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SENATE

ECONOMICS LEGISLATION COMMITTEE

**Reference: Corporations (Fees) Amendment Bill 2003; Corporations
(Review Fees) Bill 2003; Corporations Legislation Amendment Bill
2003**

MONDAY, 24 MARCH 2003

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SENATE
ECONOMICS LEGISLATION COMMITTEE
Monday, 24 March 2003

Members: Senator Brandis (*Chair*) Senator Collins (*Deputy Chair*), Senators Chapman, Murray, Watson and Webber

Participating members: Senators Abetz, Boswell, Buckland, George Campbell, Carr, Cherry, Conroy, Cook, Coonan, Eggleston, Evans, Faulkner, Ferguson, Ferris, Forshaw, Harradine, Harris, Kirk, Knowles, Lees, Lightfoot, Ludwig, Lundy, Marshall, Mason, McGauran, Murphy, Payne, Ridgeway, Sherry, Stot Despoja, Tchen and Tierney

Senators in attendance: Senator Brandis (*Chair*), Senators Chapman, Collins, Conroy, Watson, Webber and Murray

Terms of reference for the inquiry:

Corporations Legislation Amendment Bill 2002, Corporations (Fees) Amendment Bill 2002 and the Corporations (Review Fees) Bill 2002.

Committee met at 5.05 p.m.

DIXON, Mr Arthur James, Director, Accounting and Audit, CPA Australia

NEILD, Mr Stanley, Manager, Legislation Review, Australian Accounting Research Foundation; and representative, CPA Australia and the Institute of Chartered Accountants in Australia

REILLY, Mr Keith, Technical Adviser, the Institute of Chartered Accountants in Australia

CACHIA, Mr Matthew, Product Manager, BGL Corporate Solutions Pty Ltd

LESH, Mr Ronald, Managing Director, BGL Corporate Solutions Pty Ltd

HOGGETT, Mr James Alfred, Consultant, Solution 6 Pty Ltd

QUINTON, Mr Ashley Kenneth, Product Manager, Solution 6 Pty Ltd

CHAIR—We are here today to take evidence relating to the [Corporations Legislation Amendment Bill 2002](#), the [Corporations \(Fees\) Amendment Bill 2002](#) and the [Corporations \(Review Fees\) Bill 2002](#). The provisions in the bills were referred to the committee following a report of the Selection of Bills Committee presented on 5 March. This committee is to report by 27 March 2003. Before taking evidence, I remind you that witnesses appearing before the committee are protected by parliamentary privilege. ‘Parliamentary privilege’ refers to the special rights and immunities necessary for the discharge of parliamentary functions without obstruction or fear of prosecution. Any act by any person which operates to the disadvantage of a witness on account of evidence given by that witness before this committee is treated as a breach of privilege. These privileges are intended to protect witnesses. However, I must also remind you that giving false or misleading evidence to the committee may constitute a contempt of the Senate.

Unless the committee should decide otherwise, this is a public hearing and, as such, all members of the public are welcome to attend. I welcome representatives of a number of

organisations. I thank you for making yourselves available to attend this hearing at such short notice. The committee has before it your written submissions. I propose to invite each of the organisations represented at the table to make a short opening statement. I will then invite opposition senators to direct questions to any of the witnesses. We will proceed with as much flexibility as the occasion permits in a round table fashion. I invite you to make a brief opening statement.

Mr Dixon—I will make a very brief statement concentrating on the main point that I want to get across. Our major concern is with the change of what I will call the target date, from 31 January at the moment to what multiple target dates. The argument that I am sure ASIC would put is that this is going to result in greater efficiencies for them in spreading the work over the year. However, we question whether that is going to result in greater efficiencies for our members.

I will give you one example. I will not mention the firm but it is one of our clients with just under 3,000 companies to look after. At the moment, they have one target date: 31 January. They are, effectively, spreading their work over eight or nine months of the year. They are now faced with a move from one target date to 233 target dates, which is an astronomical increase to manage going forward. A number of small practitioners have made similar comments. Other claims in terms of savings for practitioners can be best illustrated by the circumstances of one of our members who said that one of their clients has 30 companies. Of course, the point that could be put to them if one of their clients has 30 companies is that they can use the grouping provisions to put them all together under one target date. But—would you believe it?—from what we are being told there has not been a single form designed for grouping. If they want to group them, they are going to have to fill out 30 separate forms.

Senator CONROY—You would think that you could fill out one for the entire group.

Mr Dixon—There will be one that will in fact be the target date adopted. So, for the other companies going into that target date, that is what you will be filling out the forms for. We have real concerns about whether there are going to be savings in time and efficiency for our members. That is our major concern, so I will leave it at that stage.

CHAIR—Thank you, Mr Dixon. Does anybody else want to make an opening statement?

Mr Reilly—I would like to thank the committee for the opportunity to provide evidence on the various bills. The submission you received earlier on, dated 14 March, was done by the institute and CPA Australia's research board—the legislation review board. We have had a number of members who have raised questions over the practicality of some of the proposals in the bills. We did support CLERP 7 when it was released in discussion paper form. Unfortunately, the bills came out just before Christmas, in a period when a number of people were heading off on leave. It is an opportune time, in our view, for the committee to have a look at some of the concerns that have been raised. You will probably find, in the evidence given, that there will be a number of different issues, one of which my colleague, Mr Dixon, has referred to. What I would like to do, with your permission, is ask Stan Neild, who was responsible for the research effort on these bills, to provide some specific comments.

Mr Neild—Briefly, the points we have to make about the system are that we do not see it as necessarily a simplification. Agents and companies will still be expected to check a document issued by ASIC. If there is no change in the information, yes, the agent or company does not have to return anything other than the payment to ASIC. But, if there is a change, documents will have to be returned to ASIC for processing. The same fee is payable, in the explanatory memorandum there was reference to the need to preserve the \$200 million—

CHAIR—I am sorry to interrupt you, Mr Neild. Perhaps I should have foreshadowed at the commencement that the Senate is sitting while this hearing is underway. When a division bell rings we are going to have to momentarily suspend the sitting. The sitting is suspended for about five minutes.

Proceedings suspended from 5.13 p.m. to 5.24 p.m.

CHAIR—The hearing of the committee is resumed. When we were interrupted by the division bells, Mr Neild was in the middle of saying something.

Mr Neild—Yes, if I can recall I will start that point again. The explanatory memoranda to the legislation refers to the fact that basically the same fee will be payable on the basis of preserving government revenue. That was based upon an estimate of \$200 million. In the Treasury submission we note that there is reference to in excess of \$240 million in revenue based upon current numbers of companies, so there is an opportunity to reduce fees.

We also note that the changes introduced a number of payment options which have been long overdue and are not a significant reason for the legislation. It appears that the legislation will be transferring work from ASIC onto the agents and their companies and that the companies and agents will need, to carry out this task, software which we understand from the software developers will be unlikely to be available in time for the 1 July implementation date. Further, the legislation allows for the changing of a review date for individual companies. However, this will not be available to companies whose review date falls in July, presumably, because the companies will not have the opportunity to lodge requests for the change of those review dates. We therefore suggest in that regard that ASIC start accepting applications for review dates at this time.

CHAIR—Thank you. Mr Lesh, would you like to say something?

Mr Lesh—The primary objective of CLERP 7 as we saw it was to reduce the compliance burdens on business. But CLERP 7 in fact does the opposite. Rather than reducing the burden, it actually increases the burden. How does it do that? Very simply: it introduces an annual review process which will take considerably more time than currently is involved in preparing annual returns; it introduces a new form of declaration of solvency; it introduces the requirement to lodge a return of particulars, which is exactly the same as an annual return, on an ad hoc basis or—as has been suggested to us a couple of times by ASIC—every three years; it introduces separate forms for Australian companies and foreign companies so people have to deal with two sorts of forms instead of one; and it introduces the requirement to notify changes in shareholders and shareholders' names and addresses, which is not currently required.

