



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

STANDING COMMITTEE ON ECONOMICS

**Reference: Corporations (NZ Closer Economic Relations) and Other Legislation
Amendment Bill 2007**

MONDAY, 23 APRIL 2007

MELBOURNE

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**SENATE STANDING COMMITTEE ON
ECONOMICS**

Monday, 23 April 2007

Members: Senator Ronaldson (*Chair*), Senator Stephens (*Deputy Chair*), Senators Bernardi, Chapman, Hurley, Joyce, Murray and Webber

Participating members: Senators Adams, Allison, Barnett, Bartlett, Boswell, Bob Brown, George Campbell, Carr, Conroy, Eggleston, Chris Evans, Faulkner, Ferguson, Fielding, Fifield, Forshaw, Hogg, Kemp, Kirk, Lightfoot, Ludwig, Marshall, Ian Macdonald, McGauran, Milne, Nettle, O'Brien, Parry, Payne, Robert Ray, Sherry, Siewert, Watson and Wong

Senators in attendance: Senators Bernardi, Hurley, Ronaldson and Webber

Terms of reference for the inquiry:

Corporations (NZ Closer Economic Relations) and Other Legislation Amendment Bill 2007

WITNESSES

BOWD, Mr Matthew, Analyst, Competition Policy Framework Unit, Competition and Consumer Policy Division, Treasury 1

KLJAKOVIC, Ms Marian, Manager, Market Integrity Unit, Treasury..... 1

PARKER, Ms Cherie Rebecca, Senior Analyst, Market Integrity Unit, Corporations and Financial Services Division, Markets Group, Treasury 1

ROGERS, Mr Scott, Analyst, Competition Policy Framework Unit, Corporations and Financial Services Division, Treasury 1

Committee met at 12.25 pm**BOWD, Mr Matthew, Analyst, Competition Policy Framework Unit, Competition and Consumer Policy Division, Treasury****KLJAKOVIC, Ms Marian, Manager, Market Integrity Unit, Treasury****PARKER, Ms Cherie Rebecca, Senior Analyst, Market Integrity Unit, Corporations and Financial Services Division, Markets Group, Treasury****ROGERS, Mr Scott, Analyst, Competition Policy Framework Unit, Corporations and Financial Services Division, Treasury***Evidence was taken via teleconference—***CHAIR (Senator Ronaldson)**—Good afternoon. I thank you very much for giving the committee some assistance. Can you give the committee a brief overview of this bill?**Ms Parker**—The bill is part of a series of initiatives to support closer economic relations between Australia and New Zealand through the greater coordination of business law. The initiatives form part of a work program that relates to the greater coordination of business law and they are a further step towards the single economic market based upon a common regulatory framework with New Zealand.

The first part of the bill, schedule 1, is intended to reduce duplicated regulation, facilitate investment between the two countries, enhance competition in capital markets, reduce compliance costs to businesses and increase investor choice. Essentially, the mutual recognition scheme will mean that New Zealand can offer securities into Australia on the basis of compliance with New Zealand fundraising requirements with minimal additional requirements imposed by Australian law. Mutual recognition means that Australian entities can offer securities into New Zealand under the same terms. The regime implements the treaty agreed between Australia and New Zealand in February 2006 and the treaty specifies the scope of the Trans Tasman mutual recognition and domestic legislation in the bill before you and will implement the treaty in Australia.

We have had stakeholder consultation on these matters. In 2004 we had a discussion paper relating to the establishment of the mutual recognition regime and we had strong support for establishing the scheme. We signed a treaty in 2006, which was reviewed by the Joint Standing Committee on Treaties. The committee supports the treaty. We also exposed the draft bill for six weeks public consultation in September 2006.

The second initiative is also a deregulatory move. The amendments will reduce compliance costs by exempting New Zealand companies from the requirement to provide information to the Australian Securities and Investments Commission that is already collected by the New Zealand Companies Registrar. The exemption is limited to circumstances where the same information is required by the regulators in both jurisdictions. New Zealand has already enacted reciprocal amendments which give the New Zealand Companies Registrar power to make similar exemptions in relation to Australian companies operating in New Zealand.

Mr Bowd—Schedule 3 of the bill contains two initiatives. The first initiative protects certain information provided to the ACCC from inappropriate disclosure. The second initiative enhances the ACCC's ability to share information with other bodies and agencies.

Schedule 3 derives from a productivity report entitled *Australian and New Zealand competition and consumer protection regimes*, dated 16 December 2004.

CHAIR—Is there any further input from Mr Rogers or Ms Kljakovic?

Ms Kljakovic—No, we are happy to answer any questions.

Senator HURLEY—I have a question about the ACCC's proposed ability to share information with others. As I understand it, the ACCC will be able to share information with governments and other agencies. If there is any suggestion that the ACCC may be sharing information with other agencies or other people that it is not supposed to, what checks or complaint mechanism will there be for that?

