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**YEAR 2000, WHERE ARE WE NOW AND  
WHERE ARE WE GOING? -  
CHALLENGES FOR AUSTRALIAN  
LAWYERS IN THE NEW MILLENNIUM**

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**TO THE 16TH ANNUAL BANKING LAW & PRACTISE CONFERENCE  
Queensland, June 10 1999.**

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IT IS A PLEASURE TO ADDRESS THE ANNUAL BANKING LAW & PRACTISE CONFERENCE TODAY ON THE TOPIC OF MEETING GLOBAL CHALLENGES FOR AUSTRALIAN LAWYERS IN THE NEW MILLENNIUM.

TO UNDERSTAND WHAT CHALLENGES LIE AHEAD FOR ALL OF US, IT IS ESSENTIAL TO FIRST APPRECIATE THE ECONOMIC AND SOCIAL CONTEXT IN WHICH OUR CORPORATE CLIENTS WILL BE OPERATING, AND HENCE THE DEMANDS THEY WILL BE PLACING ON INTERNAL AND EXTERNAL LAWYERS WITH CONSEQUENCES FOR THE WAY IN WHICH WE WILL BE PRACTISING OUR PROFESSION.

I AM SPEAKING TO YOU IN THE MIDST OF A SERIES OF GLOBAL ECONOMIC CRISES THAT ARE PRESENTING BOTH CHALLENGES, AND OPPORTUNITIES, FOR AUSTRALIAN BUSINESS.

NO LONGER ABLE TO RUN JUST ON OUR REPUTATION OF THE LUCKY COUNTRY, AUSTRALIA IS NOW IN GLOBAL COMPETITION WHERE WE ARE PLAYING FOR KEEPS. OUR COMPETITION IS NO LONGER FROM THOSE COMPANIES WE CAN SEE FROM OUR OFFICE WINDOWS. THEY ARE THE BEST OF BREED INTERNATIONALLY. THEY ARE AGGRESSIVE, INNOVATIVE, MASSIVE IN SCALE. AND THEY WANT OUR MARKETS AND OUR CUSTOMERS.

THE INCREDIBLE SURGE IN THE US ECONOMY OVER THE PAST 8 YEARS HAS CREATED SOME BREATHTAKING EFFICIENCIES AND GLOBAL SCALE THAT IS DWARFING THE ABILITY OF COMPANIES AND FINANCIAL INSTITUTIONS TO COMPETE EFFECTIVELY ON MULTIPLE PLAYING FIELDS AROUND THE GLOBE.

THERE IS NO DOUBT THAT WE ARE OPERATING IN A HIGHLY TENSE POLITICAL, ECONOMIC AND SOCIAL ENVIRONMENT. THIS TENSION IS HAVING A SIGNIFICANT IMPACT ON THE OPERATIONS OF AUSTRALIA'S MAJOR COMPANIES.

THERE ARE THREE KEY POINTS I WANT TO HIGHLIGHT THAT GO TO THE HEART OF OUR CHALLENGES:

**FIRST...**THE GROWTH PROSPECTS OF AUSTRALIA'S MAJOR CORPORATIONS WILL DEPEND ON THEIR ABILITY TO "REINVENT" THEIR STRATEGIES, STRUCTURES AND OPERATIONS SO THAT THEY CAN OPERATE IN TODAY'S GLOBALISED ECONOMY AS FLEXIBLE, NIMBLE, AND CREATIVE COMPETITORS. ACCORDING TO MCKINSEY, THE PROPORTION OF THE WORLD ECONOMY THAT WILL BE "GLOBALLY CONTESTABLE" WILL INCREASE IN THE NEXT 10-15 YEARS FROM 20% TO 50%.

**SECOND...**THE GREATEST RISK TO AUSTRALIA'S FUTURE ECONOMIC GROWTH AND TO THE HEALTH OF ITS FINANCIAL ASSETS IS NOT EXTERNAL...IT IS INTERNAL. IT IS THE POTENTIAL THREAT THAT WE MIGHT LOSE OUR RESOLVE AND RETREAT FROM CONTINUED CRITICAL ECONOMIC REFORM AND THE MARKET ECONOMY.

**THIRD...**LAWYERS WHO DO NOT APPRECIATE THESE COMMERCIAL AND POLITICAL CHALLENGES, AND RISE TO THE OCCASION, WILL FAST FIND THEMSELVES SIDELINED AS PART OF THE PROBLEM, NOT PART OF THE SOLUTION. TO BE INCLUDED AS PART OF THE CORPORATE DECISION MAKING PROCESS REQUIRES A MASTERY OF SKILLS PREVIOUSLY OFTEN REGARDED AS LUXURIES, NOT NECESSITIES. THOSE DAYS ARE NOW GONE.

AUSTRALIA'S CORPORATIONS ARE EXPERIENCING BOTH INTERNALLY AND EXTERNALLY SOURCED TENSIONS. ACCORDINGLY, THEY ARE DEMANDING MORE FROM BOTH THEIR INTERNAL AND EXTERNAL LEGAL ADVISERS. THIS PRESSURE WILL INCREASE, AND IN MY EXPERIENCE, MANY OF TODAY'S COMMERCIAL LAWYERS ARE ILL EQUIPPED TO MEET THE CHALLENGE. COMPARED TO THE BEST OF BREED LAWYER IN LONDON AND THE UNITED STATES, WE ARE NOT MEETING THE CHALLENGE.

THAT IS NOT TO SAY WE DON'T HAVE SOME EXCELLENT CORPORATE LAWYERS IN THIS COUNTRY. WE DO. OUR BEST ARE EQUAL TO ANY THAT PRACTISE IN LONDON OR NEW YORK. HOWEVER, THE REQUIRED ATTITUDE AND CULTURE CHANGES THAT ARE REQUIRED TO MEET THE CHALLENGES ACROSS THE PROFESSION, ARE LAGGING OUR INTERNATIONAL COMPETITION.

PRESSURE FROM IMPENDING GLOBAL LAW FIRM MERGERS AT THE TOP TIER, AND THE EVER PRESENT ONSLAUGHT FROM THE ACCOUNTING PROFESSION IN THE SECOND TIER, WILL TAKE A DEVASTATING TOLL ON THOSE LAWYERS NOT FEARFUL OF THE CHALLENGE AND ACTIVELY SEEKING TO CHANGE IN FUNDAMENTAL WAYS. MORE OF THIS LATER.

THE **INTERNAL** TENSIONS BEING EXPERIENCED BY OUR CORPORATE CLIENTS ARE THOSE BETWEEN:

- GLOBAL VERSUS LOCAL STRATEGIES, STRUCTURES AND OPERATING MODELS
- LONG TERM STRATEGIES VERSUS SHORT TERM TACTICS IN CORPORATE DECISION MAKING
- HONEST AND TRANSPARENT ECONOMIC VALUE ADDED VERSUS OTHER FORMS OF MEASURING THE REAL EFFECTIVENESS OF DEBT AND EQUITY CAPITAL USE, AND
- PROTECTION OF THE REVENUE VERSUS AN INTERNATIONALLY COMPETITIVE BUSINESS TAX SYSTEM

THE **EXTERNAL** TENSIONS INCLUDE THOSE BETWEEN:

- MARKET VERSUS STATE ECONOMIC MODELS, AND
- SHAREHOLDER VERSUS OTHER STAKEHOLDER INTERESTS.

THE MOST SIGNIFICANT CHALLENGE FOR ANY MAJOR ORGANISATION TODAY, IS THE IDENTIFICATION AND EFFECTIVE MANAGEMENT OF THESE TENSIONS. THIS IS PARTICULARLY THE CASE IN THE GLOBALISED BANKING AND FINANCIAL SERVICES SECTOR.

THERE ARE 4 FACTORS WHICH ARE DRIVING GLOBALISATION:

- GROWING INTEGRATED CAPITAL MARKETS
- ECONOMIC AND FINANCIAL DEREGULATION
- ATTRACTIVE DEMOGRAPHICS, AND
- THE TECHNOLOGY REVOLUTION

SUCCESSFUL COMPANIES WILL BE THOSE WHO CAN CREATIVELY MANAGE COMPLEXITY WITHOUT LOSING THEIR WAY. THIS REQUIRES A FUNDAMENTAL CHANGE IN TRADITIONAL APPROACHES TO CORPORATE STRATEGIES AND OPERATING MODELS. IT ALSO REQUIRES FUNDAMENTAL CHANGE TO OUR BUSINESS TAX SYSTEM.

