The Parliament of the Commonwealth of Australia

REPORT ON ASPECTS OF THE REGULATION OF PROPRIETARY COMPANIES

PARLIAMENTARY JOINT STATUTORY COMMITTEE ON CORPORATIONS AND SECURITIES

MARCH 2001

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ISBN 0 642 711097

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DUTIES OF THE COMMITTEE

Section 243 of the *Australian Securities and Investments Commission Act 1989* sets out the duties of the Committee as follows:

The Parliamentary Committee's duties are:

(a) to inquire into, and report to both Houses on:

(i) activities of the Commission or the Panel, or matters connected with such activities, to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; or

(ii) the operation of any national scheme law, or of any other law of the Commonwealth, of a State or Territory or of a foreign country that appears to the Parliamentary Committee to affect significantly the operation of a national scheme law;

(b) to examine each annual report that is prepared by a body established by this Act and of which a copy has been laid before a House, and to report to both Houses on matters that appear in, or arise out of, that annual report and to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; and

(c) to inquire into any question in connection with its duties that is referred to it by a House, and to report to that House on that question.

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CHAPTER 1

SCOPE AND PURPOSE OF THE INQUIRY

Background

1.1 The *First Corporate Law Simplification Act 1995* (the Act), which amended the Corporations Law, changed the financial reporting requirements for proprietary companies. The Act replaced the previous distinction between exempt and non-exempt proprietary companies with a distinction between large and small proprietary companies based on the company's assets, revenue and employees. In February 2000, the Parliamentary Joint Statutory Committee on Corporations and Securities (PJSC) resolved to inquire into the new reporting system.

1.2 The PJSC undertook this inquiry for two reasons. When the new reporting requirements were introduced, the object of the policy was to reduce the reporting obligations of small proprietary companies. Conversely, reporting standards for large proprietary companies which have significant economic impact were strengthened. These companies would be required to prepare accounts, have them audited and lodged with the Australian Securities and Investments Commission (ASIC). The Act also established criteria for granting exemptions if the reporting requirements imposed unreasonable burdens on the companies. In two previous reports in 1995, the PJSC had noted that the large/small distinction might impose significant audit costs. This initial view was strengthened by early and significant indications of problems with the new reporting system. These emerged at the time the PJSC reviewed the Draft Second Corporate Law Simplification Bill 1996 and again, in the context of the PJSC's examination of the 1995-96 ASIC Annual Report. The PJSC decided to defer a review of the large/small test for proprietary companies until the ASIC was able to collect more reliable information on the number and size of companies affected by the change.[1]

1.3 The Treasurer had also foreshadowed a review of the large/small test two years after its commencement "to ensure that its practical operation does not place an undue burden on business."[2] The PJSC considered that the proposed review by the Treasury would be limited in scope and would not address all the problems with the new reporting system. It was important that any review should assess the effectiveness of the large/small test and consider additional measures to enhance the accountability of proprietary companies. An important development in this regard has been the extension of the duties of directors as a result of changes to the Law, such as the

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1 Parliamentary Joint Committee on Corporations and Securities, *Report on the Annual Report of the Australian Securities and Investments Commission and Other Bodies: 1995-96*, June 1997, p 7. See also *Report on the Draft Second Corporate Law Simplification Bill* 1996, November 1996, pp 38-41.

2 Hansard, *House of Representatives*, 12 December 1996, Questions on Notice, p 8648.

Corporations Law Amendment (Employee Entitlements) Act 2000 and the *Corporate Law Economic Reform Program Act 1999*.[3] Common law developments have also created potential new duties of directors to shareholders, creditors and employees of the company.[4]

Previous reports

Report on the First Corporate Law Simplification Bill 1994

1.4 In its March 1995 report, the PJSC was unable to reach an unqualified view on the appropriateness of the large/small test and the criteria used for distinguishing between large and small proprietary companies. The test in the Bill provided that a proprietary company is small only if it satisfied at least two of the following three criteria:

- assets less than $5 million;
- revenue less than $10 million;
- fewer than 50 employees.

