASIC and the Department of Finance and Deregulation.

One of the key aims of the Working Group is to identify options to make disclosure documentation more meaningful.

These documents are often lengthy... complex... and, quite frankly, unreadable. Not only that, but they are costly for industry to create and of little use to consumers. The bottom line is documents must be consumer-tested and readable.

The Working Group will examine why disclosures are so lengthy and complex. This is important work. Consumers must be well

informed to make effective decisions that drive market competition and put downward pressure on prices. And business should have the opportunity to reduce the high cost of producing such documents.

The Working Group will undertake extensive consultation on the issue of disclosure length. Submissions will be called for throughout the process.

I encourage all stakeholders to get involved in this important process. To achieve the best possible outcomes we need the valuable input of all relevant stakeholders.

The collective membership of Treasury, ASIC and the Department of Finance and Deregulation will ensure that we meet the needs of investors and business, as well as the enforcement requirements of the regulator.

***Perspectives on global financial markets***



The reviews and potential reforms that have been outlined this evening are designed to better protect Australian shareholders and investors, and enhance the efficiency of Australia's capital markets.

They also aim to increase Australia's attractiveness to foreign investors and reinforce our standing as a regional financial centre.

Over the last 30 years, we have seen an ever-increasing degree of global financial integration. This trend has presented Australia with both challenges and opportunities.

We have met the challenges head-on.

In the future, national regulators will, no doubt, continue to grapple with the challenges of cross-border capital flows.

As you are aware, the United States Securities and Exchange Commission is developing a position on mutual recognition of foreign exchanges and broker dealers with Australia.

The Government supports such initiatives to improve the global financial regulatory system. These initiatives present opportunities for Australia to capture the gains from cross-border capital flows and minimise the risks that may arise from market misconduct or threats to investor safety.

On Wednesday, Mr Ethiopis Tafara, Director of the Office of International Affairs of the Securities and Exchange Commission, will discuss the US perspective. I will discuss these matters from Australia's perspective.

As a small and open economy, Australia needs to respond to global regulatory and commercial developments. For example, there is much to be gained from strengthening and deepening our financial integration with the United States.

Also, securing mutual recognition of foreign markets and broker dealers, with the United States — or with any other comparable country for that matter — would improve Australia's global

reputation, not only as a place to invest, but also as a proponent of reform and best-practice.

The Government will continue to follow global regulatory developments with interest. And I am sure that many of you here tonight will do the same.

The annual ASIC Summer School – in its 13<sup>th</sup> year in 2008 – is an important forum in which the best and brightest in the sector can develop their thinking on key challenges of the day. This year's theme "Our Financial Markets" is as big as they get so this week's proceedings are even more important. I wish you well for the remainder of the School.