TODAY'S LAWYERS, LET ALONE THOSE WHO WILL BE PRACTISING IN THE NEW MILLENNIUM, NEED TO DEMONSTRATE THAT THEY HAVE VALUE TO ADD IN THIS ENVIRONMENT, NOT JUST AS INTERPRETERS OF THE LAW OR WATER-CARRIERS OF PROBLEMS AND RISKS, BUT AS ACTIVE AND CREATIVE THINKERS AND COUNSELLORS IN ALL ASPECTS OF COMMERCIAL AND POLITICAL DEBATES.

THE OUTCOMES OF THE CHANGES THAT ARE AFFECTING ALL COMPANIES TODAY WILL SHAPE THE FUTURE SURVIVAL OF MANY, AND THE PROSPERITY AND COMPETITIVENESS OF OTHERS. LAWYERS CANNOT AFFORD TO BE MARGINALISED IN THIS ARENA.

MANY OF OUR COMPANIES HAVE DONE REMARKABLY WELL IN WEATHERING THE ASIAN CRISES. THIS WAS NOT DUE TO GOOD LUCK, BUT TO A COMBINATION OF SOUND GOVERNMENT POLICY AND ECONOMIC REFORMS, AND A MORE FLEXIBLE AND INNOVATIVE EXPORT SECTOR.

AS THE FINANCIAL REVIEW EDITORIAL SAID RECENTLY, THIS WAS NOT GOOD LUCK. IT WAS "VERY MUCH THE GAIN FROM THE PAIN OF A DECADE AND A HALF OF ECONOMIC REFORM" AND MORE RECENTLY THE GOVERNMENT'S TOUGH MINDED DETERMINATION TO GET THE BUDGET INTO SURPLUS AND DEFT HANDLING OF MONETARY POLICY BY AN INDEPENDENT RESERVE BANK.

THE WIDER DIVERSITY OF OUR EXPORT SECTOR HAS ALSO ENABLED MANY COMPANIES TO FIND NEW MARKETS OUTSIDE OF ASIA, A MARKED CONTRAST TO THE PAST WHEN OUR LIMITED RANGE OF EXPORTS WERE FORCED TO RELY ON THE INFLEXIBILITY OF TRADITIONAL MARKETS.

OUR NATIONAL SHIFT INTO SERVICES AND TECHNOLOGY AND VALUE ADDED PRODUCTION THAT HAS UNDERPINNED OUR EXPORT SECTOR, IS NOW PROVING TO BE A MATTER OF ECONOMIC SURVIVAL FOR AUSTRALIA.

THE EXCITING TEST OF BOTH GOVERNMENT ECONOMIC REFORMS AND PRIVATE SECTOR EFFICIENCIES AND CREATIVITY, ARE NOT JUST SOMETHING WE CAN BE PROUD OF. THEY ARE IN FACT SUSTAINING OUR CURRENT STANDARD OF LIVING.

ED YARDENI, THE CHIEF ECONOMIST OF DEUTSCHE BANK IN NEW YORK, BELIEVES THAT IN PEACETIME TRADE BARRIERS BEGIN TO DISAPPEAR. WE HEAD TOWARDS PERFECT COMPETITION ON A GLOBAL SCALE THAT IS CHARACTERISED BY NO GEOGRAPHIC OR REGULATORY BARRIERS TO ENTRY AND NO INFLATION. IT IS AN ENVIRONMENT WHERE COMPANIES CUT COSTS, NOT INCREASE PRICES.

IT IS NOT SURPRISING THEREFOR THAT WE NOW SEE A RASH OF GLOBAL MERGERS AS COMPANIES SEEK TO CAPTURE THE BENEFITS OF ECONOMIES OF SCALE AND SCOPE. THESE MERGERS ARE NOT MOTIVATED BY VISIONS OF WORLD DOMINATION, BUT BY A NEED TO SURVIVE ON A GLOBAL SCALE, AS MUCH FOR DEFENSIVE REASONS AS OFFENSIVE.

IN OUR INDUSTRY...AS WITH ALL OTHERS...TENSION IS BEING CAUSED BY THE INCREASED INTEGRATION OF GLOBAL GOODS, SERVICES AND CAPITAL MARKETS.

WE CAN SEE THIS IN:

- INCREASING TRADE FLOWS ACROSS ECONOMIES.
- INCREASING FOREIGN DIRECT INVESTMENT ACROSS GEOGRAPHIC BORDERS AND INCREASED PARTICIPATION OF "FOREIGNERS" IN "LOCAL" MARKETS.
- AND PERHAPS MOST CRITICALLY OF ALL...IN INCREASED CAPITAL FLOWS ACROSS GEOGRAPHIC BOUNDARIES.

IN THIS CONTEXT, THE DEVELOPMENT OF INFORMATION TECHNOLOGY SUCH AS THE INTERNET AND THE CAPABILITY IT HAS PROVIDED FOR ELECTRONIC COMMERCE RAISES FUNDAMENTAL ISSUES FOR HOW OUR COMPANIES WILL DELIVER THEIR PRODUCTS AND SERVICES IN A GLOBAL MARKET AND THEIR ABILITY TO ENGAGE IN CROSS BORDER

COMMERCIAL TRANSACTIONS OVER THE NET USING "E-CASH" AND "CYBERCASH."

MULTINATIONALS NOW HAVE THE ABILITY THROUGH THE NET TO INITIATE, NEGOTIATE AND EXECUTE HIGHLY COMPLEX COMMERCIAL TRANSACTIONS WITH COUNTERPARTIES RESIDENT IN ANOTHER JURISDICTION WITHOUT HAVING ANY PRESENCE IN THAT OTHER JURISDICTION. WE SEE THIS NOT ONLY IN THE WHOLESALE AREAS OF OUR BUSINESS, BUT ARE NOW ON THE VERGE OF A MASSIVE GROWTH IN CROSS BORDER RETAIL FINANCIAL TRANSACTIONS AS WELL.

THERE IS A FUNDAMENTAL SHIFT IN THE ECONOMICS OF INFORMATION. THIS IS LESS ABOUT NEW TECHNOLOGY AND MORE ABOUT NEW BEHAVIOURS REACHING A CRITICAL MASS. THE EXPLOSION IN CONNECTIVITY IS TRANSFORMING BUSINESS STRATEGIES ACROSS THE GLOBE.

TECHNOLOGY IMPROVEMENT IS BEING PARALLELED BY THE EXTRAORDINARY PACE OF CAPITAL FLOWS, WHICH ALSO REQUIRES CLEVER AND PROACTIVE STRATEGIC MANAGEMENT.

TODAY'S CAPITAL INVESTMENT DECISIONS ARE DRIVEN BY THE... "BEST RATE OF RISK ADJUSTED RETURN AVAILABLE ANYWHERE IN THE WORLD AT ANY TIME". IN ADDITION, THE GLOBALISATION PROCESS USES FINANCIAL INNOVATION AND NEW TECHNOLOGY TO GET AROUND REGULATION. THE LIBERATION OF FINANCIAL MARKETS INTRODUCES COMPETITIVE FORCES THAT WILL CHALLENGE EXISTING INFRASTRUCTURE, MANAGEMENT PROCESSES AND CULTURE.

THE GLOBALISATION OF THE FINANCE SECTOR APPEARS TO BE OUTSTRIPPING OTHER INDUSTRIES. TODAY, 20% OF THE WORLDWIDE STOCKMARKET CAPITALISATION IS ACCOUNTED FOR BY FINANCIAL SERVICES. WE ARE SEEING THE TRANSFORMATION OF THE WORLD'S MAJOR FINANCIAL MARKETS FROM A SERIES OF LOCAL SECTORS LOCKED INSIDE CLOSED NATIONAL ECONOMIES TO A GLOBAL INDUSTRY THAT OPERATES FREELY ACROSS NATIONAL BOUNDARIES.

INTERNATIONAL FINANCING BY BANKS VIA NET FOREIGN SECURITIES HAS TREBLED IN THE PAST 10 YEARS...AS HAS FOREIGN EXCHANGE TURNOVER. WE ARE ALSO SEEING THE ASSETS OF DOMESTIC FINANCIAL INSTITUTIONS INCREASINGLY BEING PLACED OFFSHORE.