1.5 Although an estimated 98 per cent of proprietary companies would be classed as small and accordingly be exempt from the reporting requirements, the PJSC concluded that the three-part test was to a degree arbitrary. Concerns were raised that the two new categories of proprietary companies may result in incorrect classification and inadequate protection for creditors. In evidence to the PJSC, the accounting bodies proposed the reporting entity concept as an alternative to the large/small test. The benefits of the reporting entity concept were twofold: it was the more meaningful test for determining reporting obligations and it was already in use in other parts of the Corporations Law as well as the Accounting Standards.

1.6 However, the PJSC concluded, on balance, that it preferred the large/small test over the reporting entity concept as a basis for distinguishing between proprietary companies. It did so because, by comparison with the three-part test in the Bill, the reporting entity concept "does not provide a test of sufficient certainty to enable an objective assessment to be made of whether a company falls within the entity test."[5] The PJSC also took into account the support for the new reporting system by the ASIC (formerly the Australian Securities Commission) and the Law Council of Australia.

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3 See Parliamentary Joint Statutory Committee on Corporations and Securities, *Report on the Corporations Law Amendment (Employee Entitlements) Bill* 2000, April 2000, pp 7-13. The Act increased the protection for employee entitlements as well as extending the duty on directors not to engage in insolvent trading.

4 See Professor R Baxt, *Do directors owe a duty to employees? Implications of amendments to the Corporations Law and other developments*, Law Council of Australia, 22 July 2000.

5 Parliamentary Joint Committee on Corporations and Securities, *Report on the First Corporate Law Simplification Bill 1994*, 2 March 1995, p 16.

1.7 The PJSC then looked at the particular criteria in the test. It considered that of the three criteria, the threshold tests of assets and revenue were the most important and recommended that serious consideration be given to two options:

- that the employees criterion remain; or
- that the employees test be deleted from the Bill and the test for a large/small proprietary company be on the proposed assets and turnover criteria alone.

1.8 The Government did not agree to amend the Bill. It considered that the test in the Bill provided adequate flexibility. The formulation of the test was designed to achieve an approximate measure of a company's economic significance and the proposal to reduce the criteria would result in "a less appropriate test of a company's economic significance, and accordingly a less appropriate touchstone for the application of corporate financial reporting requirements."[6]

Report on Items 1-4, Schedule 4 of the First Corporate Law Simplification Bill 1995

1.9 The PJSC repeated its concerns about the potential impact of the large/small test on audit costs and the threshold criteria used in the Bill in its report tabled on 30 August 1995. Estimates of these costs ranged from $10,000 to $80,000 annually.

1.10 Four main approaches were suggested to overcome this problem. One option was to amend the test so that fewer companies would be classed as large proprietary companies. A second approach was to extend the ASIC's discretion to exempt companies from the requirement to have their accounts audited. A third option was to alter the requirement thereby avoiding the additional audit costs. Large proprietary companies would be able to rely on their unaudited accounts provided that an external accountant prepared the accounts. A fourth approach was to replace the large/small test with the reporting entity concept.

1.11 The PJSC noted strong concerns that in some cases the audit requirement was not justified.[7] It considered that the problem could be addressed by expanding and clarifying the ASIC's discretion to exempt proprietary companies from the requirement. Accordingly, the PJSC made a number of specific recommendations as to how the ASIC should exercise that discretion:

> ***Recommendation 1***
>
> The Bill be amended to provide that in exercising its discretion under section 313 of the Corporations Law to exempt a large proprietary company, or class of large proprietary companies, from the audit requirement the Australian

6 Hansard, *House of Representatives*, 9 March 1995, p 1988.

7 The Australian Chamber of Commerce and Industry and the Motor Trades Association of Australia stated that "For a number of companies with shareholding owned by family members and with borrowings mainly confined to financial institutions there appears to be a significant new compliance cost without any corresponding net public benefit" .

Securities Commission should have regard to, but not be limited by, the following criteria:

the expected cost or burden of audit;

the expected public interest or benefit of making this information available;

the number of creditors;

the nature and extent of a company's liabilities;

whether it is the first year the company is required to prepare audited accounts;

whether the company is one which is likely to repeatedly move in and out of the large proprietary category over a period of years.