More importantly, in our view CLERP 7 will not lead to better public information. Currently, companies lodge an annual return each year. The return is signed by an officer of the company and this person takes responsibility for the document. The document keeps ASIC's database up to date because they will pick up any differences between that document and what is currently on their database. Under CLERP 7, there is no requirement to lodge a document every year. As a result, what will happen is that people will receive the annual review document from ASIC, some will look at it, some will look at it quickly, some will not look at it at all and many will just simply pay the bill. In other words, they will not check that the data is correct and therefore ASIC's database will not necessarily reflect any changes that need to be made.

CHAIR—That is pretty dangerous.

Mr Lesh—That is what we thought. The CLERP 7 legislation acknowledges this in some respects because what it says is that we need a new return of particulars form. That form, which would be lodged every three years or whatever, would then bring ASIC's database up to date—where it would be had we continued to lodge annual returns as we currently are. Today, many changes are only highlighted when the annual return is lodged and so, under CLERP 7, in our view, over time ASIC's database will in fact lose significant integrity. ASIC is also making the assumption that introducing a new form will resolve this. I have never known new forms to actually resolve problems of non-compliance and people not lodging forms in the first place.

The introduction of the annual review date was designed to spread ASIC's workload throughout the year. We understand, however, that 22 per cent of companies are in fact formed in June. Currently, they receive 28 per cent of annual returns in January. So in fact what is going to happen is that the peak is going to move from January to June. June also happens to be the end of financial year and when accountants, who are the majority of agents, are the busiest. So in fact it is going to put an extra burden on them during their busiest time of the year.

I do not want to go into too much detail about form 484, which is a three-part form replacing four existing forms. The only thing I will say is that, on a field by field basis, the new form includes 50 per cent more information than the existing form. As we are supposed to be doing a simplification I thought I would use a very easy 'let's look at how much paper there is' test. This is how much paper is required under the new legislation: it totals 39 pages. This is what is required under the existing legislation: it totals 16 pages. So we are simplifying by going from 16 pages to 39 pages.

We have sitting here four organisations that represent accountants, lawyers and corporate groups. Over 2,000 accounting firms and other groups use our software and they are saying to us that this legislation is going to increase the cost and the burden of compliance—which is the exact opposite purpose of the legislation. I, therefore, from our perspective, ask senators to consider the following: removing the legislation—withdrawing the legislation from parliament at the moment—setting up a working party with the people here who have direct interest in this, ASIC and Treasury to work out a solution to achieve the objectives of CLERP 7 but without the trauma we are going to cause if we go through it in the current process; setting a date for the end of that working group—maybe 30 June—and trying to start this thing on 1 February next year after all, or the vast majority, of the 2003 annual returns are lodged.

CHAIR—Thanks, Mr Lesh. Mr Hoggett, would you like to say anything?

Mr Hoggett—Yes. I am a consultant on this particular project at Solution 6. Thank you for the opportunity to address the committee. Solution 6 is part of what you call a submission chain. The return forms run through our software—in fact, they are our software. Our software is licensed to accountants, lawyers and companies. Forty per cent of all returns that are electronically lodged go through our software, which is an enormous number of returns.

We would like to say at the start that we are not negative about reform. We think this is an area where reform is required. We are not even negative about all of these proposals. A number of them are very good. We think the elimination of annual returns is probably a very good thing, even though people will still have to pay the bill whether or not they complete them. We think the provision of additional information is a good thing. So there is good stuff in this legislation. But we have two major concerns. One relates to the process, which is fairly specific to the software side of things, and one relates to the actual content of the reforms.

On the process, it is our opinion that the 1 July deadline is too tight for us. We think it is probably too tight for the industry generally. Software makes things much more efficient—and we all use it all the time—but it takes a long time to develop. In a major reform like this, it can take up to eight months when you have all the specifications, which we still do not have. Development can really only start with all the details, because it is a very detailed process, and we are getting the specifications too late to do the job properly. And the legislation is not yet passed, so there is a potential even there for change. We are in an unstable information situation. As Ron has already said, 1 July is the worst possible time. There is mayhem already in the software industry about that time of year, dealing with changes to the tax system that are going to go on and the software requirements for that.

We have been in this very situation before—two years ago. The GST was a rushed job. It was heavily reliant on software and on the very detailed specifications, and the software was not fully ready. One provider of software virtually broke down—their system broke down—and they were providing software for almost 40 per cent of returns. The others, including us scrambled through. It was an administrative and community relations disaster—and it is still going on. The result was that the ATO ended up with a whole heap of paper returns when it wanted electronic returns. We think this is the sort of thing that could happen here.

We think we can do better than this. Given the right conditions, we know we can do better than this and we think that jointly we can do better than this. What we need in relation to the process is a transitional period, which I think Ron has already mentioned, to allow us to complete the software development, the detailed testing and QA that has to be done on the software, and the proper training of the agents—thousands of agents—so that they can use the software and make the submissions. There is a training thing and there is an education thing. You then have to educate all the companies. These are legal forms; we have to get them right. As the senator has said, it is dangerous if you do not get them right. We are setting ourselves up to get them wrong. We do not think we should be obsessional about the start date. A shift of six months should not be a deadly thing.

On the content of the reform, we agree with Ron and I will not go into it in great detail. We do not think ASIC have done what they were supposed to do. They have not made commercial life simpler. The new forms are more numerous and more complicated than the old, and the processes are more complex. The timing of the agents' work flows will become more rigid. There are new tasks for business and new costs. It complicates the process and it is suboptimal in itself. Again, we think we could do better. Some suggestions have already been made in the submissions and we think a consultation process that was a bit more open-minded than we have seen so far might produce some good improvements.

In conclusion, it is not just us who are uneasy. Other major software providers and the professions—for example, Macquarie Bank—are expressing the same concerns. The business community is not even in the loop yet and they do not know what they are about to be hit with. So we are suggesting consideration of changes to make CLERP work better—and a transitional period to make it work at all. We are not saying, 'Don't do it.' We are saying, 'Do it differently.'

CHAIR—Thank you.

Senator WATSON—To me it all seems pretty simple and straightforward until we get down to the sections to complete. Where are the issues of your difficulty? I concede that there is a timeframe in terms of getting your computer applications working but, once they are in place, what are the problems with the form?

Mr Hoggett—We were told it would be simpler. It is more complicated. It was supposed to be a simplification.

CHAIR—So, Mr Hoggett, you are not saying there is an obscurity in the form?

Mr Hoggett—No.

CHAIR—You are saying it is too detailed?

Senator WATSON—I am up to about page 9 and it all seems pretty simple to me.

Mr Hoggett—What we are saying, broadly, is that the process is difficult for us. It is too squeezed up and that is a problem.

Senator WATSON—I have not finished; I am only up to page 9.

Mr Hoggett—Once the process is gone through the software can do it all, but the promise was for greater simplicity and the promise has not been delivered.

CHAIR—Let me get this straight, Mr Hoggett. Your criticism is not that there is anything obscure about the form but merely that it seeks too much information. Is that the essence of it? Hansard cannot pick up your nod. Was that a yes?

Mr Hoggett—We are saying that it is not obscure, but it is just complicated and too precious.

Senator WATSON—I want to know where it is complicated.

Mr Lesh—Part C of the form, which you have not got to yet, is quite complicated. Parts A and B are reasonably straightforward but part C of form 484 is very complicated. It starts with a chart setting out who has to do what—which, in itself, will confuse a number of people—and then the data requirements of part C are also quite substantial, and also have never been reported previously.

CHAIR—Is this one of those cases, Mr Lesh, which is like a lot of things: the first time you do it is complicated and after you have worked out how to do it, it is like riding a bike?

Mr Lesh—Possibly that is true. I think that some people will have considerable difficulty with the new form. Anybody who is not well aware of company structures and how they work will have considerable difficulty completing the form, especially part C.

Senator WATSON—Mr Reilly, can you tell me where all the complications are? Yes, it is more detailed. I concede your time problems; that is a really significant problem. But I need to be satisfied about its complications.

