



Media Release

RESPONSE TO CAMAC SONS OF GWALIA REPORT

30 January 2009

In releasing its report on the High Court's decision in the *Sons of Gwalia* case, the Corporations and Markets Advisory Committee (CAMAC) supports the status quo but acknowledged that its members are not of the one view on this matter. AFMA believes the cost of no action for Australian business would be significant and it is imperative for the Federal Government to change the law to reverse the effect of the decision.

If the Government does not act, overseas lenders will not invest in unsecured debt issued by Australian companies or they will seek a higher credit spread for these unsecured debt transactions.

In *Sons of Gwalia Ltd v Margaretic*, the High Court held in effect that a claim by a shareholder for loss to the value of shares caused by failure of the company to inform the market would rank equally with the claims of other unsecured creditors in an external administration. In effect this places aggrieved shareholders on the same footing as unsecured creditors who lent money to the company, overturning the long-held principle that shareholders – as owners of the company – stand last in line.

AFMA members report that the Court's decision in the *Sons of Gwalia* case disadvantages Australian companies seeking funding in the international debt market because lenders are reluctant to advance funds on an unsecured basis if their chances of recovering their money in the event of the company going into administration are diminished. Where lenders are prepared to lend, it will be at a higher cost to reflect the higher risk.

The *Sons of Gwalia* decision raises important public policy issues concerning the ability of Australian business to raise debt finance in the most cost effective manner, the efficiency of the insolvency administration process and the fair treatment of large and small creditors. In the current difficult credit climate, it is especially relevant that the law should be amended to reverse the effect of the High Court's decision and bring Australian law back into line with the approach taken in the US which is a major source of capital for Australian companies.

While CAMAC's analysis contributes to the law reform debate, notably from a legal perspective, the final decision about law change requires careful judgement based on the real market impacts of the decision and economic circumstances. AFMA believes that a full reflection on the practical effect of the decision on market behaviour and the insolvency administration process supports a change to the law.

The Minister for Superannuation and Corporations Law, Senator Nick Sherry, has acknowledged the considerable importance of this issue to the business community and indicated that this will be reflected in the Government's assessment of the need for law change. This approach is the right one, having regard to the significance of the issue.

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Notes for Editors:

1. Australian Financial Markets Association (AFMA)

The Australian Financial Markets Association is the peak industry association for Australia's wholesale banking and financial markets. These markets play a pivotal role in the Australian economy by making it possible for Australian financial institutions and companies to manage their capital and risks, conduct business with each other and with their counterparts overseas.

AFMA represents industry participants in the wholesale banking and financial markets, including Australian and foreign banks, securities companies, state government treasury corporations, fund managers, traders in electricity and other specialised markets and industry service providers.

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