Recommendation 2

The Committee recommends that the exercise of the ASC's discretionary power in the manner described in Recommendation 1 be made subject to a process of public consultation and scrutiny. The Committee also recommends that the ASC include in its Annual Report details of how it has complied with its procedures.

Recommendation 3

The three tests contained in the proposed section 45A, the criteria for exercising the ASC's discretion, the exercise of that discretion and the effectiveness and cost of the process be reviewed by the government and this Committee after a period of two years.

Recommendation 4

In view of the delay in commencement of the legislation, the Committee recommends that the Bill be amended to defer the commencement of the audit obligation on large proprietary companies until the 1996-97 financial year.[8]

1.12 The Government accepted all of the above recommendations and the Bill was amended accordingly.[9] The Government also agreed that ASIC Class Orders should be made following a transparent consultation process and that the ASIC should include details of this in its annual reports.

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8 See Parliamentary Joint Committee on Corporations and Securities, *Report on Items 1-4, Schedule 4 of the First Corporate Law Simplification Bill 1995*, 30 August 1995, pp 13-16.

9 See First Corporate Law Simplification Bill 1995, Amendments to be Moved on Behalf of the Government.

'Grandfathering' of exempt proprietary companies

1.13 Under the previous distinction, exempt proprietary companies were not required to lodge their accounts with the ASIC if they appointed an auditor. The new reporting system would require some of these companies to lodge audited accounts. The Bill proposed that existing companies, which have their annual accounts audited and are large and which continue to operate unchanged ('grandfathered' companies), would not be required to lodge accounts with the ASIC.

1.14 The PJSC at first supported the proposal in its March 1995 report. However, it reconsidered the matter in light of the evidence presented during its reference on the Bill. In its report of 30 August 1995, the PJSC referred to concerns that proposed sub-section 317B(3) would allow a company already being audited, and falling within the large category, to be exempted indefinitely from lodging accounts. A secondary effect of this situation would be "the development of a trade in grandfathered companies." The PJSC recommended that:

> Whilst not within the Committee's terms of reference, the Committee considers that the proposed section 317B(3) (the 'grandfathering' clause) in the Bill be amended to include a sunset period of three years from the date of commencement of the legislation.

1.15 The Government did not agree to amend the Bill to include a sunset period but recognised the need to review the grandfathering provisions as part of the same review recommended by the PJSC.

Conduct of the inquiry

1.16 On 27 January 2000, the Minister for Financial Services and Regulation, the Hon Joe Hockey MP, requested the PJSC to review the test for determining whether a proprietary company is large or small and the requirements for the audit and lodgement of financial statements by proprietary companies. Subsequently the PJSC resolved to undertake a single review, which would include a review of the large/small test foreshadowed by the Treasurer.

1.17 In February 2000, the PJSC advertised for public submissions and indicated that it would review the new reporting system with particular reference to:

- the three criteria comprising the large/small test;
- the appropriateness of having requirements for audit and the lodgement of accounts for some classes of proprietary companies;
- the appropriateness of the criteria for the exercise of the ASIC's discretion;
- the manner in which the ASIC has exercised that discretion; and
- the effectiveness and costs of the process of providing exemptions from the audit requirement.

1.18 The PJSC received 14 written submissions from individuals, proprietary companies, accounting firms and professional organisations. The PJSC held public hearings in Canberra on 28 June 2000 and Melbourne on 30 June 2000. Lists of published submissions and of witnesses who appeared at the hearings are at Appendices 1 and 2.

CHAPTER 2

OPERATION OF THE LARGE/SMALL TEST

Rationale for new classification

2.1 Prior to the 1995 amendments the Corporations Law required all proprietary companies, regardless of size, to prepare financial statements. However, exempt proprietary companies, unless their accounts were audited, were required to lodge key financial data with the ASIC including current assets, non-current intangible assets and non-current liabilities. This information, as the PJSC noted in its report of 2 March 1995, served little or no public purpose.[1] It was often unreliable and was provided up to seven months after it was current. On the other hand, non-exempt proprietary companies were required to lodge full accounts. The basis for the requirement was that these companies, which are ultimately wholly or partly owned by public companies, should be accountable in a public manner.