Mr Reilly—Senator Watson, I would have to get back to you on that because I have not gone through the detail of the form—

Senator WATSON—Mr Dixon, then?

Mr Reilly—but what the accounting bodies have done is to look at the time period for consultation, and I think you are hearing from the software houses that they are going to have a great deal of difficulty meeting the timetable.

Senator WATSON—I acknowledge that, but where is the complication? Mr Dixon, can you tell us about the complications in filling it in?

Mr Dixon—I cannot tell you so much in relation to the form itself. As I said, my major concern is with the impact on the practice and when they can complete the work. My concern is not with the content but with the impact on the practice.

Senator WATSON—Which is the page that takes all the time?

Mr Lesh—The ones that split up the details of members will take a considerable amount of time, unless you are doing that on an automated process. If you are doing that on a manual process it will take an exceptional amount of time to complete.

Senator WATSON—The little companies would not have many changes, would they? The big ones would and they would have an automated process. Once you have had the time to put your processes into line, where is the problem? The most complicated form seems to be page 2 of 9. Is that the complicated one?

Mr Lesh—Part C of 484 is the part that I think is the most complicated—C1, C2, C3 and C4.

Mr Quinton—Could I say something as well?

Senator WATSON—Well, appoint a company office holder.

Mr Lesh—No, part C; that is part D.

CHAIR—Let us take this in question and answer order. Senator Watson, Mr Quinton wanted to make an observation on your question.

Mr Quinton—On the question of complexity, if you look at the existing forms and the existing process you will see that, whether it is professional accountants or their clients, when they go through the process of filling in these forms it is a lot simpler than what is required in section C. Firstly, they have to go through this table structure and there is additional information that they need to provide. Further on there is additional reporting information on movements in shares. Even a small company can have a number of family members who have shares in the organisation and they will have to understand this form when they complete it, whereas in the past they could review the annual return and make changes, if they wanted to, at that point in time.

CHAIR—I have been listening to the various observations, and they all seem to say the same thing: that it is complicated or detailed—nobody says it is obscure. But I have not heard anybody say that it is gratuitous—in other words, that all of this extra information that is going to take so much time to provide is unnecessary, so that the requirement is gratuitous. Does anybody say that?

Mr Hoggett—That is a difficult one, because we are not asking for the information.

CHAIR—Quite, but one of the bases upon which one could always criticise a request for information would be, ‘You couldn’t possibly need that to serve the purpose for which this form is going to be used.’ I do not hear anybody making that criticism.

Mr Lesh—I would certainly suggest that the information on increases and decreases in numbers of shares is gratuitous information which, till now, on our understanding, has not been recorded on ASIC’s database.

Senator WATSON—Apart from the changes to the capital base, where are the complications?

Mr Quinton—On page 5 of 9 in that section C there is a table requiring additional information to be provided relating, as Ron was saying, to increases or decreases in numbers of shares; whereas in the current legislation the clients can just provide the updated balance for any movements in those shares. Also, with the top 20 members a lot more analysis would have to be done for those companies as to who the top 20 members are and what the changes were during that period.

CHAIR—Is that the only example?

Mr Quinton—There is the example of the forms relating to holding company information.

CHAIR—But is that your best case? Is the table that you have just identified the source of your most particular complaint?

Mr Quinton—In addition to the matrix structure that talks about transfers of shares et cetera.

CHAIR—That is the same thing, isn't it? That is what that table does.

Mr Quinton—But a director of a small business, say, who has to go through and review this has been used to reviewing the annual return and what changes are required.

CHAIR—I understand your point. I am not saying that I disagree with your point, but it is the same point, isn't it—that the one issue you identify as your chief complaint is this change in shareholdings? Do you have another complaint?

Mr Quinton—There is other additional information which I can go through.

CHAIR—Yes.

Mr Quinton—In terms of the ultimate holding company information, which is in section A, there is additional information that has to be recorded about ultimate holding companies.

CHAIR—What—who the ultimate holding company is?

Mr Quinton—Say, for example, there was a change in an ultimate holding company, you would then have to go through all the subsidiary companies and report that information. Is ASIC able, with their systems, to review those changes and update them rather than—

CHAIR—That is two. Are there any others?

Mr Lesh—One of our major issues with the whole of the new form is that we are not achieving efficiencies. That form has to be—

CHAIR—I am sorry, Mr Lesh. That is an answer to a different question. I want to give you the opportunity to make your point, of course; but I thought it might focus the discussion if I ask people to particularise those parts of the form that they have complaints about. We have heard two. Is there another particular instance rather than a generic criticism?

Mr Lesh—Yes. There is no provision to notify multiple companies on the same form. That form has to be lodged for every single change. I see that as very significant. It is a problem in the current system as well, but if we are going to look to improve the system why don't we have a single form and notify all changes on that one form rather than a separate form for every company? If, for example, you have a person who is a director of a company, and they are a director of 10 companies, they have to produce 10 forms.

Senator WATSON—For 10 subsidiaries?

Mr Lesh—Or for 10 subsidiaries—10 forms.

CHAIR—That is one form per entity, though—

Mr Lesh—That is correct. My point is that if we were looking at good form design, we should be able to handle that on a single form.

Senator WATSON—But you might have one company that is nearly insolvent and the others are very prosperous. The regulator needs to know that.

Mr Lesh—But insolvency does not come in on that form. There is a separate form for insolvency.

CHAIR—Anyway, your complaint is that where there is a holding company and subsidiaries there should not be a separate form for each legal entity.

Mr Lesh—The holding company-subsiary relationship is one, but the majority of relationships of private companies is 10 companies straight across here, with the same person being a director of every one of those companies.

CHAIR—But they are different legal entities. They might not be different economic entities, but they are different legal entities.

Senator CONROY—Would it solve it if you said on the form, ‘Take Mr Stan Howard off the following 10 companies,’ instead of having to have 10 separate pages?

Mr Lesh—That is basically correct, yes. I see that as a significant weakness in the form.

Senator CONROY—If they list the entities correctly, then hopefully ASIC can work their way through that.

CHAIR—Those are three particular criticisms I have heard. Are there others?

Senator WATSON—Surely ASIC needs to know the composition of the boards of each of the companies.

Mr Lesh—Not for a change of address. If it is a change in directorship it is a different issue. A change in address for a director could be one person’s name on the top of the form and the 20 companies he is a director of. That form does not even consider that.

Senator CONROY—The problem is maybe the processing system that ASIC uses, where you have got to enter in the company name rather than the reverse.

Mr Lesh—I think that is part of the issue: ASIC’s system may not be able to handle that; but if we are looking to improve—

CHAIR—But, Mr Lesh, this is a form about the details of a company, not the details of a director.

Mr Lesh—It is both.

CHAIR—But you are not going to serve the purpose of recording the details of each company, albeit they might be related, by having a common form if there are shared directorships.

Senator CONROY—The problem is that they will probably code it on the company entity rather than the director entity. So it would take a lot longer to scroll through looking for all the companies.

CHAIR—Isn’t that the way it has always been, though, with ASIC or the NCSC before it? It has always been based on the company rather than on the directors.

Mr Lesh—That is correct; and I suppose what we are saying is: if we are going to improve the system, streamline it and cut compliance work, a significant way that we can do that is by having a single form for notification of the change of address of a director.

CHAIR—But ASIC’s jurisdiction is over companies. The point of entry into this process is to say, ‘This is the information about a given company.’ It does not strike me as surprising, irregular or gratuitous that the form should ask for particulars of each company. Senator Conroy?

Senator CONROY—I do not really have any other questions. I think all the issues and concerns are out on the table.

CHAIR—Are they?

Senator JACINTA COLLINS—Let us move on to Treasury matters.

CHAIR—Apart from those three particular criticisms that we have heard, are there any somewhat more general criticisms or any other specific criticisms?

Mr Neild—Our concerns are with the fact that the software developers will not have the software in place for those—

CHAIR—That is a timing issue.