TAKING AUSTRALIA AS AN EXAMPLE...IN 1991 AROUND 13 PER CENT OF AUSTRALIA'S SUPER FUNDS ASSETS WERE INVESTED OFFSHORE. TODAY THE LEVEL IS ESTIMATED AT MORE THAN 20 PER CENT. IT IS ESTIMATED THAT THE AUSTRALIAN BANKING AND FINANCIAL SERVICES SECTOR HAS 20% OF ITS ASSETS OFFSHORE...ONE OF THE HIGHEST LEVELS OF ANY DEVELOPED ECONOMY.

YET AS THE FORMER CITICORP CHAIRMAN WALTER WRISTON ACCURATELY PREDICTED, THE INFORMATION CONTENT OF MONEY IS PROVING MORE VALUABLE THAN MONEY ITSELF. THE TECHNOLOGY REVOLUTION BY ENABLING MASSIVELY GREATER CROSS BORDER INFORMATION FLOWS, OPENS THE COMPETITIVE ARENA IN FINANCIAL SERVICES TO NEW VALUE PROPOSITIONS THAT MAY BE MORE EASILY AND EFFECTIVELY PROVIDED BY NEW ENTRANTS.

ALL THIS MEANS THAT THE FUTURE INCOMES OF ALL AUSTRALIANS ARE DIRECTLY LINKED TO THE PERFORMANCE OF LOCAL AND INTERNATIONAL FINANCIAL MARKETS. NAB, ONE OF AUSTRALIA'S LARGEST PUBLICLY LISTED COMPANY, HAS 55% OF ITS REVENUES SOURCED FROM OFFSHORE TODAY.

WHEN YOU CONSIDER WHAT IS HAPPENING IN THE WORLD'S LARGEST ECONOMIES YOU CAN BETTER APPRECIATE THE MASSIVE AMOUNT OF INTERNATIONAL INVESTMENT FLOWING AROUND THE WORLD.

AND WHERE DOES THAT CAPITAL GO? THAT CAPITAL GOES WHERE IT CAN EARN THE BEST RATE OF RETURN. THAT REQUIRES STABLE ECONOMIC AND POLITICAL CONDITIONS, SENSIBLE AND FAIR TAX SYSTEMS, AND EXPECTATIONS THAT THE PRIVATE SECTOR WILL ADD VALUE TO SHAREHOLDERS OVER TIME. IF AUSTRALIA CAN MEET THESE CRITERIA, WE WILL ENJOY THE BENEFITS OF THOSE CAPITAL FLOWS. IF WE CANNOT, THEN WE WILL MISS OUT.

ALL OF THIS MEANS THAT THE WORLD'S CAPITAL MARKETS ARE HIGHLY INTERDEPENDENT. IT ALSO MEANS THAT CAPITAL FLOWS CAN CREATE NATIONAL HAVOC.

MULTINATIONALS SUCH AS THE NATIONAL ARE COMPETING FOR FUNDS IN INTERNATIONAL CAPITAL MARKETS. WITH THE EXPANSION OF AUSTRALIAN MULTINATIONALS INTO INTERNATIONAL CAPITAL MARKETS AND BUSINESS MARKETS, AUSTRALIAN MULTINATIONALS HAVE AN INCREASING PROPORTION OF FOREIGN SHAREHOLDERS AND FOREIGN PROFITS.

HIGHLY VOLATILE, GLOBALISED CAPITAL MARKETS WILL REQUIRE COMPANIES TO ACHIEVE A TRANSPARENT GLOBAL STANDARD IN RETURN ON EQUITY. THIS MEANS A RENEWED EMPHASIS ON GROWING SHAREHOLDER WEALTH.

THERE IS NOTHING POLITICALLY "INCORRECT" ABOUT WANTING TO MAKE MONEY FOR SHAREHOLDERS.

IN THE PAST AUSTRALIANS TENDED TO VIEW COMPANIES SIMPLY AS EMPLOYERS. THE SOURCE OF JOBS. THAT LEAD TO OUR

DYSFUNCTIONAL MANAGEMENT VERSUS WORKERS UNION NIGHTMARE THAT ERODED BOTH SOCIAL RELATIONSHIPS AND DISTORTED OUR LABOUR MARKETS.

TODAY, COMPANIES ARE BEING VIEWED IN THEIR PROPER PERSPECTIVE. THEIR ROLE IS MUCH MORE ENHANCED AND RELEVANT TO MOST OF THE POPULATION.

AS AUSTRALIANS COME TO GRIPS WITH THE REALITY THAT HE OR SHE MUST PROVIDE FOR THEIR RETIREMENT, AND THAT IN A LOW INTEREST RATE ENVIRONMENT, AFTER TAX AND EVEN WITH LOW INFLATION, THIS CANNOT BE ACHIEVED IN BANK BILLS, THEN A GROWING NUMBER OF AUSTRALIANS ARE INVESTING IN THE SHAREMARKET AS THE ONLY WAY TO PROVIDE FOR THEIR RETIREMENT.

SOME ARE INVESTING DIRECTLY, SUCH AS IN TELSTRA OR AMP SHARES. OTHERS INDIRECTLY, THROUGH MANAGED FUNDS OR SUPERANNUATION SCHEMES.

DIRECTLY OR INDIRECTLY, ALL AUSTRALIANS ARE BECOMING INCREASINGLY RELIANT ON THE SUCCESSFUL ABILITY OF AUSTRALIAN COMPANIES TO CREATE WEALTH. AND TO DO SO ON A SUSTAINABLE BASIS OVER TIME. TO CREATE WEALTH THAT LASTS THROUGH LOCAL, REGIONAL OR GLOBAL INSTABILITY. TO CREATE WEALTH IN DIVERSIFIED, AND HENCE LOWER RISK, WAYS. THE METEORIC RISE AND FALLS OF THE LIKES OF BOND CORPORATION AND ITS ILK, ARE NO LONGER ADMIRER OR VALUED BY AUSTRALIANS.

TO DELIVER THE REQUIRED SHAREHOLDER RETURNS OVER THE LONG TERM, CORPORATIONS WILL ALSO NEED OPERATIONAL SCALE.

THIS MEANS IT IS NOT A MATTER OF GLOBAL VERSUS LOCAL IN TERMS OF CORPORATE STRATEGIES, STRUCTURES AND OPERATIONS. THERE IS A CLEAR NECESSITY FOR MAJOR CORPORATIONS TO HAVE BOTH GLOBAL AND LOCAL CAPABILITIES.

THE SIMPLE FACT OF LIFE IS THAT AUSTRALIA'S LOCAL MARKET WILL NOT PROVIDE THE GROWTH, THE TURNOVER AND THE PROFITABILITY TO SUSTAIN COMPANIES OF ANY SIGNIFICANT SIZE.

GEOGRAPHIC DIVERSITY PROVIDES THE MARKET SIZE REQUIRED TO SUSTAIN GROWTH.

GLOBALISATION, TECHNOLOGY ADVANCE AND DEREGULATION ARE INTERACTING TO BOTH ACCELERATE AND FACILITATE CORPORATE CHANGE.



TO RETURN TO THE POINT I RAISED EARLIER...THEY ARE CREATING THE TENSION POINTS.

THESE CHANGES ENABLE COMPANIES TO REDUCE OR ELIMINATE PERFORMANCE GAPS BY...LEVERAGING SPECIALISATION...LEVERAGING SCALE ECONOMIES...AND ARBITRAGING PRODUCTIVITY DIFFERENCES.

THE NEED TO DRIVE EFFICIENCIES IN THE CORE BUSINESS AND REINVENT THE WAY WE DO BUSINESS AND MEET OUR CUSTOMERS' NEEDS. IS NOT MERELY A MATTER OF GOOD BUSINESS, IT IS A MATTER OF SURVIVAL.

ALREADY 60% OF THE NATIONAL AUSTRALIA BANK'S BASIC RETAIL TRANSACTIONS ARE CONDUCTED BY ELECTRONIC MEANS...IRRESPECTIVE OF WHETHER THIS IS IN METROPOLITAN OR RURAL AREAS.