2.2 While the classification of companies as exempt and non-exempt reflected the status of the company, there was no consistent rationale for identifying companies in which there was a public interest. For example, very large companies, in which there may be a substantial public interest because they employed a large number of people, could be classified as exempt while minor enterprises could be non-exempt. The policy approach adopted was to establish an objective three-part test that reflected the size and economic influence of the company. At the same time, removing the requirement to lodge key financial data would reduce the burden of regulation for the majority of proprietary companies. The policy underlying the new system was stated in the Explanatory Memorandum to the First Corporate Law Simplification Bill 1995:

> Financial reporting requirements under the Law have been reduced for most proprietary companies, but strengthened for companies which have a significant economic impact. The Bill streamlines the regulation of all proprietary companies. Under the new rules, small proprietary companies face a regulatory burden that is no greater, and in significant respects less, than the burden currently faced by exempt proprietary companies.[2]

Summary of proprietary company accounting requirements

2.3 Under the *First Corporate Law Simplification Act 1995*, all large proprietary companies are required to lodge audited accounts with the ASIC within four months

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1 Parliamentary Joint Committee on Corporations and Securities, *Report on the First Corporate Law Simplification Bill 1994*, 2 March 1995, p 31.

2 Explanatory Memorandum, paragraphs 3.15, 6.11.

of the end of the financial year. A proprietary company will be 'large' if it satisfies at least two of the following criteria:

- The consolidated gross operating revenue of the company and the entities it controls (if any) is $10 million or more.
- The value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is $5 million or more.
- The company and the entities it controls (if any) have more than 50 employees at the end of the financial year.

2.4 The amount of a company's consolidated gross operating revenue for a financial year and the value of its consolidated gross assets are to be calculated in accordance with the Accounting Standards.[3] In counting employees for the purpose of the test, part-time employees are to be counted at an appropriate fraction of the full-time equivalent.[4] Unless exempted by the ASIC, large proprietary companies that were not previously required to lodge audited accounts were required to lodge financial statements for the 1995/96 financial year. However, for these companies the requirement that the lodged financial statements be audited applied in respect of financial statements for the 1996/97 financial year. The ASIC further deferred the audit requirement for these companies to years ending on or after 9 December 1997.

2.5 In deciding whether to exercise its discretion to exempt a large proprietary company from the audit requirement, the ASIC is required to take into account factors such as the expected costs and benefits of the company complying with the audit requirement, and any practical difficulties the company faces in complying with the requirement. ASIC Policy Statement 115, *Audit Relief for Proprietary Companies*, and Policy Statement 43, *Accounts and Audit Relief*, outline the circumstances in which the ASIC will consider audit relief.

2.6 Some large proprietary companies are exempt from lodging accounts under section 319(4) of the Law. This provision allows a large proprietary company not to lodge financial statements with the ASIC if it was an exempt proprietary company on 30 June 1994, which has its accounts audited and satisfies certain other conditions. However, the ASIC may require such a company to lodge financial statements and auditor's reports.

2.7 A small proprietary company that is controlled by a foreign company is required to prepare and lodge its own accounts unless the foreign company has lodged consolidated accounts with the ASIC.[5]

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3 Section 45A(6).

4 Section 45A(5).

5 Section 292(2).

2.8 Shareholders with at least 5 per cent of the voting shares in a small proprietary company may require the company to prepare accounts and have them audited.[6] Any financial statements prepared by the company at the request of shareholders must be sent to all shareholders. The ASIC may also require a small company to prepare accounts, have them audited and lodged. It must specify the date by which the documents have to be prepared or lodged.