Mr Neild—The other thing is that the returns for each company are on their date of registration. The current situation might be that you will have a partner in an accounting practice who may get all the returns for his client companies provided to him at one time. Under the new arrangements, he will get them at the anniversary dates of the registration of those companies. He will need to go through the same process. Rather than doing it once for maybe 200 companies, he may have to do it 10 times.

CHAIR—So you think it should be a common date for all companies.

Mr Neild—Either that or there should be greater flexibility leading up to the implementation date to allow groups of companies or directors to reorganise the date that they receive those extracts of particulars to be sent to them.

CHAIR—But this is going to be an annualised obligation, isn't it? There is going to have to be a set date. It is a question of whether it should be a common date, the anniversary of registration or some other date chosen by some other method.

Mr Dixon—The fact is that, under the current system, where there is only one date, what you have is practices organising themselves, spreading their work over seven or eight months. What I am saying is that—

CHAIR—So you are in favour of a common date?

Mr Dixon—Of a common date. The work that people do on the annual return is separated from all the other work. We should not think that everything is locked into 30 June, when, say, tax returns and other lodgments might be due. This process can in fact be spread throughout the year. It is not locked into other work.

Mr Lesh—Could I just make a simple comment. The tax office handles the same issues with lodgment dates, and they do it by having a lodgment program, where a certain number of returns are required to be lodged throughout a period throughout the year. A similar situation, a similar process, for ASIC would achieve exactly the objectives that we are talking about, whereby the company returns would be lodged throughout the year and agents would have to lodge a certain percentage by certain dates, which is the way that the tax office works. You would still get forms throughout the year.

Senator WATSON—You would have to have some restricted time frame, though, wouldn't you?

Mr Lesh—Yes.

Senator WATSON—What are you suggesting? Over what period?

Mr Lesh—Twelve months.

Senator WATSON—That is a bit long, isn't it?

CHAIR—There is a rolling obligation to lodge within any given 12-month period.

Mr Lesh—Yes.

Mr Dixon—Up to 31 January.

CHAIR—But delivered by a common cut-off date.

Mr Lesh—Correct.

CHAIR—Are there any other matters?

Mr Lesh—Our main concern, and I think it has become obvious to us and our clients, is the whole issue of whether ASIC's database is actually going to be better or worse as a result of this whole exercise. In our view and the view of our clients, their database will be worse, not better.

CHAIR—That is a matter for them really, isn't it?

Senator WATSON—The only reason you said that it was going to be worse was that people would not fill it in accurately.

Mr Lesh—Correct—they will not fill it in accurately or they will not fill it in at all.

CHAIR—Nobody has said that this is going to be hard to fill in. You have told me that it is not obscure; it just asks for too much information and it might be a bit hard.

Mr Lesh—But they only have to fill the form in if there is a change. If they do not realise there is a change, do not know to notify of a change or just do not notify of a change, there is no form to fill in. Currently they do get an annual return form, so they are getting that information.

CHAIR—But they might say that is an efficiency because it means that, if there are no changes, they do not have to put in an identical form.

Mr Lesh—I concede that point; I agree with you. But the other side of it is that, if we do not lodge a form and there are changes, people will not be aware of those changes for three years.

CHAIR—That is a compliance issue.

Mr Lesh—Yes, it is a compliance issue.

CHAIR—And the legal obligation is on the company to ensure that it does comply. That is hardly unheard of.

Mr Hoggett—But in a sense it does make the compliance more difficult.

CHAIR—Why?

Mr Hoggett—Because as you go through the year you have to realise that you have got to notify your change of address—

CHAIR—But surely any competent company secretary is going to be across that?

Mr Hoggett—We are talking about a lot of very small companies. The little guy out there does not have a company secretary; it is his wife.

CHAIR—Well, a lot will. I am thinking of public companies I suppose, but the affairs of most small companies are run by the accountant or their compliance obligations are supervised by the accountant.

Mr Hoggett—They have to notify the accountant so he can notify ASIC.

CHAIR—It just does not strike me as very hard, Mr Hoggett.

Mr Hoggett—I know it does not strike you as very hard but you deal with regulations every day. These characters do not. That is what we are saying about the whole thing. You are really testing us on: why shouldn't we have more regulation? We are saying to you: why should we have more regulation? And we hope you will ask the same questions of ASIC. Do they need this information? Do they really need it?

CHAIR—I suppose the simple way would be, if people were concerned about whether they might fall into an accidental act of noncompliance, to adopt the existing practice of reloading each year.

Mr Hoggett—And they get a penalty I guess for not lodging on time.

Senator WATSON—We might have another look at one of those forms, I think, and get ASIC's reaction to it.

CHAIR—Thank you very much gentlemen.

[5.59 p.m.]

BELL, Ms Rosanne Louise, Project Director, CLERP 7, Australian Securities and Investments Commission

DRYSDALE, Mr Mark, Executive Director, Public and Commercial Services, Australian Securities and Investments Commission

McNEICE, Mr Jeremy Graham, Director, Operations Public Information Program, Australian Securities and Investments Commission

NEASEY, Ms Helen Mary, Analyst, Treasury

PASCOE, Mr Les, Specialist Adviser, Accounting Policy, Treasury

RAWSTRON, Mr Michael, General Manager, Corporate Governance Division, Treasury

CHAIR—I welcome officers of the Treasury and of the Australian Securities and Investments Commission. I take it you heard the discussion with the previous witnesses. I invite a spokesman for each of the two agencies to make some comments. Can you try to take up the criticisms in your remarks?

Mr Drysdale—I will take up some of the issues and then I will pass to Treasury. It is ASIC's view that this is a simplification and it is a process that we are keen to see happen on the time frame that has been put to date—1 July. Essentially, the issues that we have just heard fall into a couple of categories. One goes to the level of consultation. I think that is always a topical issue at this time in new legislation. As senators would be aware, we are in a process right now where the legislation is still firming up to be passed. We are in consultation with some of the players in this. We will be in further consultation as that firming up happens.

There is a separate set of issues around whether this is really a simplification. We think this is definitely a simplification. Some of the comments made by the committee members went to the issues that I would have spoken of, but I will give you a couple of simple numbers. There are 1.3 million companies that, at the moment, we require to send us an annual return. At that time, 88,000 changes are notified to us. So we are getting a great deal of paper that flows through our systems in a relatively straightforward way—and a completely unnecessary way, in our view.

CHAIR—So you say you are saving 1,212,000 data transactions per annum basically?

Mr Drysdale—That is our expectation. Where did CLERP 7 come from? It was founded in areas like the Bell review, which was looking at reducing paper work for small business. Our view is that, for companies at that end, this definitely achieves that. It is true that there is some additional information required about companies. That is in the area of members and shareholding—and we can come to that. That is additional information which most players think is necessary and was something that, through the consultation process, emerged as a requirement.

The other issue is really around industry readiness for this. We hear with interest the comments from some of the software developers. The software developers that you have heard from tonight represent the larger providers of software in this industry. So, naturally, they are a group that we would be keen to work with to address the issues that they have raised tonight. Some of those issues have not been raised with us directly—some have—and we can follow up on those. Our intelligence from the other nine or 10 players who provide software in the industry is that in almost every case they believe they will be ready for 1 July.

The over-the-phone contact, which we have been able to have since reading the submissions, has been that they are gearing up for that as a 'go' date.

CHAIR—Mr Rawstron, did you want to say something?

Mr Rawstron—I would simply confirm what my colleague from ASIC has said. Our view has been that the policy behind these changes is aimed at reducing the paper work burden on small and medium sized enterprises. We actually see that the law will simplify the provision of information to ASIC and also provide ASIC with a better foundation from which to ensure the integrity of its own systems. And, obviously, that would go to ASIC's ability to enforce the Corporations Law requirements more generally.

In terms of consultation, the CLERP 7 proposals have come through quite an extensive consultation process. As I understand it, there were roadshows and a fair degree of interaction with the marketplace. We would have thought that, through that process, most of the concerns of the industry and others would have been ironed out or addressed.

CHAIR—Is it your evidence that, after these roadshows and various other vaudevillian activities, these changes were generally welcomed by the market?