IT IS IMPOSSIBLE TO LOOK AT THESE NUMBERS AND NOT REALISE THAT THE FUNDAMENTAL PARADIGM ON WHICH MANY BUSINESSES ARE BASED, MUST CHANGE, AND MUST CHANGE QUICKLY. NO BANK WITH A COST STRUCTURE OF \$1.80 A TRANSACTION CAN COMPETE AGAINST A COMPETITOR WHO IS PROCESSING TRANSACTIONS AT 1c.

THIS IS A FUNDAMENTAL CHANGE FROM THE COMPARATIVELY STATIC, UNI-DIMENSIONAL MODELS OF THE PAST. OUR CORPORATE DINOSAURS HAVE TO LEARN TO TAP DANCE, AND LEARN QUICKLY.

THIS IS THE WAY THE WORLD INTRUDES UPON AND FUNDAMENTALLY INFLUENCES OUR INTERNAL STRATEGY, STRUCTURE AND OPERATIONS...AND THOSE OF AUSTRALIA'S MAJOR CORPORATIONS.

WHAT THEN DO THESE TRENDS MEAN FOR AUSTRALIA'S MAJOR COMPANIES WHO WE, AS LAWYERS, ARE ADVISING?

THESE ARE THE CLIENTS WE WILL BE ADVISING IN THE NEW MILLENNIUM. IT SHOULD COME AS NO SURPRISE THEREFOR, THAT THEY WANT LEGAL SUPPORT THAT IS STRATEGIC, COMMERCIAL, RELEVANT, PROACTIVE AND EFFICIENT.

THE "CLARET SOAKED" PONDERINGS OF RUMPOLE OF THE OLD BAILEY ARE NOW OF HISTORICAL INTEREST ONLY. WE CANNOT AFFORD TO BE LEFT BEHIND BY THE RAPID CHANGES AFFECTING OUR CLIENTS. NEITHER CAN WE AFFORD TO BE ON THE SIDELINES IN THE POLITICAL CHANGES AFFECTING AUSTRALIA AND THE NATIONS WITH WHICH WE TRADE.

THESE TECTONIC SHIFTS IN THE MARKET PLACE ARE SEEN IN ALMOST EVERY INDUSTRY TODAY FROM TELECOMMUNICATIONS TO BANKING TO RETAILING TO MANUFACTURING. THEY IMPACT DIRECTLY AND DRAMATICALLY ON HOW WE PRACTISE OUR PROFESSION.

I WAS READING RECENTLY ABOUT THE DOWNFALL OF AN OLD LINE BUSINESS OF ENCYCLOPAEDIA BRITANNICA, WHICH WAS RECENTLY SOLD OFF AND IS UNDERGOING A TRANSFORMATION BY ITS NEW OWNERS IN ORDER TO SURVIVE.

THIS IS A COMPANY THAT INITIALLY VIEWED CD ROMS AS NOTHING MORE THAN UPSTART ELECTRONIC VERSIONS OF INFERIOR PRODUCTS. WITHIN A VERY SHORT PERIOD OF TIME THEY REALISED THAT CD ROM ENCYCLOPAEDIAS WERE COSTING \$1.50 TO PRODUCE COMPARED TO THE TRADITIONAL BOOKS THAT COST \$300, AND WERE SELLING AT \$50 COMPARED TO \$2.200 FOR THEIR TRADITIONAL PRODUCT. THESE ECONOMICS FORCED A MAJOR CHANGE IN THINKING THAT TRANSFORMED THE ENCYCLOPEDIA BUSINESS OVER NIGHT. FOR DECADES THEIR COMPETITORS WERE OTHER BOOK MAKERS AND PUBLISHERS. WITHIN A MATTER OF A FEW YEARS THEIR MAIN COMPETITORS WERE COMPUTER COMPANIES.

THINK OF THE LAW FIRM WHO HAD ENCYCLOPEDIA BRITANNICA AS THEIR MAIN CLIENT SINCE THE DAWN OF TIME. IF THEY DEFINED THEMSELVES AS BEING BOOK PUBLISHING LAWYERS AND IGNORED COMPUTING AND E-COMMERCE, THEY WOULD NO DOUBT HAVE FAILED TO ANTICIPATE THE SHIFT IN THEIR CLIENT'S BUSINESS AND BEEN LEFT BEHIND AS A VALUE ADDING PLAYER IN THE STRATEGIC SHIFT IN THE BUSINESS AND ITS FUTURE DIRECTION.

THIS STARKLY DEMONSTRATES HOW QUICKLY AND DRASTICALLY THE NEW ECONOMICS OF INFORMATION CAN CHANGE THE RULES OF COMPETITION, ALLOWING NEW PLAYERS AND SUBSTITUTE PRODUCTS TO RENDER OBSOLETE SUCH TRADITIONAL SOURCES OF COMPETITIVE ADVANTAGE AS A SALES FORCE, A SUPREME BRAND, AND EVEN THE WORLD'S BEST CONTENT.

THROUGHOUT THE WORLD NATIONS ARE EXPERIMENTING WITH NEW FORMS OF LIBERAL AND SOCIAL DEMOCRATIC GOVERNMENTS. TO VARYING DEGREES THEY ARE ALSO REDEFINING THE RELATIONSHIP BETWEEN THE STATE AND THE MARKET.

AS JOHN QUIGGIN POINTED OUT RECENTLY IN THE FINANCIAL REVIEW, MOST SUPPORTERS OF GLOBALISATION - AND MANY OPPONENTS - SEE THE GLOBALISATION DEBATE AS A STRUGGLE BETWEEN TECHNOLOGICAL FORCES WHICH ARE CREATING "ONE WORLD, READY OR NOT" AND A NOSTALGIC ATTACHMENT TO THE OBSOLESCENT NATION STATE.

IN THE UNITED STATES THERE IS A "NEW DEMOCRATS" MODEL THAT HAS PRESIDED OVER A PERIOD OF MASSIVE JOB CREATION, WHILE TOTALLY DISCARDING THE NATIONAL'S TRADITIONAL SOCIAL WELFARE SYSTEM.

UNDER A DEMOCRAT PRESIDENT USING WHAT SOME WOULD DESCRIBE AS "RADICAL FREE MARKET" POLICIES, THE UNITED STATES PRIVATE SECTOR HAS CREATED A NET 29 MILLION NEW JOBS SINCE 1980. THIS IS A TREMENDOUS ACHIEVEMENT.

IN BRITAIN, TONY BLAIR'S NEW LABOR IS ADOPTING PART OF THE CLINTON APPROACH AND HAS AS YET MADE ONLY MINOR CHANGES TO PREVIOUS TORY ECONOMIC AND SOCIAL POLICIES.

AND THROUGHOUT ASIA...PARTICULARLY IN JAPAN...THERE IS AN ONGOING REAPPRAISAL OF THE ECONOMIC AND POLITICAL STRUCTURES AND POLICIES THAT DO NOT SEEM TO HAVE SERVED THEIR RESPECTIVE NATIONS WELL.

IT IS ESSENTIAL THAT GOVERNMENTS UNDERSTAND THAT THEY DO NOT CREATE VALUE. IT IS THE PRIVATE SECTOR THAT CREATES VALUE.

GOVERNMENTS DON'T CREATE WEALTH. THEY RE-DISTRIBUTE WEALTH. THEIR ROLE IS TO KEEP BUDGETS BALANCED AND INFLATION UNDER CONTROL. TO CREATE LEVEL PLAYING FIELDS THROUGH OPEN COMPETITION. TO CREATE CLEAR, SIMPLE, FAIR AND UNDERSTANDABLE TAX REGIMES THAT ENCOURAGE RISK TAKING AND HENCE WEALTH CREATION. WHEN GOVERNMENTS TRY THEIR HAND AT OMNIPOTENCE AND TO SHAPE ECONOMIC BEHAVIOUR AND OUTCOMES, THEY INVARIABLY GET INTO TROUBLE WHICH LEADS TO ECONOMIC DISTORTIONS AND ABERRANT BEHAVIOUR.

WE ARE CLEARLY IN A PERIOD OF MAJOR CHANGE IN NATIONAL POLITICAL AND ECONOMIC POLICIES. SERIOUS PROPOSALS HAVE BEEN PUT FORWARD, FOR EXAMPLE, TO GRANT THE UNITED NATIONS POWERS OF TAXATION OVER SEABED MINING AND INTERNATIONAL FINANCIAL TRANSACTIONS. AS QUIGGIN POINTS OUT, THIS IS A LOGICAL RESPONSE TO THE GROWING INEFFECTIVENESS OF THE NATION STATE.