2.9 All companies nevertheless are required to keep accounting records. These records must correctly explain their transactions and financial position to enable true and fair accounts to be prepared and properly audited in accordance with the Law.[7]

1998 ASIC Report to the Senate

2.10 In accordance with a motion passed by the Senate on 28 September 1995, the ASIC was required to prepare a report on the operation of the large/small test two years and six months after the commencement of the Act. The ASIC's response to the Senate order was dated 5 June 1998 and tabled on 22 June 1998. The 1998 ASIC report was not debated by the Senate. The following is a summary of the findings of the 1998 report:

- 99.3% of all proprietary companies (1,027,146 proprietary companies) which would have been required to prepare financial statements prior to the Act have no financial reporting requirements.
- The reporting requirements for the following companies were unchanged as a result of the Act:
  - (a) 2,101 grandfathered large proprietary companies;
  - (b) 1,215 non-grandfathered large proprietary companies which were previously non-exempt; and
  - (c) 973 small proprietary companies which are controlled by foreign companies and which were previously non-exempt.
- The following proprietary companies are required to lodge financial statements and many will be required to have them audited:
  - (a) 1,592 non-grandfathered large proprietary companies which were previously exempt; and
  - (b) 718 small proprietary companies that are controlled by foreign companies and were previously exempt.[8]

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6 Section 293(1).

7 Section 286(1).

8 Australian Securities Commission, *Report to the Senate: Review of the First Two years of Operation of Certain Amendments to the Corporations Law by the First Corporate Law Simplification Act 1995*, 5 June 1998, p 1.

2.11 Since the tabling of the 1998 report the number of companies which have no financial reporting requirements has increased from 1,027,146 to 1,152,403.[9]

Operation of the large/small test

2.12 According to the 1998 report, the majority of companies supplying information about the large/small test exceeded all the criteria, not just the two criteria necessary to be classified as large proprietary companies. The majority of these companies were well above the criteria comprising the large/small test. Half the companies reported consolidated gross operating revenue which was at least three times the $10 million threshold. Half the companies also reported consolidated gross assets which were at least three times the $5 million criterion. Less than half of the companies had at least two times the 50 employees criterion.[10] In its submission to the PJSC, the ASIC provided updated information on revenue, assets and employees, as well as the number of members, for the year to 8 December 1999:

	Consolidated Gross Operating Revenue	Consolidated Gross Assets	Employees	Members
Number reporting information	1,934	1,934	1,934	1,934
Average	$95.5m	$150.2m	198	2
% not meeting criterion	5.9%	2.8%	36.9%	n/a
First Quartile (25% lower than)	$16.9m	$11.2m	20	1
Second Quartile (50% lower than)	$31.7m	$23.9m	71	2
Third Quartile (75% lower than)	$74.0m	$79.1m	165	3
Highest	$6,312.6m	$31,490.0m	7,835	240

Source: Australian Securities and Investments Commission, Submission 6, Attachment 2, p 4.

9 Australian Securities and Investments Commission, Submission 6, p 3.

10 Australian Securities Commission, *Report to the Senate: Review of the First Two years of Operation of Certain Amendments to the Corporations Law by the First Corporate Law Simplification Act 1995*, 5 June 1998, p 13.

2.13 The ASIC concluded that the information provided in the 1998 report and the updated information "demonstrates that the test satisfies the objectives outlined in the Explanatory Memorandum to the First Corporate Law Simplification Bill."[11]

Applications for audit relief

2.14 As noted earlier, the introduction of the large/small test in 1995 reduced the reporting requirements for 94 per cent of all proprietary companies. However, some previously exempt companies were required to lodge their accounts for the first time, while some were required to have them audited for the first time. Following the release of its policy for audit relief for proprietary companies in November 1996, the ASIC has given some relief to particular classes of companies while a small number of companies have applied for individual relief.

2.15 The table below indicates the number of companies lodging financial statements that are receiving audit relief:

	Financial year ending 9/12/97 to 8/12/98		Financial year ending 9/12/98 to 8/12/99	
	Large proprietary companies	Small proprietary companies controlled by foreign companies	Large proprietary companies	Small proprietary companies controlled by foreign companies
Number of companies lodging notice of audit relief and lodging financial statements	515	13	412	6
Total number of companies lodging financial statements	3,245	1,798	2,501	1,312
Percentage of companies likely to have obtained audit relief	15.9%	0.7%	16.5%	0.5%

Source: Australian Securities and Investments Commission, Submission 6, p 11.