Mr Rawstron—Certainly that is the impression that we took away from that process, yes.

CHAIR—Senator Collins?

Senator JACINTA COLLINS—Most of my questions are for Treasury, but, before I do that, there is the more general question from the earlier debate. Why, in your view, is it not gratuitous to collect the data on the increase and decrease in the number of shares?

Ms Bell—I think you have to understand that, when you abolished the annual return, that was the only place we really collected this information in a snapshot once a year about the top 20 members. It is now going to become an ongoing reporting requirement. Because it is an ongoing reporting requirement, we have to be able to account for the changes to the top 20 members across a period. In the forms that we have designed, we are really only trying to collect the information that the legislation requires ASIC to collect and to assemble it in some sensible way so that it is of value to the searching public.

Senator JACINTA COLLINS—Is this the only area where there are additional ongoing reporting requirements?

Ms Bell—The other is the ultimate holding company, which is now becoming an ongoing notifiable requirement.

Senator JACINTA COLLINS—What is the educative process associated with this for people to become aware of the change in their ongoing reporting requirements?

Ms Bell—We are just gearing up now on the communications front. We have been waiting to see the status of the legislation et cetera. We will be in touch with all the registered agents that represent some 800,000 companies. We have already written to them once, and we will be writing to them further about the changes to the requirements. We will also be communicating directly with each company about the new reporting requirements.

Senator JACINTA COLLINS—So the 1.3 million companies will receive something advising them of the new reporting requirements.

Ms Bell—Either directly or via their registered agents if they choose to operate that way.

Senator JACINTA COLLINS—Back to Treasury, what proportion of the fees raised by ASIC go to consolidated revenue?

Mr Rawstron—As I understand it, constitutionally all the fees have to go into consolidated revenue, so there is an appropriation.

Senator JACINTA COLLINS—Let me put the question this way: what proportion of fees raised by ASIC are used by ASIC and related bodies?

Mr Pascoe—About \$150 million is used by ASIC and related agencies. In addition, there are compensation payments to the states and the Northern Territory.

Senator JACINTA COLLINS—How much is raised?

Mr Pascoe—Just over \$300 million, I think.

Senator JACINTA COLLINS—So about twice.

Mr Rawstron—No.

Mr Pascoe—No, the amount between ASIC and related bodies plus the compensation to the states accounts for about \$290 million.

Senator JACINTA COLLINS—So you raise about \$10 million greater than—

Mr Pascoe—It is a bit more than that. Probably about \$30 million or \$40 million, I think.

Mr Rawstron—If you want the exact figures, I can get you those.

Senator JACINTA COLLINS—If you could, I would appreciate it.

Mr Rawstron—We can provide those to you tomorrow.

Senator JACINTA COLLINS—Can you confirm that there will be a general review of ASIC fees this year?

Mr Pascoe—Every year there is a CPI based review of the quantum of fees. The expectation would be that recommendations would be made to the government concerning that.

Senator JACINTA COLLINS—This is just the regular CPI review, not a more general review.

Mr Pascoe—No.

Senator JACINTA COLLINS—Beyond the CPI factor, are all ASIC fees going to be reviewed as part of the CPI review?

Mr Pascoe—As part of the CPI adjustment, all fees are looked at, yes.

Senator JACINTA COLLINS—And there is no other review on foot that you are aware of?

Mr Pascoe—Not specifically at this stage, no.

Senator JACINTA COLLINS—What do you mean by ‘not specifically’?

Mr Pascoe—The CLERP 7 paper did contain proposals for revisions to fees in a number of areas, in particular takeovers and fundraising, with the long-term objective of increasing cost recovery from those particular activities. I am not aware that any particular issues are being considered by the government towards increasing those fees at this time.

Senator JACINTA COLLINS—So those recommendations are not being acted on at this stage?

Mr Pascoe—Not at this stage, as far as I understand it.

Senator JACINTA COLLINS—Where would I find the detail of all of those recommendations in relation to fees?

Mr Pascoe—There is a consultative paper which was published in February 2000 which contains material about the fees proposals as they then existed.

Senator JACINTA COLLINS—Is there a name that goes with that consultative paper?

Mr Rawstron—It is the CLERP 7 paper.

Senator JACINTA COLLINS—It is just the CLERP 7 discussion paper?

Mr Rawstron—Yes, that is the only public document that has been released.

CHAIR—When you say ‘the only public document’, that is the document, isn’t it? That is the paper.

Mr Pascoe—Yes, that is the only paper.

CHAIR—From your tone, I did not want to hear a criticism that there should have been more. You are not saying that, are you, Mr Rawstron?

Mr Rawstron—No.

CHAIR—I did not think so.

Senator JACINTA COLLINS—I was trying to work out whether there were earlier papers related to the Bell review or whether they were talking about something later in the process. It is the consultation for CLERP 7 that you are referring to. If ASIC fees are based on cost recovery principles, what considerations are taken into account when determining the fee levels?

Mr Rawstron—That is probably not a question that we can give you a direct answer on here. I assume that—unless my ASIC colleagues have something that they can provide—there is a lot of historical noise, you might call it, in terms of the fee levels with the establishment of the type of corporate regulatory structure. The type of agreement between the states and the Commonwealth carried forward in their obligations not only to compensate the states for the revenue they otherwise would have received if the existing state based systems continued but also to deal with the increased provision of funding for ASIC in light of the activities it was taking over, plus notional allocations to the Federal Court for its work in Corporations Law and the like. I will probably have to get back to you with a response on that. I cannot give you a response that would indicate that some grand scheme sits behind how the actual individual fees are calculated. For example, the annual fee, as I understand it, has been on the \$200 level for five years. Is it that long?

Mr Pascoe—Since 1997.

Mr Rawstron—It has not increased since 1997.

Senator JACINTA COLLINS—I am trying to understand what assurance proprietary companies have, aside from an announcement in the 2002 budget, that they will not end up paying \$10,000—the new maximum fee limit—to lodge their returns. If you are saying to me that there is no scheme or formula behind the current calculation—

Mr Rawstron—There is government policy. I think it was an election commitment by the current government not to increase the fees and that, as I understand it, stays in place until the end of June next year.

Senator JACINTA COLLINS—But beyond that?

Mr Rawstron—Beyond that there are a couple of other matters you would need to take into account. The Productivity Commission has reviewed fee setting more generally in the Commonwealth context. It has looked at organisations such as ASIC and other Commonwealth agencies. At some point in time, the government will need to respond to that report. Presumably, there are ongoing funding issues that might need to be looked at for ASIC. At any point in time, obviously it is up to the government to make whatever decisions it thinks are appropriate in terms of setting fees, but there is certainly nothing before my division whereby we are proposing to recommend the government to do anything other than, I suppose, approach fee setting in light of what we have done in the past—that is, we might look at areas where fees are ‘inadequate’ for, say, complicated prospectus lodgments where we think there should be a greater obligation placed on proponents to pay the processing costs that ASIC may go through. There may be other areas of fees that the government may consider appropriate to look at in order to encourage compliance, such as late fees. Certainly it is not our intention at this point in time to recommend to the government that it should be charging companies significantly increased fees.

Senator JACINTA COLLINS—At this stage, can you confirm that the two-tiered system will continue whereby proprietary companies pay significantly lower fees than public companies? Is there any mooted change to that?

Mr Pascoe—There is no planned change to that.

Senator JACINTA COLLINS—The financial impact statement in the explanatory memorandum states that ASIC was allocated increased funding for implementation of CLERP 7 reforms in a previous budget. Can you expand on when and how that occurred?

Mr Rawstron—Are you talking about ASIC funding?

Senator JACINTA COLLINS—Yes.

Mr Drysdale—CLERP 7 has been funded over about three years to date, with one year to go. The total funding was in the order of \$10 million. Much of that is for systems change and those sorts of changes but some of it was also to do with things like upgrading the telecommunications technology in the place, setting up a more efficient call centre et cetera. Much of the expenditure still to come is in areas like communications. You have picked up on the point about the number of people we have to communicate with individually. The costs of that, when you multiply them by numbers with five or six zeroes, add up.