THIS CHANGE HAS LED TO WHAT SOME HAVE DESCRIBED AS A "BATTLE BETWEEN GOVERNMENT AND THE MARKETPLACE".

FOR THE GREATER PART OF THIS CENTURY GOVERNMENTS HAVE SOUGHT TO DIRECTLY CONTROL THE KEY PARTS OF THEIR LOCAL ECONOMIES.

HOWEVER...DURING THE PAST DECADE...GOVERNMENTS HAVE PROGRESSIVELY SHED MANY OF THEIR PREVIOUS POWERS AND THE "MOVE TO THE MARKET" HAS BECOME A GLOBAL PHENOMENON. THE AMERICAN LEAD FREE MARKET IS CREATING LOTS OF NEW WEALTH. BUT THIS ECONOMY - HIGHLY PRIVATISED, DEREGULATED AND IN THE MIDST OF GLOBALISATION, ALSO BRINGS NEW RISKS.

AS EDWARD LUTTWAK POINTS OUT IN HIS NEW BOOK "*TURBO CAPITALISM: WINNERS AND LOSERS IN THE GLOBAL ECONOMY*", THIS ALSO IS FRAUGHT WITH PERIL. LUTTWAK IS A SENIOR FELLOW AT THE CENTRE FOR STRATEGIC AND INTERNATIONAL STUDIES IN WASHINGTON.

HE POINTS OUT THAT THE UNFETTERED AMERICAN CAPITALISM OF THE LAST DECADE DOESN'T TRAVEL WELL. IN THE LESS SOCIALLY AND LEGALLY WELL DEVELOPED SOCIETIES AND ECONOMIES OF ASIA AND ELSEWHERE. SUCH AMERICAN STYLE MODELS RISK SOCIAL UNREST AND FINANCIAL RUIN.

LUTTWAK MAY BE RIGHT THAT ASIA IS BEST SUITED TO SOME FORM OF "CONTROLLED" CAPITALISM LIKE THE REGULATED AND PROTECTED AMERICAN ECONOMY THAT LASTED FROM 1945 TO THE 1980s RATHER THAN THE UNTETHERED VARIETY OF AN UNFETTERED CAPITALISM THAT HAS HELD SWAY SINCE THE DAYS OF MARGARET THATCHER AND RONALD REGAN.

THE DANGER OF EXPORTING THE AMERICAN FORM OF CAPITALISM IN ITS CURRENT EVOLUTIONARY STATE, IS THAT IT IS EXPORTED WITHOUT THE TWO DISTINCTLY AMERICAN FORCES THAT BALANCE ITS POWER AT HOME: AN AGGRESSIVE AND ACTIVIST LEGAL SYSTEM, AND AN ENDURING CALVINIST TRADITION.

WHATEVER THE RIGHT ANSWER, THIS PRESENTS NEW CHALLENGES FOR AUSTRALIAN LAWYERS AS WE LEARN TO SURVIVE AND PROSPER IN THE VOLATILE ECONOMIES OF ASIA AND ELSEWHERE.

SO WHAT DOES ALL THIS CONTEXT MEAN FOR HOW WE AS LAWYERS DELIVER OUR SERVICES AND ENSURE THAT WE PLAY A VALUE ADDING ROLE IN CORPORATE AUSTRALIA?

IN MY CURRENT EXPERIENCE THERE ARE TWO MAJOR CHALLENGES FACING CORPORATE COUNSEL: (1) DEMONSTRATING THEY ADD REAL VALUE TO CORPORATE DECISION-MAKING, AND (2) PROACTIVELY ADVANCING A ROLE IN EFFECTIVE AND COMMERCIAL MANAGEMENT OF LEGAL RISK.

ADDING VALUE:

AS DISCUSSED PREVIOUSLY, TODAY'S MAJOR CORPORATIONS ARE CHARACTERISED BY GLOBALISATION, MASTERY OF TECHNOLOGY AND COMMUNICATION, ELIMINATION OF NATIONAL BOUNDARIES, AND TOTAL FOCUS ON QUALITY OF SERVICE AND CUSTOMER RELATIONSHIPS. LAWYERS WHO ARE NOT ADDING VALUE TO THOSE ELEMENTS ARE PART OF THE PROBLEM, RATHER THAN PART OF THE SOLUTION.

AS CORPORATE COUNSEL WE FACE THE CHALLENGES OF DEMONSTRATING THAT: (1) LAWYERS ADD VALUE IN THE CORPORATE AND MANAGEMENT STRUCTURE, (2) LEGAL SERVICES CAN BE PROVIDED TO THE CORPORATION IN A COMMERCIALY RELEVANT AND COST EFFECTIVE MANNER, (3) LAWYERS CAN ASSIST IN HELPING THE CORPORATION BECOME A LEARNING ORGANISATION OVER TIME, AND (4) WE CAN MASTER INTEGRATING LEGAL ADVICE WITH EFFECTIVE LEGAL AND REGULATORY COMPLIANCE AND RISK MANAGEMENT.

INTEGRATING SOUND COMMERCIAL LEGAL ADVICE WITH EFFECTIVE LEGAL AND REGULATORY COMPLIANCE AND RISK MANAGEMENT MUST BE A MAJOR FOCUS OF OUR ACTIVITIES. IT IS THE ONE COMMON THEME THAT CONNECTS US TO THE HEART OF THE BUSINESS AND IF DONE WELL, DELIVERS ON ALL THESE FOUR OBJECTIVES.

THIS SLIDE WHICH I HAVE COPIED FROM BEATON & ASSOCIATES, CAPTURES WELL THE MAJOR AREAS IN WHICH LAWYERS SHOULD BE ADDING VALUE. ESSENTIALLY, IF YOU ARE ENGAGED IN ANY ACTIVITY THAT IS NOT ON THIS SLIDE, STOP DOING IT. YOU ARE WASTING YOUR TIME AND YOUR COMPANY'S SCARCE RESOURCES. CONVERSELY, IF YOU AREN'T FILLING YOUR DAY DOING THINGS ON THIS SLIDE - START DOING THEM.

EVERY LAWYER SHOULD BE ABLE TO PRODUCE HIS OR HER OWN VERSION OF THIS SLIDE. IN A SERVICE PROFESSION SUCH AS OURS, *DOING* THINGS IS EASY. THERE ARE USUALLY NO SHORTAGE OF DEMANDS ON OUR TIME. THE HARD PART LIES IN DECIDING WHAT *NOT TO DO*, WHEN TO SAY NO. THIS SLIDE IS A HELPFUL START TO AUDITING MUCH OF OUR DAILY FUNCTIONS.

GEORGE BEATON POINTS OUT THAT VALUE EXCHANGE IS AT THE HEART OF EVERY COMMERCIAL AND PROFESSIONAL RELATIONSHIP. VALUE IS THE PIVOT FOR BOTH SUPPLIER AND CLIENT. IGNORING THE RELATIVELY RARE OCCASIONS OF THE TOTALLY STUPID CLIENT WHO WOULDN'T KNOW VALUE IF IT CAME UP AND HIT HIM OR HER ON THE HEAD, MOST CLIENTS *DO* KNOW VALUE WHEN THEY SEE IT. IF COMPANIES ARE HAVING TROUBLE APPRECIATING THE VALUE BEING

ADDED BY THEIR LAWYERS. THE PLACE TO START IS A BRUTAL SELF EXAMINATION BY THE LAWYERS THEMSELVES.

THE FOCUS MUST BE ON THE ***DIFFERENTIATORS***. THE "GIVENS" ARE THOSE LEGAL SERVICES THAT CAN BE PROVIDED BY ANY LAW FIRM IN TOWN. THE "DIFFERENTIATORS" ARE THOSE BENEFITS PROVIDED BY LAWYERS THAT ADD TO THE CLIENT'S OVERALL COMPETITIVENESS. LAWYERS WHO ARE NOT ABLE TO READILY IDENTIFY WHAT THEIR DIFFERENTIATORS ARE, HAVE A LIMITED LIFE.

DIFFERENTIATORS INCLUDE A THOROUGH UNDERSTANDING ABOUT THE BUSINESS AND ITS STRATEGIES; CREATIVITY IN PROBLEM SOLVING; COMMERCIALITY IN PROVIDING LEGAL SOLUTIONS TO LEGAL OBSTACLES; A TRUSTING RELATIONSHIP WITH MANAGEMENT; LIKEMINDEDNESS AND A WILLINGNESS TO COMMUNICATE OPENLY.