11 Australian Securities and Investments Commission, Submission 6, p 4.

2.16 Under the ASIC Class Order relief, large proprietary companies and small proprietary companies that are controlled by a foreign company may be exempted from the requirement to prepare and lodge financial statements. The ASIC policy also includes class relief for all proprietary companies that meet certain requirements concerning the company being well managed and in a sound financial position. Between 9 December 1995 and 14 July 2000, the ASIC dealt with 102 applications from proprietary companies for audit relief outside its Class Order relief. These applications covered small proprietary companies that are controlled by foreign companies as well as large proprietary companies, but do not include applications which were later withdrawn prior to decision by the ASIC. Of the 102 applications, 81 or 80 per cent of the total were granted. These figures include 41 applications by proprietary companies controlled by foreign companies, 28 of which were granted.[12]

Applications for individual relief

2.17 Since the introduction of the large/small test, the ASIC has only granted relief to two companies that made application for individual relief from a total of 61 applications. The ASIC considered that both companies were effectively small while the remaining applications did not meet the pre-conditions for relief.

2.18 Two of these decisions not to grant relief were appealed to the Administrative Appeals Tribunal. In both cases, the companies argued that the requirement to lodge accounts was inappropriate to their circumstances and imposed unreasonable burdens. (These cases are discussed in Chapter 3 of this report).

2.19 The ASIC advised that its policy for audit relief for proprietary companies was appropriate in the context of the requirements of the Law.

Public access to accounts lodged with the ASIC

2.20 A measure of the importance of the financial statements of large proprietary companies to users of those accounts is how often those documents are accessed on the public record. The ASIC's public database records each access of a company's accounts.

2.21 As the table below shows, the financial statements of the 3,245 non-grandfathered large proprietary companies were accessed 10,549 times on the ASIC database each year, an average of 3.25 accesses per year. This figure is consistent with the information provided in the 1998 report.[13]The following table analyses these accesses by class of proprietary company:

12 Correspondence to PJSC, 17 July 2000.

13 See Australian Securities Commission, *Report to the Senate: Review of the First Two years of Operation of Certain Amendments to the Corporations Law by the First Corporate Law Simplification Act 1995*, 5 June 1998, p 15.

Class of company	Number of accesses from 8/12/97 to 20/2/00	Annualised number of accesses	Number of companies which lodged financial statements in respect of years ending in the 12 months to 8/12/98	Average number of annualised accesses per company lodging financial statements	Number of companies which lodged for years ending in 12 months to 8/12/98 whose financial statements were accessed at least once from 8/12/97 to 20/2/00
Non-grandfathered large proprietary companies	23,266	10,549	3,245	3.25	2,259
Small proprietary companies controlled by foreign companies	4,882	2,214	1,978	1.23	562
Total	**28,148**	**12,763**	**5,043**	**2.53**	**2,821**

Source: Australian Securities and Investments Commission, Submission 6, Attachment 2, p 4.

CHAPTER 3

ISSUES ARISING FROM THE LARGE/SMALL TEST

General criticisms

3.1 The PJSC received 14 written submissions from accounting firms and individual practitioners, large proprietary companies, professional organisations and the ASIC. Although a number of submissions expressed support for the large/small test, the majority gave either qualified support or was critical of the new reporting system. The most common criticisms related to the arbitrary nature and amounts of the threshold limits and the differential reporting for large 'grandfathered' proprietary companies. These submissions highlighted the practical difficulties in distinguishing between companies on the basis of size and financial circumstances and the costs associated with preparing and lodging financial statements.

3.2 A consistent theme of submissions was that the audit requirement applicable to proprietary companies should be based on a cost/benefit of the requirement. If the audit requirement is considered necessary or desirable in terms of public policy, the benefits to the community must be realised and costs to business minimised. For those large proprietary companies that are not exempted the cost burden can be onerous and unwarranted. Several submissions questioned the cost/benefit of the audit requirement for large proprietary companies. These included the Office of Small Business, which commented:

> It is important that the reasons for requiring an audit at all are fully considered and justified. Unless the benefits of retaining the existing audit requirements can be clearly demonstrated as outweighing the costs, the audit requirement should be removed for all proprietary companies. If an audit is considered necessary or desirable on public policy grounds, any benefits must be realised and costs to small business minimised.[1]

Audit costs

3.3 Several submissions focussed on the compliance costs for companies that are required to lodge audited accounts with the ASIC. The Office of Small Business estimated the average audit costs for medium-sized companies at $25,000.[2] The Motor Trades Association of Australia (MTAA), which represents franchised new motor

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1 Office of Small Business, Department of Employment, Workplace Relations and Small Business, Submission 5, p 3.

