

CHAPTER 1

INTRODUCTION

The Corporate Law Economic Reform Program

1.1 In March 1997, the Treasurer, the Hon Peter Costello MP, established the Corporate Law Economic Reform Program (CLERP). The aim of the Program was to reform key areas of the Corporations Law (the Law) to make it easier for new businesses to be established, and to reduce the cost of business regulation.

1.2 The Program was carried out by the Treasury, working closely with the Business Regulation Advisory Group. This Group included representatives from business organisations, the legal and accounting professions, the Australian Stock Exchange and the Sydney Futures Exchange. The Treasurer and the Parliamentary Secretary to the Treasurer, Senator the Hon. Ian Campbell, also consulted directly with business and consumer groups to ensure that reform proposals were canvassed as widely as possible in the community.

1.3 As part of the Program Discussion Papers were released on each of the key areas of reform to the Law during 1997.¹ These Papers were developed in consultation with business groups and other stakeholders. The Papers also contained discussion of the recommendations of the Wallis Inquiry relating to business regulation and market integrity.²

1.4 In April 1998, the Treasurer, released the draft Corporate Law Economic Reform Bill 1998 for public comment. The draft Bill implemented a number of recommendations of the Wallis Inquiry and reform proposals canvassed in the CLERP Papers.

1.5 Following a period of public consultation, the Corporate Law Economic Reform Bill 1998 was tabled in the House of Representatives on 2 July 1998. That Bill had not passed through the Parliament when the recent Federal election was called and therefore lapsed. The Bill was re-introduced into the House of Representatives on 3 December 1998 as the Corporate Law Economic Reform Program Bill 1998.

1 See Corporate Law Economic Reform Program, Proposals for Reform: Paper No.1 (Accounting Standards – Building international opportunities for Australian business); Paper No. 2 (Fundraising – Capital raising initiatives to build enterprise and employment); Paper No. 3 (Directors’ Duties and Corporate Governance – Facilitating innovation and protecting investors); Paper No. 4 (Takeovers – Corporate control: a better environment for productive investment); Paper No. 5 (Electronic Commerce: Cutting cybertape – building business).

2 See Financial System Inquiry, Final Report, March 1997.

1.6 The Bill is in four parts, each part dealing separately with reforms to, Director's Duties and Corporate Governance, Fundraising, Takeovers and Accounting Standards. The Bill in its current form incorporates many of the comments and submissions made on the exposure draft Bill.

The Committee's inquiry

1.7 On 9 April 1998 the Treasurer requested that the Committee examine the provisions of the exposure draft bill. The Committee, after considering the Treasurer's request, agreed to inquire into the provisions of the exposure draft.

1.8 The Committee advertised its inquiry in April 1998 and called for submissions by 6 May 1998. The Committee held public hearings in Canberra on 26 June 1998 and in Melbourne on 13 July 1998.

1.9 In July 1998 the Committee varied its terms of reference for the inquiry to include consideration of the provisions of the Corporate Law Economic Reform Bill 1998 which had then been introduced into the Parliament. However, the Committee's inquiry lapsed as a result of Federal election in 1998.

1.10 Following the re-introduction of the Bill as the Corporate Law Economic Reform Program Bill 1998, the provisions of the Bill were referred to the Committee by the Senate for inquiry and report by 22 April 1999. The Committee re-advertised its inquiry and held further public hearings in Sydney on 22 January 1999 and Canberra on 22 and 23 March 1999.

1.11 This report is based on the submissions and evidence received by the Committee during both its current and previous inquiries. A list of organisations and individuals who provided submissions is included at Appendix 1 to this Report. A list of witnesses who appeared before the Committee is included at Appendix 2.

General comments about the Bill

1.12 Before discussing the issues raised by the Committee's consideration of the Bill in the following chapters, it would be useful to make some preliminary observations.

1.13 As outlined above the Bill has undergone an extensive process of drafting and redrafting through public consultation and discussion. This process began with the release of the CLERP papers and public consultations initiated by Treasury and the Business Regulation Advisory Group. The exposure draft of the Bill, which was released by the Treasurer in April 1998, was also the subject of review and comment. The Bill, which was introduced into Parliament, incorporates many of the comments and suggested amendments from business groups, professional bodies, practitioners and users of the Law.

1.14 There is strong support for both this process and the Bill from those who made submissions to the Committee. For example, the Investment and Financial

Services Association (IFSA) welcomed the legislative provisions of the Bill and declared its support for their introduction.³ Despite some reservations about the arrangements under the Bill, the Australian Accounting Standards Board (AASB) stated that “The AASB agrees wholeheartedly with the main objects of Part 12 of the Bill. It is vital to the credibility of the Australian capital market that the reforms to the accounting standard-setting structure are implemented in a manner which will ensure the objects of the Bill are achieved.”⁴ The Securities Institute of Australia stated that it “supports the reforms proposed in the Corporate Law Economic Reform Program draft legislation” many of which were advocated by the Institute in its submissions to Government.⁵ Similarly, the Australian Stock Exchange supported the reform proposals in the Bill but with minor amendments to the fundraising provisions.⁶ The Australian Chamber of Commerce and Industry summarised its views as follows:

ACCI strongly supports the draft Bill for the following reasons:

- it takes into account all the views put on behalf of business;
- it removes many of the rigidities and “one size fits all” approach in the equity and corporate governance and administration applying under Australia law;
- it seeks to address the challenges of Australian business competing globally;
- in particular, it addresses the shortcomings in relation to cost and availability of longer term patient capital for smaller and medium sized business;
- it takes away disincentives for enterprise and innovation; and
- it addresses the needs of moving to electronic methods of business which will dominate commerce in future years;
- it removes unnecessary and costly impediments to takeovers which are an important part of increasing the efficiency and international potential of Australian enterprises.

The CLERP process is considered to be a model of best practice consultation with the affected parties in policy development. It forms an integral part of a competitive industry policy and recognises the international move to outcome based regulation. It also achieves a careful balance between the need to foster vibrant capital development and the maintenance of prudential investor safeguards and confidence. This should ensure the best outcomes for Australia in terms of future investment, innovation, exports and employment generation.⁷

3 Investment and Financial Services Association, Submission 12, p 2.

4 Australian Accounting Standards Board, Submission 11, p 1.

5 Securities Institute of Australia, Submission 9, p 1.

6 Australian Stock Exchange, Submission 5, p 2,

7 Australian Chamber of Commerce and Industry, Submission 3, pp 1-2.

1.15 The Committee acknowledges these views and expresses its approval for the process of public consultation which the Treasurer, the then Parliamentary Secretary, the Minister for Financial Services and Regulation, and Treasury has undertaken.

1.16 The submissions the Committee received focused on specific provisions of the Bill, which generally dealt with matters of detail rather than broad issues of policy and principle. Comments on the provisions of the Bill ranged widely across the four areas of the Bill dealing separately with fundraising, directors' duties and corporate governance, accounting standards and takeovers.

1.17 The issues discussed in this Report are examined in chapters, which deal with each of the four main areas of reform dealt with in the Bill. Some of the issues raised in submissions based on the provisions contained in the exposure draft have already been addressed through changes to the final Bill.