VALUE IS OFTEN IN THE CLIENTS' PERCEPTION BUT THAT DOES NOT MAKE IT ANY LESS REAL. CLIENTS WHO DO NOT FEEL THEY ARE GETTING VALUE, IN ALL LIKELIHOOD ARE NOT. IN SUCH CASES THE LAWYER MUST REVISIT WITH THE CLIENT WHAT THEIR EXPECTATIONS ARE AND ADJUST THE SERVICE BEING PROVIDED TO REFLECT THOSE NEEDS.

#### MANAGING RISK:

WHY SHOULD LAWYERS BE CONCERNED PRO-ACTIVELY WITH RISK MANAGEMENT? WHAT VALUE DOES IT ADD TO COMPANY ACTIVITIES? AND, ARE OUR COMPANIES GETTING VALUE FOR MONEY?

I BELIEVE THAT SKILFUL LEGAL RISK MANAGEMENT IS NOT ONLY RELEVANT TO THE SUCCESS OF OUR CORPORATIONS BUT IN FACT HAS NEVER BEEN MORE IMPORTANT TO OUR SUCCESS THAT IT IS NOW. WHY DO I CONCLUDE THIS?

GLOBAL MARKETS ARE NOW FREELY DISAGGREGATING THE VARIOUS COMPONENTS OF RISK AND ALLOCATING THEM TO MARKET PARTICIPANTS BEST ABLE TO BEAR THEM. ALL CLIENTS, WHETHER THEY AWARE OF IT OR NOT, ARE UNDER TENSION IN THIS DISAGGREGATING PROCESS.

THE LEGAL COUNSELLING THEY REQUIRE TO ADAPT AND CHANGE, OR BE ELIMINATED FROM THE MARKET PLACE IS PROFOUND. THOSE CORPORATE CLIENTS WHO *ARE* AWARE WHAT IS HAPPENING TO THEM, REQUIRE INNOVATIVE LEGAL ADVICE; PROACTIVE LAWYERS WHO CAN DELIVER ANSWERS TO QUESTION THEY DO NOT YET KNOW HOW TO ASK; AND SKILFUL MANAGEMENT AS THEY MOLD THEMSELVES INTO NEW COMPETITORS IN REGIONAL OR GLOBAL MARKETS.

CLIENTS WHO ARE *NOT* AWARE THEY ARE EMESHED IN A GLOBAL REALLOCATION OF DISAGGREGATED RISK, NEED SPECIAL BED SIDE COUNSELLING AND THE SENSITIVE ADMINISTERING OF THEIR LAST RITES.

I BELIEVE THERE ARE FOUR MAIN REASONS WHY LAWYERS MUST BE AN INTEGRAL PART OF PROACTIVE RISK MANAGEMENT.

FIRSTLY, IT PUTS COMMERCIAL LAWYERS AT THE EPICENTRE OF COMMERCIAL DECISION-MAKING. IF HANDLED SKILFULLY, IT INTEGRATES LAWYERS INTO THE MANAGEMENT DECISION-MAKING AND OPENS UP ROLES THAT ARE VERY FAMILIAR TO AMERICAN LAWYERS, BUT WHICH IS LESS COMMON IN AUSTRALIA.

THE ABILITY TO IDENTIFY LEGAL PROBLEMS, AND THEN INITIATE SOLUTIONS IN CREATIVE WAYS THAT ALLOWS CLIENTS TO ACHIEVE THEIR COMMERCIAL OBJECTIVES IN MORE LEGALLY ACCEPTABLE WAYS. IS A SKILL THAT STILL REMAINS ELUSIVE TO SO MANY OTHERWISE BRIGHT AND KNOWLEDGABLE LAWYERS. YET IT IS THAT VERY SKILL THAT IS THE KEY DIFFERENTIATOR TO ADDING VALUE IN CORPORATE AUSTRALIA.

SECONDLY, LAWYERS HAVE A DUTY TO ENSURE THAT AS CORPORATIONS WE BEHAVE RESPONSIBLY. ETHICALLY AND MORALLY THERE CAN BE NO OPPOSITION TO THE STATEMENT THAT WE MUST OBEY THE LAW. THERE IS NOTHING SPECIAL ABOUT MAKING THAT STATEMENT IN THE CONTEXT OF CORPORATE LIFE. WE TEACH THOSE VALUES TO OUR CHILDREN. WE BEHAVE THAT WAY AT HOME AND SO WE BEHAVE THAT WAY AT WORK. THE 30 MINUTE RIDE TO THE OFFICE EVERYDAY DOESN'T CHANGE THOSE VALUES. IT IS A NATURAL PART OF OUR LIVES AND NOT SOME BURDENSOME NEW BUREAUCRATIC IDEA DREAMED UP IN AN IVORY TOWER.

AS CORPORATE LEADERS, THE PUBLIC, OUR SHAREHOLDERS AND OUR REGULATORS EXPECT THAT WE WILL CONDUCT OURSELVES RESPONSIBLY, AND PART OF THAT ACCOUNTABILITY INVOLVES COMPLYING WITH THE LAW. LAWYERS WHO ARE NOT DIRECTLY COMPENSATED BY SHORT TERM RESULTS, ARE FREQUENTLY MORE OBJECTIVE ABOUT ANALYSING ETHICAL ISSUES.

WHILE THESE MOTHERHOOD STATEMENTS ARE EASIER TO ACCEPT HERE IN AUSTRALIA, APPLYING THEM IN THE ROUGH AND TUMBLE MARKETS OF ASIA OR EASTERN EUROPE REQUIRES MORE SKILL AND PATIENCE. YET OUR COMPANIES MUST SUCCEED IN THOSE MARKETS AND WAYS HAVE TO BE FOUND TO REMAIN COMPETITIVE WHILE STILL ADHERING TO OUR VALUES.

NAVIGATING THROUGH COMMERCIAL TRANSACTIONS IS NOT EASY IN COUNTRIES WHERE SUPREME COURT JUDGES MAKE \$600 A YEAR AND BRIBERY AND CORRUPTION IS ENDEMIC TO ALL ASPECTS OF PUBLIC LIFE. OR WHERE CHILD LABOUR IS TAKEN FOR GRANTED. OR OCCUPATIONAL AND HEALTH AND SAFETY STANDARDS ARE LARGELY NON EXISTENT. OUR COMPANIES REQUIRE CREATIVE AND PRO-ACTIVE ADVICE THAT BRINGS LAWYERS INTO THE CENTRE OF THE COMMERCIAL STRATEGIES, NOT SIDELINED INTO IRRELEVANT MORALISTS SHUT OUT OF THE REAL DECISION-MAKING.

THE THIRD REASON THAT EFFECTIVE AND COMMERCIAL LEGAL RISK MANAGEMENT REMAINS RELEVANT FOR LAWYERS IS THAT WE HAVE A DUTY TO PROTECT OUR CLIENTS. DIRECTORS, OFFICERS AND STAFF ARE EXPOSED TO CIVIL AND CRIMINAL PROSECUTION IF THEY BREAK THE LAW. PROTECTING THEM PERSONALLY IS ONE OF OUR HIGHEST RESPONSIBILITIES.

IN MANY CASES CRIMINAL ACTIONS, COSTS OF DEFENCE, DAMAGES AND FINES ARE NOT COVERED BY D&O INSURANCE POLICIES. ENSURING THAT ALL STAFF UNDERSTAND THEIR LEGAL OBLIGATIONS AND DO NOT UNWITTINGLY BREAK THE LAW IS CRITICAL TO GOOD MANAGEMENT AND COMMON DECENCY. IF VIOLATIONS DO OCCUR, THEN IT IS ESSENTIAL THAT WHATEVER DUE DILIGENCE DEFENSES MAY BE AVAILABLE ARE IN PLACE AND PROPERLY DOCUMENTED.

THE FOURTH REASON JUSTIFYING A PRO-ACTIVE INVOLVEMENT IN LEGAL RISK MANAGEMENT IS THAT NON-COMPLIANCE IS EXPENSIVE. THE COST OF DEALING WITH REGULATORS AND LAW ENFORCEMENT AUTHORITIES IS HIGH. FINES AND PENALTIES CAN ALSO BE LARGE. A HIDDEN COST IS THE COST OF LOSING THE TRUST OF REGULATORS AT HOME AND ABROAD. LOST LICENSES, INCREASED SUPERVISION AND AUDITS, ALL ADD TO OUR COST OF DOING BUSINESS.