Mr Bowd—The proposed amendments ensure the protection of sensitive information against inappropriate disclosure. The provisions provide that an ACCC official must not disclose any protected information except in the performance of their duties or functions as an ACCC official or when required or permitted to do so by relevant law. This prohibition applies not only to a member of the ACCC but also to staff assisting the ACCC and consultants engaged by the ACCC. The amendments will only permit the disclosure of protected information in appropriate circumstances. In particular proposed subsection 155AAA(12) only allows the ACCC to share protected information with other Australian and foreign governments and agencies where the information would enable or assist them to perform or exercise one of their functions or powers. Further, as recommended by the Productivity Commission report, the provisions provide the ACCC with a discretion as to whether to release the information or not. This discretion cannot be exercised unreasonably.

The new information sharing regime will also permit the chairperson of the ACCC to impose conditions on the recipients of protected information in appropriate circumstances. This will ensure that the ACCC can impose appropriate restrictions on, among other things, the use and secondary disclosure of protected information where such restrictions are desirable. It is also worth noting that the proposed provisions are consistent with the information sharing amendments which are currently applicable to other regulators such as ASIC.

Senator HURLEY—I understand that the ACCC's ability to share information is limited. What I am saying is: if a company feels that the ACCC has shared information that it should not and it is aggrieved by the process, where does it go and how does it deal with that complaint?

Mr Rogers—Basically, a breach of that provision is a breach of the relevant provision of the Crimes Act. Ultimately, it is a criminal offence for the information to be shared in a way that is not consistent with the amendment. Further, the ACCC has in place general complaints handling mechanisms to take account of anything it does in relation to its administration of the TPA. So, if you like, that would be the light-handed approach, but ultimately it is a breach of the Crimes Act for that provision not to be adhered to.

Senator HURLEY—So a company would have to take the matter to court if it felt that the ACCC had acted inappropriately?

Mr Rogers—They themselves would not have to take it. They could make a complaint to the police or to the DPP and it would be investigated from there. Initially, one would imagine, they could make a complaint to the ACCC itself and they would also examine it in the course of their ordinary complaints handling mechanism.

Senator HURLEY—There would be some difficulties in that it is really the ACCC that is given the discretion to decide whom it does not give information to.

Mr Bowd—It is correct that the ACCC is given that discretion but it can only exercise that discretion in the circumstances provided for in the legislation. Those circumstances include providing certain agencies where it would assist those agencies to perform or exercise one of their functions or powers.

Senator HURLEY—I am just aware that there has been some criticism in the past of the way the ACCC has made information public, or acted on information where companies have felt that that is premature on the basis of insufficient evidence. But you are confident that in this case the legislation is clear enough about those kinds of situations?

Mr Bowd—Yes, we are. As I stated previously, the information would be shared with other agencies both here and abroad and not publicly released.

Senator WEBBER—My questions go to submission from the Law Council of Australia. They seem to have some concerns about the delay between the bill being released for public exposure on 11 September considering the exposure draft was dated 16 August, and therefore the compressed timeline for consultation. Was there a reason for that?

Ms Parker—That was the time that the exposure draft was finalised. However there are processes to go through before we can release the exposure draft—approvals, and so forth. We had six weeks public consultation. Furthermore, in 2004 this scheme had a two-month public consultation period about the principles of the scheme. The Law Council did not make a submission at that particular time and in 2006 we felt that six weeks consultation was adequate with regard to the fact we had already set the principles of the scheme. We had a treaty that was reviewed by a committee and, furthermore, six weeks consultation was considered adequate given the issues that were flagged in the bill.

Senator WEBBER—I take it that nothing came up in the consultation process, seeing submissions on the bill were invited by 13 October and it was introduced on the 18th?

Ms Parker—No, the bill was actually introduced in the last week of the autumn sittings but we did take the Law Council's submission even though it was late. We certainly did consider it. There were six submissions received in response to the bill.

Senator WEBBER—And theirs was the only one that was late?

Ms Parker—Yes.

Senator WEBBER—They seem to say in their submission that they are troubled by the amount of time allowed for industry consultation in relation to recent proposals such as this bill. They seem to allude to the fact that we have compressed timelines on not just this issue.

Ms Parker—We do not consider that the timelines were compressed given that we started substantial consultation in 2004 on this issue. Treasury released a variety of submissions.

Each has its own issues driven by whether they are departmental or ministerial papers. I am not really in a position to comment upon other time frames that Treasury papers have. However we think that there has been sufficient consultation and engagement with stakeholders on this paper.

CHAIR—Thank you very much for making yourselves available today. Thank you.

Committee adjourned at 12.36 pm