Senator JACINTA COLLINS—So it is \$10 million over four years?

Ms Bell—I think it is \$9.1 million.

Mr Drysdale—Yes, it is close to \$10 million.

Senator JACINTA COLLINS—Regarding electronic lodgment fees, the [Corporations \(Fees\) Amendment Bill 2002](#) expands the range of fees that may be prescribed. In effect, the bill makes provision for refunds of fees paid by electronic means. This is contrary to the CLERP 7 paper, which says:

... there is little scope for an incentive based on a reduction of the lodgment fee for documents that are lodged electronically.

Clearly the government has decided to deviate from this original intention. Can you explain why?

Mr Drysdale—I hate to be the one who says that that sounds like a policy issue.

Mr Rawstron—I do not think we can actually say that the government has made any deviation at all. Treasury has not put a proposal to the government to consider. But it is true that the legislation facilitated the opportunity for fees to be differentiated according to whether or not the information provided was paper based or electronically based.

Senator JACINTA COLLINS—The bill makes provision for refunds for fees paid by electronic means, whereas the original paper indicated that there would be little scope for such an incentive. Obviously the government has found scope, and I am asking if you can explain why that has been the case.

Mr Pascoe—I would have to refer to the paper in more detail but I think there were two issues involved. One was whether there could be a reduced fee for documents which were lodged electronically. The other was whether there should be a reduced fee for EFTPOS type payments. The scope for a reduced fee for electronic lodgments was looked at but, as we were abolishing the annual return at that point in time and that was the major document that was lodged electronically, it was felt that there was not a great deal of scope for that. I cannot recall the precise rationale for a reduced fee for electronic payment but, in view of more recent developments on EFTPOS type payments, there may be not a lot of scope for that anyway. If you would like more information on that, we will see what we can find.

Senator JACINTA COLLINS—I would appreciate that. The government has advised that ASIC will establish a business advisory board before the commencement of the legislation. Can you advise whether candidates have been chosen yet, who they are, what qualifications they are required to have and when the board will commence?

Mr Drysdale—The candidates have not been chosen. The CLERP 7 green book essentially lists the organisations from which we would be looking to invite people onto the business advisory board. The board's role is to advise ASIC's public information program on how its paperwork and other compliance activities interact with business and how we can make those more effective. A couple of the organisations that are represented here tonight are listed to join that board. Our time frame has been that, once the legislation looks like being passed and has an enabling date, we will then move on establishing the business advisory board.

Senator JACINTA COLLINS—Did you cover the issue of the qualifications?

Mr Drysdale—Again, the book nominates the sorts of organisations we are talking about—organisations such as software developers, the Institute of Chartered Accountants, CPAs and small business organisations. I think it is for us to nominate what the role of the board is but for those organisations to nominate who they wish to be on the board.

Senator JACINTA COLLINS—What size are you looking at for the board?

Mr Drysdale—The paper contemplated a group of between eight and 10. That is probably about right.

Senator JACINTA COLLINS—Okay. The government advised on Friday that there would be a number of amendments to the proposed bill, specifically in relation to the review date and also in relation to conditions relating to electronic lodgment. Can you explain to the committee the rationale for these latest amendments—beyond what we have heard today?

Ms Bell—I would be happy to tackle the one about the review dates. I think there was a technical drafting glitch—for want of a better word. The legislation says that the review date of a company is the registration date for that company. Due to a series of changes to the legislation over past decades, it turned out through some glitch that some half of the companies were going to end up with a review date of 1 January. So we had to change the wording of the bill to make sure that the registration date was, in effect, either the date it was

registered under the current act or, if it was registered under a previous act, the date that is in ASIC's public database—that is, it is the original date of incorporation of that company.

Senator JACINTA COLLINS—Okay. And the electronic lodgment?

Ms Neasey—The electronic lodgment provisions in proposed section 353 refer to ASIC being able to determine conditions for lodging electronically. The bill is not clear as it stands at the moment. It simply says that ASIC may determine electronic lodgment conditions in relation to lodging the—

Senator JACINTA COLLINS—I am sorry; I simply cannot hear what you are saying at the moment.

Ms Neasey—What the bill should have said was that ASIC can determine electronic lodgment conditions in relation to lodging information with ASIC and also with licensed market operators. So these government amendments are simply to make clear that the lodgment is with both ASIC and licensed market operators and that ASIC can determine those conditions, which determination would be published in the *Gazette*. It is more or less a gloss on section 352, under which ASIC can enter into agreements with companies to lodge information electronically rather than in paper form.

Senator JACINTA COLLINS—When can we expect to see those amendments?

Ms Neasey—Those amendments will be introduced in the House of Representatives on Wednesday, I believe.

Senator JACINTA COLLINS—Okay. My difficulty is simply that we are seeking to record by Thursday of this week. It makes our processes a bit simpler if we can at least see draft amendments before we conclude our considerations. Perhaps if you could take that on board back to the Treasurer.

My final question is in relation to removing the 72-year age limit, or the special requirements for appointment or reappointment—and some of the submissions dealt with this. What was the rationale behind that?

Ms Neasey—I believe the Prime Minister made an election commitment, at the last election, to remove the age restriction in relation to directors who, when they reach the age of 72 and if they are to be re-elected by the company, a 75 per cent majority—that is a special resolution—is required. Other directors would hold onto their directorships for, say, three years. In this case a company would be required to pass a special resolution in order to re-elect a director each year, and that imposes a cost on companies. The other issue is that age discrimination is a factor in this, and this is consistent with other moves to reduce age discrimination. It is simply that in this case the Corporations Law deals with company directors, so this is the medium for reducing age discrimination.

Senator JACINTA COLLINS—So in this case it is an age discrimination factor. There has been a cost imposed on companies in the past, and it will apply generally to all companies, unlike the Stan Howard scheme on employees entitlements—even though Stan Howard turned 72 this year.

Ms Neasey—I was not aware of that.

CHAIR—That is a fairly cheap shot even by your standards, Senator Collins.

Senator MURRAY—I just have one question to put to you, Mr Drysdale. Please humour me because I want to use an analogy. You will be familiar with the broken windows concept as outlined, I think, in New York. The idea was that broken windows were a sign that things were wrong in an area and provided you put in the resources to correct the broken window a

lot of other things would be corrected in the process. So something that was minor could lead to major benefits elsewhere. And the proposition has been put to me before that, in a sense, annual returns and those kinds of returns, constituted the broken window. People being dilatory with those, or not completing them properly—or something of that nature—would indicate other problems elsewhere in tax and compliance, and so on. In its concluding comments, the *Bills Digest* that we receive says:

... whilst the Act does to an extent reduce the document lodgement requirements of companies and registered schemes, the requirement to lodge an annual return is replaced with other annual reporting requirements which will continue to make reporting to ASIC under the Corporations Act a matter that will consume company resources.

That remark says that it will still have a compliance angle. My question—and it is dependent upon resources—is this: is the new lodgment process going to provide you with the early warning signals and the mechanisms to identify serial offenders and people who do not behave in the correct manner and go on to other crimes and problems?

Mr Drysdale—One way to answer that is to look at what happens at the moment and how well that works. At the moment we get something fewer than 1.3 million annual returns lodged with us. I think, in the order of 80,000 or 90,000 companies do not lodge a return with us. Usually they also do not pay. I think that the signal—if I am reading where you are going correctly—that there is a company that is ignoring its paperwork and notification obligations, might still be there for us because people will not pay their annual fees. And that will be the same sort of signal as someone not lodging their annual return to us. So that is an early intervention.

Generally, what are we concerned about? We are concerned that the quality of the information on the database is as high as it can be. We take an approach which has us targeting particular areas of noncompliance that we come across through research and analysis. A point was made earlier about the return of particulars and the proposition was that every three years we will be sending out a return of particulars to companies. Of course, that is not our strategy and it will not be the strategy—but you can use that return of particulars requirement as a compliance and checking mechanism.