IN ADDITION, BAD PUBLICITY DOES IRREPARABLE DAMAGE TO GOODWILL. WHILE THERE IS GENERALLY NO GOODWILL NUMBER ON OUR BALANCE SHEETS, IT IS PROBABLY ONE OF OUR LARGEST HIDDEN ASSETS. IT MUST BE VIGILANTLY PROTECTED.

CLEVER RISK MANAGEMENT IS AN ART NOT A SCIENCE. TOO MUCH AND OUR COMPANIES BECOME UNCOMPETITIVE. TOO LITTLE AND OUR VERY EXISTENCE CAN BE THREATENED. GOOD LEGAL COMPLIANCE IS AN INTEGRAL PART OF RISK MANAGEMENT AND MUST BE APPLIED WITH THE SAME DEGREE OF SKILL AND SENSITIVITY AS ALL OTHER PARTS OF THAT ART.

THEREFOR, IF WE ARE SATISFIED THAT LEGAL RISK MANAGEMENT REMAINS RELEVANT AND ADDS VALUE TO OUR COMPANIES, WHY DO I SAY THAT IT HAS NEVER BEEN MORE IMPORTANT THAN IT IS NOW?



THE REASON IS THAT MANY MAJOR AUSTRALIAN COMPANIES ARE MOVING AGGRESSIVELY OVERSEAS. ALL OF THE MYRIAD CHECKS AND BALANCES THAT WE HAVE BUILT UP OVER DECADES AT HOME NEED TO BE REPRODUCED AROUND THE GLOBE. THIS INVOLVES TRANSFERRING THOSE SKILLS INTO SOME VERY DIFFICULT LEGAL AND CULTURAL ENVIRONMENTS.

THINGS WE TAKE FOR GRANTED AT HOME ARE SIMPLY NOT SO IN MANY OF THESE COUNTRIES. THERE ARE THOUSANDS OF TINY CHECKS AND BALANCES THAT OPERATE IN OUR DOMESTIC ENVIRONMENT THAT WE TAKE FOR GRANTED AND WHICH ARE SIMPLY NOT YET PRESENT AS WE MOVE OFFSHORE. FIGHTING THE ASSUMPTIONS THAT THEY EXIST IS A SERIOUS ISSUE. UNDERSTANDING THESE IS A MAJOR CHALLENGE.

IT IS A LAW OF PHYSICS THAT AS DISTANCE INCREASES INFLUENCE DECREASES. HOW WELL WE MEET THE CHALLENGE OF BUILDING A SEAMLESS INTERNATIONAL RISK MANAGEMENT SYSTEM WILL DETERMINE IN LARGE PART WHETHER OUR OFFSHORE VENTURES ARE ULTIMATELY DEEMED TO BE A SUCCESS OR FAILURE. IT WILL TEST US LIKE WE HAVE NEVER BEEN TESTED BEFORE.

WE MUST MAP THE NEW AND EMERGING RISK AREAS OF OUR COMPANIES AND MATCH THEM TO THE LEGAL RESOURCES AVAILABLE. WE HAVE A TENDENCY TO LOOK FOR OUR WALLETS WHERE WE ARE SHINING THE TORCH. WE ALL TOO OFTEN STAY WITHIN OUR COMFORT ZONES BECAUSE THAT IS WHERE OUR SKILLS, KNOWLEDGE AND EXPERIENCES LIE.

HOWEVER, THE FUTURE CHALLENGE FOR AUSTRALIAN LAWYERS IS TO CHOOSE LIFE ON THE BLEEDING EDGE OF THE LEARNING CURVE NOT WITHIN THE WARMTH OF THE COMFORT ZONE.

BY UNDERSTANDING THE FUTURE STRATEGIES AND GOALS OF OUR ORGANISATIONS WE SEE WHERE FUTURE PROFITS ARE TO BE DERIVED, AND WHAT RISKS MUST BE TAKEN TO CAPTURE THOSE REWARDS. IT IS IN THOSE AREAS THAT LAWYERS NEED TO FOCUS, TO BUILD NEW SKILLS, MANAGE NEW RISKS, AND DEMONSTRATE TO OUR CLIENTS THAT WE ARE ABLE TO ADD VALUE IN THE DECISION-MAKING PROCESS.

IN THE US LAWYERS ARE TITLED "ATTORNEYS AND COUNSELLORS AT LAW". THE ROLE OF COUNSELLOR IS PLAYING AN INCREASING ROLE IN OUR RELEVANCE TO THE CORPORATION. IT IS NO LONGER SUFFICIENT TO MERELY BE ABLE TO IDENTIFY RISKS. WE MUST BE ABLE TO SHARE IN THE BURDEN OF QUANTIFYING THOSE RISKS AND HELP IN

DESIGNING INNOVATIVE SOLUTIONS FOR OUR CLIENTS TO CAPTURE REWARDS WITHIN ACCEPTABLE LIMITS OF RISK.

ALL OF THESE CHALLENGES MUST BE MET IN AN ENVIRONMENT OF STRICT COST CONTROLS. THAT PLACES AN ADDITIONAL CHALLENGE BEFORE US. NOT ONLY MUST WE DELIVER THESE DEMANDING NEW SERVICES, BUT IT MUST ALSO BE DONE WITH THE MINIMUM OF RESOURCES. THAT PRESENTS A UNIQUE CHALLENGE FOR LAWYERS IN PARTICULAR.

THE LEGAL PROFESSION IF LEFT UN-SUPERVISED WILL DELIVER MORE QUALITY THAN THE CLIENT NEEDS. ALMOST EVERY OTHER SERVICE PROVIDER WILL DELIVER LESS QUALITY THAN THE CLIENT WANTS IF NOT WATCHED LIKE A HAWK. LAWYERS TEND TO OVER DELIVER SOLUTIONS FOR EVERY PROBLEM. IT IS A MISTAKE TO EQUATE UNWAVERING PERFECTIONISM WITH BEST PRACTICE.

THAT DOES NOT HOWEVER, PROVIDE AN EXCUSE FOR DELIVERING SHODDY WORK PRODUCT. OUR CHALLENGE IS TO DELIVER HIGH QUALITY ADVICE USING THE MINIMUM OF RESOURCES, ie. GAINING GREATER EFFICIENCIES. WE MUST UNDERSTAND WHY THE ADVICE IS BEING SOUGHT, THE COMMERCIAL CONTEXT IN WHICH IT WILL BE APPLIED, THE VALUE OF THE ACTIVITY BEING CONSIDERED, AND THE TIMING OF THE INPUT.

THIS REQUIRES A DEEPER AND BROADER UNDERSTANDING OF OUR CLIENTS AND THEIR BUSINESSES THAN WAS EVER THE CASE IN THE PAST. IT ALSO PRESENTS ANOTHER CHALLENGE FOR EXTERNAL COUNSEL IN STAYING UP TO DATE WITH THIS LEVEL OF UNDERSTANDING.

AS IN HOUSE COUNSEL WE HAVE NOT HISTORICALLY SPENT TIME DISCUSSING WITH OUTSIDE COUNSEL THEIR COMPANIES' CORPORATE STRATEGIES, SOURCE OF PRESENT AND FUTURE PROFITS, COST RATIOS, SHORT, MEDIUM AND LONG TERM GOALS, AND OTHER COMMERCIAL IMPERATIVES.

WITHOUT THIS LEVEL OF UNDERSTANDING, LEGAL ADVICE RISKS BEING ARID DESCRIPTIONS OF THE LAW LACKING IN COMMERCIAL RELEVANCE, WITH LIMITED APPLICATION AND WITH COSTS OUT OF PROPORTION TO THE PERCEIVED COMMERCIAL BENEFITS.

RISK *MANAGEMENT* IS APTLY NAMED. IT IS NOT CALLED RISK AVOIDANCE. BY USING THE WORD "MANAGEMENT" IT CONVEYS THE FACT THAT RISK IS A NORMAL AND ACCEPTABLE PART OF CORPORATE LIFE. THE CHALLENGE LIES IN MANAGING IT.

