

Council For The National Interest

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Mr Joseph Longo

Chairman

Australian Securities and Investments Commission

Level 7, 120 Collins Street

MELBOURNE VICTORIA 3000

Dear Chairman Longo

There have been several articles in The Australian Newspaper and other media, recently, stating that major public companies such as BHP, Rio Tinto, Wesfarmers and ANZ Bank have each committed \$2million to support the Voice YES campaign. It is also reported that millions of dollars have been committed to the Yes campaign by scores of other 'ASX 200' companies.

The boards of directors, governing publicly listed companies, must discharge their statutory and fiduciary obligations of care. It follows that in relation to the Voice, they must take appropriate legal and commercial advice as to what a successful result of the Voice would mean for their company and the shareholders before they commit to support the Yes case.

Publicly listed companies must use shareholder funds and company assets in the best interests of the company and the shareholders. Shareholder funds must not be spent on pet political or social projects of a director or directors unless there is clear evidence that to do so is in the best interests of the company.

The media reports make no mention of any such investigations or analysis that demonstrates the support of the Yes campaign is in the best interest of BHP, Rio Tinto, Wesfarmers, ANZ Bank or any other of the ASX 200 companies.

As Wesfarmers is based in Western Australia, I took up this matter of the best interest of the company and the shareholders with Mr Michael Chaney AO, Chairman of Wesfarmers.

Mr Chaney provided no evidence that Wesfarmers had commissioned a proper investigation to show it was in the best interest of Wesfarmers to support the Yes campaign with \$2million of company money. He simply referred to the "reconciliation journey the Company has been on" and referring to "over 750 organisations that he says have come out to support "yes" there are directors, committee people, councillors and so on – thousands of individuals – who have considered the issues and decided that they should support Yes and Wesfarmers board's decision was the same as theirs." Mr Chaney provided no evidence

these "thousands of individuals" had carried out a proper investigation to show that a successful Yes vote would be in the best interests of their organisation.

CNI believes that it would be proper and necessary for ASIC to contact every company and institution that comes under ASIC surveillance and has publicly revealed that it will support, financially, the Yes campaign and demand to see a copy of the investigation analysis, carried out by the company showing that it is in the best interest of the company and the shareholders to do so. The same would apply to any other relevant organisation.

Please advise us as to whether you are prepared to make such a demand and carry out corrective action where appropriate.

CNI would argue that if the directors had not demonstrated that success of the Yes case would be in the best interests of the company and the shareholders then the directors must provide the donations from their own personal funds NOT from company funds.

Additionally, could you kindly advise what steps, can shareholders take for damages, where it is shown that a company has not carried out a proper investigation and it is clear that the Yes vote, if successful, is not in the best interests of their company and themselves as shareholders.

There is one other aspect, on which CNI would welcome your views. Australia's Constitution puts a referendum, such as the Voice referendum, entirely in the hands of the people. It is above the parliament and above the government. Public funding to inform the people of the issue of the referendum and the consequences of the outcome should be equal.

It is bad enough, in this referendum, that this is not the case with the government favouring the 'yes' case but what is happening in the corporate world and not for profit world is extremely concerning. As detailed above, large and not so large companies are committing millions of dollars to support the 'yes' case thus causing a threat to Australia's democracy.

We ask, please, could ASIC lobby the government to frame legislation to stop companies from using shareholder funds to change our system of government?

CNI will welcome your response.

Sincerely
Denis J Whitely

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Executive Committee Council for the National Interest