So in terms of the usefulness of an annual return as a signal of misbehaviour, we think that nonpayment will continue to be a signal of a company that does not understand that it needs to lodge some paperwork each year. Just as we are now targeting noncompliance in other areas, like financial statements et cetera, with lodgment requirements, the return of particulars—and specific compliance programs around that—is a more efficient way of keeping the database as accurate as it can be.

Senator MURRAY—The proposition that is put by the broken windows concept is that a relatively minor noncompliance issue actually points to behavioural and attitudinal problems which are serious in other directions.

Mr Drysdale—Absolutely.

Senator MURRAY—That is at the nub of my question. Will you have those signals that say to you: if this happens it could be an instance of something more serious elsewhere?

Mr Drysdale—It would be fair to say that I am a firm believer in what you are talking about. The approach that we are taking with compliance generally is that, where previously we would do compliance on a sample basis, we are now taking much more of a population based approach to compliance. So, for companies that have not lodged their financial accounts with us that should have, this year, for the first time, every single one of those

companies is being followed through right up to ending up in court for non-compliance with that part of the legislation. In the annual return cycle, of the 80,000-odd companies that did not lodge an annual return, probably less than a quarter would have been prosecuted previously. This year, every one of those that does not have a legitimate reason that is approved will be prosecuted. And we are doing it in other areas as well, like non-compliance with insolvency practitioners requirements et cetera. The place has taken a view that usually those early indicators—it is exactly as you put it—are a very good sign of a company that needs some attention from the regulator because otherwise they learn behaviours that we would be concerned about.

Senator WATSON—An earlier witness felt it should be possible to lodge one document for a holding company for all subsidiaries. How practical, from ASIC's point of view, is this suggestion?

Ms Bell—I do not think it is a very practical suggestion because at the moment we only require a company to tell us if they have an ultimate holding company and then to tell us if that ultimate holding company changes. But we do not know what the structure is between the companies. We do not know exactly what percentage this company owns of that and who owns another one. I do not think we have enough information on our database to track through the company's structure from which we could automatically update the changes.

Senator WATSON—A legitimate concern appears to be the time to work out the computer software for the new start-up. How much extra time do you believe would be tolerable from ASIC's point of view? The major supplier has said that there is not enough of a time frame. We are asking: what do you believe is a reasonable time frame should we go down that line of recommendation?

Mr Drysdale—I will ask Ms Bell to give you some detail on that in a moment but, as I said in my opening statement, there are different views about whether the software will be ready from different providers.

Ms Bell—In addition, if it is not ready we are putting in place some transitional arrangements to help ease the path into the new world. One of those is that we will accept the existing forms for at least two months after the beginning of 1 July where there is substantial compliance. So where the old form is still suitable to notify a change, in the future world we will accept that for a period. We are also trying to work with—

Senator WATSON—That means they have got to do the job twice though, doesn't it? They do the old form and then after two months they do the new form.

Ms Bell—No. Let us say, for instance, that the legislation starts on 1 July and the company has a change of address in mid-July. We will let it use the old form 203 to notify that change to us and that will meet all of the requirements. They will not be required to use the new form 484.

Senator WATSON—Right, so they have got July and August and they can use the old form, and that is a substitute for the new form. So, in other words, they have an extra two months?

Ms Bell—Yes.

Senator WATSON—Okay, that does not seem unreasonable. Where a particular firm is a lodger for a whole lot of clients—200, 300 or 400 people—would it be feasible to provide for a system whereby these large lodgers, as with income tax, can get an extension of one month or two months or whatever it might be? What is your view on that? Have you thought about

that for the large lodgers? This is a problem for some accountants whose work perhaps specialises in this area.

Ms Bell—Companies will have a variety of review dates spread across the year. For instance, any large agent will have a range of dates. They can apply to ASIC if they want to vary the review dates for particular companies, particularly if they are within a group or if they have a common office holder. So they should have some flexibility to be able to develop a time frame that suits themselves. Other than that, we will be guided pretty much by the legislation in terms of how long the company has to respond to us. The review process for the company should not be an onerous one. If companies are notifying changes throughout the year, as the legislation requires now and as it will in the future, there should be very few companies that have to lodge changes as part of the annual review process—perhaps fewer than 20 per cent of the companies. The others will merely have to use that process to do a check-in, to pay their annual invoice fee and to do a solvency resolution. Our belief is that it should not be a bigger burden than what it is at present—it should be far less.

Senator WATSON—I understand the form on page 2 of 9 is just a checklist. If it is just a checklist, why it is necessary to lodge that form?

Ms Bell—Are you talking about section C?

Senator WATSON—Yes; the form on page 2 of 9.

Ms Bell—There is a variety of requirements relating to share structure and members, and those requirements differ between proprietary and public companies—public companies only having an annual requirement. Nevertheless, we wanted this to be an all year round form that could be used by both groups. So it is really a guide for a company of which sections of the form need to be filled in. That is really just an indication—

Senator WATSON—I know that. But why should they have to lodge it with ASIC? They might have better checklists than that one. Why should that have to be lodged?

Ms Bell—We certainly do not intend that it is an important part of the lodgment regime; it is more a guidance.

Senator WATSON—Does it have to be lodged?

Ms Bell—Yes, it does if it is part of the form.

Senator WATSON—But you are saying it is not an important part. Why is it necessary to lodge it? They might have other mechanisms to pick this up automatically. As long as they have in the document changes of agents or whatever it might be or their share structure is okay, why should they have to also fill out that form?

Ms Bell—I think that is mainly designed for the paper lodgers, so that we can keep track of the paper work that comes into the office. Electronically, I do not think that will be a big issue; they can design the front-end not to capture it. But, having said that, these are draft forms—so I think you are making a good point.

Senator WATSON—Just to get this clear: we could save everybody a lot of time by saying that only paper lodgers need to complete and lodge this form. Would that be possible?

Ms Bell—Yes.

Senator WATSON—It would be possible? Can we get that clarification through?

Ms Bell—Yes.

Senator WATSON—To my way of thinking, it does seem a bit of a funny way to go about it. If you look at the form on page 2 of 9, you see there is a section for the transfer of shares. You have for a proprietary company, in C1 ‘not applicable’, in C2 ‘not applicable’, in C3 ‘not applicable’ and then in C4 you have a tick. Should that not be nil because there is no change? That is why I am a bit confused about that form. Why do you have a tick when there are no changes? There is no change to the asset register because it is not applicable, so there should not be any change to an asset register. I would have thought that answer should have been ‘no’.

Ms Bell—I think that example is where there is a transfer of shares in a proprietary company, it probably has resulted in a change to the top 20 members, even though it was not a result of a cancellation, an issue or a change to the share structure. If the share was transferred from one party to another, that would be a relevant section to complete.

Senator WATSON—I cannot follow that at all. You say ‘not applicable’, ‘not applicable’ and you are ticking yes to say that there is a change to the register. That is why I feel the form is confusing. I think the design of that form could be simplified.

Ms Bell—It is certainly a form which we are about to put on our web site and to get exposure to get feedback on. We have had some specialist expertise try to help us design it. It is not a simple area, and I expect a lot of people will go to their accountants for help if they have complex share transactions.

Senator WATSON—But I reckon their accountants might be in trouble. You have admitted that, for this particular form, if you are on an electronic basis, you do not have to lodge it. You were saying that it is just necessary for paper lodgers.

Ms Bell—If I can just clarify that—

Senator WATSON—Just a minute—we are either with it or we are not with it.

Ms Bell—With the electronic systems, the software developers can design their software to gather any data any way they want. But at the back-end, the data comes to ASIC so that we can produce it like this form so that the searching public can get a copy of this form. They do not necessarily have to have this exact table sitting in their software for their people to tick the boxes. It is an important guide to help people end up with the complete form.

Senator WATSON—Some people have to lodge it and some do not? So we are quite clear that paper lodgers have to. You just said that the form is out for public consultation. I would have thought that the software people would be modelling on these forms already. So it is going to be a real problem if the documents are not yet complete, because your consultation is not complete. What is the stage of your consultation?

