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AUSTRALIAN INSTITUTE OF CREDIT MANAGEMENT SUBMISSION RE

2010 CORPORATE INSOLVENCY REFORMS

Reversal of the effect of *Sons of Gwalia v Margaretic* and related issues

The Australian Institute of Credit Management (AICM) welcomes and strongly supports the 2010 Corporate Insolvency Reform Package.

Reversal of the effect of *Sons of Gwalia v Margaretic*

AICM believes that addressing the current uncertainty which has arisen from the 2007 *Sons of Gwalia Ltd v Margaretic* decision is in the best interests of the business community and in a broader sense the Australian economy. This conclusion is based upon the level of apprehension from AICM members that unsecured commercial creditors will face a greater uncertainty of recovery if shareholders similar rights of recovery.

The provision of credit is an intrinsic component of commercial trading. The remedying of possible uncertainty will facilitate the provision of commercial 'business to business' credit, resulting in an increased level of business confidence which is necessary to support Federal Government strategies to protect the Australian economy from the ongoing impact of the 'global financial crisis'.

Issues in external administration

AICM supports the matters detailed in Attachment A of the paper *2010 Corporate Insolvency Reforms*. In particular AICM welcomes the proposals relating to the following matters:

- Access to creditor lists
- Notice to property owners
- Publication of external administration notices via single website. AICM believes that the benefits that will flow from this initiative are substantial

and would urge that the development of this website be a matter of priority.

Whilst appreciating the direction and intention of the reform relating to exemption from publication AICM would express a reservation that the granting of an exemption on the grounds of '*...no significant risk to the interests of creditors, including contingent and prospective creditors as a whole...*' may prove somewhat troublesome in interpretation and potentially could result in unnecessary and vexatious litigation. AICM would propose that the word 'significant' not be included in the amendments to the *Corporations Act 2001* (Cth).

Relation-back and commencement dates

AICM strongly supports the removal of existing anomalies. Any mechanism which will facilitate the application of these provisions is to be applauded as the ultimate outcome should reduced litigation, improve clarity of interpretation and confidence in the overall management of corporate insolvency situations.

Miscellaneous reforms

AICM supports the Minor miscellaneous insolvency reforms outlined in Attachment B.

In particular

- Company under external administration – former name to be used on documents
- Bankrupt ineligible
- When an administrator may dispose of encumbered property
- Carrying on of business

AICM commends the Minister and Federal Government for recognising the need to address what may appear to be minor issues but which can cause unnecessary delays and complications during the management of corporate insolvency.