THAT REQUIRES RISK IDENTIFICATION, RISK QUANTIFICATION, RISK MINIMISATION AND ULTIMATELY RISK *MANAGEMENT*. TRANSFERRING THOSE SKILLS INTO THE LEGAL ARENA IS A KEY OBJECTIVE. ONLY BY EFFECTIVELY AND PRO-ACTIVELY PERFECTING AND APPLYING THESE SKILLS CAN WE HOPE TO DELIVER COMMERCIALY RELEVANT, VALUE ADDING AND COST EFFECTIVE LEGAL COUNSELLING ON A GLOBAL SCALE.

LAWYERS MUST LEARN TO SATISFY NEW DEMANDS. TRADITIONALLY LAWYERS TEND TO BECOME INVOLVED IN *NON COMPLIANCE*. THEY ARE INVOLVED IN CHALLENGES FROM REGULATORS, SERIOUS CUSTOMER COMPLAINTS, LITIGATION, PROSPECTUS DUE DILIGENCE ETC. THEY TRADITIONALLY HELP FIX THE PROBLEM AND THEN MOVE ON TO THE NEXT PROBLEM.

IN THE FUTURE, LAWYERS WILL NEED TO CHANGE THEIR INVOLVEMENT IN THEIR CLIENT'S BUSINESSES. AFTER HELPING TO FIX THE PROBLEM CAUSED BY *NON COMPLIANCE*, WE NOW REQUIRE THEM TO ANALYSE THE *CAUSE* OF THE PROBLEM AND TO MAKE RECOMMENDATIONS FOR FUTURE *PREVENTION*. THIS MAY INVOLVE CHANGING PROCEDURES, IMPROVING TRAINING, OR ALTERING POLICIES SO AS TO MINIMISE THE RECURRENCE OF THE PROBLEM.

THE GOAL IS TO BECOME LEARNING ORGANISATIONS. EVERY DAY WE MUST GET SMARTER AND BETTER AS ORGANISATIONS. WHAT WE LEARN FROM *NON COMPLIANCE* MUST BE FED BACK INTO THE LEARNING PROCESS SO THAT THE CORPORATION BECOMES A SELF HEALING ORGANISATION THAT OVER TIME GETS BETTER AND BETTER.

LESSONS LEARNED IN ONE PART OF THE GLOBE MUST BE SHARED WITH OTHER PARTS OF THE ORGANISATION SO THAT RISK PREVENTION CAN BE MAXIMISED. THIS REQUIRES BETTER AND MORE FREQUENT COMMUNICATION AMONG THE LEGAL GROUPS AND GREATER INTERACTION WITH THE RISK MANAGEMENT OFFICERS IN ALL PARTS OF THE BUSINESS.

IT ALSO REQUIRES KEEPING AN EYE TO COST CONTROL. WHERE WE HAVE OVERKILL IN SOME AREAS WITH A MULTI LAYERING OF SUPERVISION THAT IS EXCESSIVELY ROBUST AND THEREBY CAUSING EXCESS COST, THESE MUST BE RECOGNISED AND SUGGESTIONS MADE TO BETTER TAILOR THE MANAGEMENT TO DELIVER THE REQUIRED LEVEL OF RISK MANAGEMENT AT A MORE EFFICIENT COST. THIS WILL ENABLE A BETTER AND MORE EFFICIENT ALLOCATION OF RESOURCES TO THE PRIORITY RISKS.

GOOD COMPLIANCE, LIKE GOOD HUMAN RESOURCES MANAGEMENT, IS NOT A SPECIALISED FUNCTION THAT CAN BE DELEGATED OFF AND ISOLATED IN JUST ONE PART OF THE BUSINESS, OR EFFECTIVELY

INCORPORATED IN A SPECIAL MANUAL ON THE SHELF. IT MUST BECOME A PART OF OUR EVERYDAY LIVES. IT MUST BE EMBEDDED IN THE WAY EVERYONE CONDUCTS THEMSELVES, IN OUR POLICIES AND IN OUR PROCEDURES. ITS EFFECTIVENESS IN TERMS OF COMPLIANCE AND COST, DEPENDS ON HOW WELL WE INTEGRATE IT INTO NORMAL ACTIVITIES. IT SHOULD NOT BE IMPOSED FROM OUTSIDE. IT SHOULD BE EMBEDDED WITHIN EVERYTHING WE DO.

THESE GOALS REQUIRE THAT LAWYERS BE PROPERLY POSITIONED WITHIN THEIR CORPORATIONS. IT IS ESSENTIAL THAT IN-HOUSE LAWYERS BE APPOINTED TO THOSE MANAGEMENT COMMITTEES THAT DEAL WITH THE KEY ISSUES OF CORPORATE LIFE. IN SOME CASES, THESE ARE BOARDS OF DIRECTORS OF SUBSIDIARY COMPANIES.

CORPORATE LAWYERS SHOULD BE COPIED ON MANAGEMENT PAPERS AND PROPOSALS EARLY ENOUGH TO PARTICIPATE IN A MEANINGFUL WAY IN THE PROCESS. INTEGRATING LEGAL ADVICE AND COUNSELLING INTO THE DECISION-MAKING PROCESS EARLY ENOUGH TO BE USEFUL AND AVOID WASTAGE OF CORPORATE RESOURCES OF TIME AND MONEY, IS AN ESSENTIAL INGREDIENT IN ADDING THE VALUE I HAVE REFERRED TO.

THIS HOWEVER, REQUIRES LAWYERS TO DEMONSTRATE THAT THEY ARE ADDING VALUE IN THE PROCESS. TYPICALLY I FIND THAT IN COMPANIES WHERE MANAGEMENT RARELY SEEKS OUT LAWYERS BEFORE THEY ENCOUNTER PROBLEMS, THAT IT IS THE LAWYERS WHO ARE AT FAULT NOT THE CLIENTS.

INTERNAL CLIENTS WHO ARE OFTEN OFFERED FREE LEGAL SERVICES, BUT WHO STILL DO NOT SEEK IT OUT, ARE USUALLY CLIENTS WHO FAIL TO SEE VALUE. WHILE IT IS POSSIBLE THEY ARE SIMPLY TOO DUMB TO KNOW VALUE WHEN THEY SEE IT, IN MY EXPERIENCE IT IS TYPICALLY THE FAULT OF THE LAWYERS NOT THE CLIENTS. THESE ARE CLIENTS WHO HAVE HAD TOO MANY NEGATIVE EXPERIENCES OF LAWYERS WHO HAVE ONLY ADDED COSTS, SLOWED DOWN THE DECISION-MAKING PROCESS, READILY IDENTIFIED NEGATIVE ELEMENTS AND RISKS BUT THEN FAILED TO OFFER COMMERCIALY VALUABLE SOLUTIONS. NOT SURPRISINGLY, THOSE CLIENTS RUN THE OTHER WAY, EVEN WHEN THEY CAN GET FREE ADVICE.

#### CONCLUSION:

IN CONCLUSION, LET ME SAY THAT MASTERING THESE CHALLENGES AND CHANGING OUR PROFILE AND THE ROLE WE PLAY IN GUIDING OUR CORPORATE CLIENTS AT HOME AND IN THE INTERNATIONAL MARKETS IN WHICH THEY COMPETE, WILL DISTINGUISH AUSTRALIAN LAWYERS AND CREATE AN ENVIRONMENT OF CHALLENGE, REWARD

AND FULFILMENT THAT WAS NOT ALWAYS PRESENT IN THE NOW  
FADING PRACTICE PARADIGM THAT HAS CHARACTERISED MUCH OF  
OUR LIVES IN THE PAST.

THE NEW MILLENNIUM IS WITHOUT DOUBT THE MOST EXCITING  
PERIOD THAT AUSTRALIAN LAWYERS HAVE EVER ENCOUNTERED. NOT  
ALL WILL SURVIVE THAT CHALLENGE UNLESS WE RAPIDLY BRING OUR  
SKILLS UP TO THE LEVEL OF INTERNATIONAL COMPETITION. IF  
MASTERED HOWEVER, IT WILL ENABLE US TO ENJOY AND PROSPER IN  
THE NEW MILLENNIUM WHICH WILL BRING TO FRUITION THE OLD  
CHINESE WISH: "MAY YOU LIVE IN INTERESTING TIMES."

# In-house Counsel's Contribution to Company's Performance