Ms Bell—I think the particular page you are talking about is not collecting any data that is critical to the database. It is more about how we are presenting the form. So if there are minor changes to that, they can either be—

Senator WATSON—Is that the only form that is still out for consultation? Have all the others been agreed?

Ms Bell—They have been designed.

Senator WATSON—But we do not know whether they are going to be agreed to. So you might be putting all these software people to an awful lot of work; they are in the process of producing designs which might yet be changed. So these people do have a legitimate complaint because these may be only interim documents?

Ms Bell—We fully expect that the requirements we have given the software developers are the ones that they will design for 1 July. So this form, as it is now, is what we expect to have implemented on 1 July. That does not preclude further changes to the form—either at that date or after that date—if there are necessary changes, but I do not believe there will be.

Senator WATSON—But you can appreciate that, once the software people have designed the forms and got them ready to send them out to 10,000 clients, you cannot have a situation where you say, ‘Sorry, we’ve made a change to page 2 of 9, so forget that. We will have a new one in.’ It is probably going to take the software developers another three months to integrate that into all their other changes and then get the forms out to all the clients.

Mr Drysdale—Page 2 of 9 is actually a help guide.

Senator WATSON—I know, but it has to be lodged. That is our problem.

Ms Bell—But if it were not lodged, we would still process the form, I expect.

Senator WATSON—Yes, but you said that it has to be lodged. If you have to lodge something, it has to be final.

Mr Drysdale—It is page 2 of a form that is lodged as a whole. It points to the parts of the following pages that the company should be filling out, depending on what their particular issues are. Essentially, in a software sense, that help guide will not appear like that. The software developers will develop a screen based approach where people are able to take themselves to whatever actual pieces of information in the following pages need to be lodged with ASIC.

Senator WATSON—It just worries me that you do not have your form design thoughts finalised before you expect computer people to start generating the forms and clients to start filling them in. I think it is a legitimate worry if they are interim forms.

Mr Drysdale—The data fields are finalised, in that the data that is required to be collected has been finalised and has been provided. That is really what the software developers need.

Senator WATSON—So, in other words, if the software developers do not have to lodge this form, they are not going to have a problem, because they will not have to reproduce it. You gave us a nod that they would not have to lodge; is that correct?

Ms Bell—They will have to lodge in substantial compliance.

Senator WATSON—In relation to page 2 of 9, you said that they will not necessarily have to lodge that form if they are on electronic data.

Ms Bell—If they fill out the rest of the sections—if they tell us all the details of their share structure tables et cetera—the form will be lodged, whether or not they tick those boxes.

Senator WATSON—The form will be lodged, but will they be in compliance in lodging all the required forms? Earlier you said to me that they will not have to lodge that form on page 2 of 9, but that the paper fillers—the handwritten ones—will have to lodge that form.

Ms Bell—I think I was trying to say—

Senator WATSON—You then went on and said you have not completed your consultation process and that particular form may yet change. That worries me. How substantial are those changes going to be? Are you going to simplify it a little bit more? I just pointed out one area—just one line which I looked at—and that—

Ms Bell—You are pointing to an interesting difficulty of the process.

Senator WATSON—I just looked at one item.

CHAIR—I think we are getting a bit repetitive. I think your point has been made well and truly. We were supposed to have finished by half past six.

Senator WATSON—That is fair enough.

CHAIR—Is there another area you want to go into?

Senator WATSON—No, but I think it is an important area.

CHAIR—Quite. That is why I did not interrupt until I was sure the point had been exposed and conceded well and truly.

Senator WEBBER—Given the fact that we seem to have highlighted some areas where we are not quite ready for implementation, it is still obviously your intention that there be a 1 July start-up date or date of assent. Mr Drysdale, before, you said you were keen to have the legislation go forward on the current time frame. Can you advise the committee whether ASIC is ready for all of the changes proposed in the legislation? What steps, other than the communication strategy that Ms Bell outlined earlier, have you taken to prepare for the implementation of these changes?

Mr Drysdale—Okay. The changes range from design to communication to forms to systems to back office processes. Are we ready for them? Yes, we believe we are. What you do when you have a project of this size is you work out the issues that need to be absolutely there on 1 July and then the areas of lesser importance. For example, in the area that I was referring to when I was answering Senator Murray before, about the compliance strategy that we will roll out, we will not be rolling that out from 1 July because we will be concentrating on the educative and the processing side of work. All of that is project planned in terms of what the right sequence is for that and we believe we are ready for that.

Senator WEBBER—So there is just the odd hiccup about things like forms along the way but we are all on track for 1 July?

Mr Drysdale—I do not think it is a hiccup. The truth of it is that the information that is required in the forms is there. That form has been through a useability consultant. We have brought consultants in who tell us how we can design these forms so that humans can read them more easily. They have said, ‘You put a table like that in, which helps people work through the following pages because it is a guide to them.’ We are putting effort into that. I think that the data that is required is right. It may be that there are some changes that we make to some aspects of this process between now and 1 July. That would be expected. We have heard some things tonight from the software developers that we will be in conversation with them about this week as well. It is a large project. It is not a huge project in terms of some of the other examples that have been given tonight but it is a large enough project that—when you are within three months of it—this is a reasonably exciting time.

Senator WEBBER—And when the pressures come out in the system, no doubt about that. Thank you for that. It is my understanding that industry has raised concerns that, by fixing a review date and requiring this solvency declaration no later than two months after a review date, companies then lose the flexibility in scheduling meetings for their proprietary companies. Currently, companies can schedule the annual return solvency meetings any time during the 12-month period. This will now be restricted to a two-month period. Would you consider that this is an issue which will impact on corporate groups with a large number of small proprietary companies?

Mr Drysdale—It would if we did not have the provision where essentially we are putting to those groups the opportunity to nominate to us what their lodgement pattern will be. The submission that you are referring to from Macquarie Bank is a very good example. It is a

large group with a lot of companies, small and large, within that group. Essentially, the way the process works is they can put to us how they would like to establish their lodgment pattern across the year.

The difference is that they cannot decide month-by-month whether or not this is the month to declare that company solvent. They need to program that out across the year. We think that is probably a good safety mechanism as well.

Senator WEBBER—One of the other amendments proposed by the bill increases the limit on the value of ASIC's contracts which do not require ministerial approval from \$250,000 to \$1 million. What type of contracts does ASIC enter into that are valued at over \$250,000?

Mr Drysdale—Property contracts, IT contracts—

Senator WEBBER—Sounds like IT is going to be big.

Mr Drysdale—It is always big—sadly. It could be printing or mail-out. When the ASC was established in 1990, \$250,000 was the number that was in the ASC Act. Most of the other agencies in the Treasury portfolio have had that number increased at some time in the past.

Senator WEBBER—So it is just a catch-up measure to bring you into line with other agencies. One of the other amendments removes the requirement to notify ASIC when a change is held over uncertificated securities. Can you explain the rationale behind this amendment?

Ms Bell—Could you repeat what that is about?

Senator WEBBER—It is my understanding that one of the amendments removes the current requirement to notify ASIC when a change is held over uncertificated securities. Can you explain the rationale behind that change?

Ms Neasey—Certificated securities are currently covered by the charges provisions. This will bring uncertificated securities in line with the charges provisions, in that they will not be covered by the charges provisions—they will be exempted from them. This was a recommendation of the Corporations and Markets Advisory Committee in their report a couple of years ago.

Senator WEBBER—What was their reasoning behind that recommendation?

Ms Neasey—I would have to go back and read it.

Senator WEBBER—Could you perhaps follow that up and bring that back to us?

Ms Neasey—Indeed.

CHAIR—Before concluding, I table a letter dated 24 March 2003 from the Parliamentary Secretary to the Treasurer, Senator Ian Campbell, to Senator Chapman concerning this reference. I thank the witnesses and those who have facilitated this hearing.

Committee adjourned at 6.52 p.m.