2 Office of Small Business, Department of Employment, Workplace Relations and Small Business, Submission 5, p 2.

vehicle dealers, estimated the additional audit cost in excess of $20,000.[3] Submissions also referred to the indirect costs to business, including the time spent and resources allocated to non-profitable outcomes. The MTAA commented:

> What has resulted is that many hundreds of family owned Australian companies which are trading profitably and meeting their debts as they fall due are now required to fulfil onerous and costly audit conditions for no real purpose.[4]

3.4 The accounting bodies also presented the results of a 1995 survey by the Institute of Chartered Accountants. The Institute undertook a survey of its members, to which 1,252 responded out of a total of 3,500. The survey identified 3,735 large proprietary companies of which 2,797 (or 75 per cent) were non-reporting entities. The number of large proprietary companies which had not appointed an auditor and were non-reporting entities was 2,132. The majority of these companies (2,068 or 97 per cent) had five or fewer members. The average cost of having the accounts audited was $12,600. Based on these estimates, if a company has only two members but is classified as large, the annual audit costs are $6,300 per shareholder.[5]

3.5 To reduce compliance costs it was proposed that all proprietary companies should be exempted from the requirement.[6] Alternatively, large proprietary companies should be required to provide a simplified profit/loss statement and end of year balance sheet to each shareholder which has been reviewed by a qualified accountant.[7]

Benefits of audit requirement

3.6 Although submissions did not address the benefits of the audit requirement in as much detail, they presented a broad overview of the perceived benefits. The main benefits are summarised as follows:

- improved business operations;
- maintenance of checks and balances;
- evidence of a company's solvency;
- accurate record keeping.

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3 Motor Trades Association of Australia, Submission 7, p 15.

4 Motor Trades Association of Australia, Submission 7, p 8.

5 Correspondence to the Chairman of the PJSC, 7 July 2000.

6 Office of Small Business, Department of Employment, Workplace Relations and Small Business, Submission 5, p 3.

7 National Institute of Accountants, Submission 8, p 8.

3.7 To some degree however the benefits were less apparent where there was no separation between ownership and management of a company as occurs in many large proprietary companies. Unlike public companies, proprietary companies have a restricted ownership. This limited shareholding means that owners of the business are involved, at least in some way, with the management of the business or are closely related to someone who is. As the National Institute of Accountants (NIA) observed, shareholders are more like directors of the company than normal shareholders and as such "they have a greater responsibility to make themselves aware of the position of the business and have greater access to such information. This suggests that there is less of a need to make public reports that would be expensive and provide no more than what should already be known".[8]

Commercial privacy

3.8 Many private companies are operated by owner/managers who closely guard their financial information from competitors. Several submissions raised the issues of privacy and the use of a company's financial statements by rival companies. Although these companies previously lodged key financial data they are now concerned about commercial privacy and the effects of providing price sensitive information to their competitors.[9] Prior to the introduction of the large/small test, the criteria for reporting was based on the status of the company in question. The classification of companies as exempt proprietary companies enabled those companies that were privately owned to maintain their commercial privacy. Mr Ron Mann, the sole shareholder/director of Gram Engineering Pty Ltd, stated that as a consequence of the disclosure of his company's financial details his business was vulnerable to industry competitors who were larger and more diversified:

> In my case, I can see the negative effects of placing all my company's financial information on public record. I have no objections to my financial reports being held by ASIC, but not placed on public record. As I have mentioned earlier, my company specialises in the manufacturing of pre-painted steel fencing. My two major competitors, BHP Building Products – a part of the total BHP Steel Group and Metroll Pty Ltd – a major roofing/other steel products supplier, will have access to all my detailed financial information and able to use them to their advantage. The financial information (re fencing) of the company's competitors are hidden amongst all their other business activities, therefore putting my company at a strategic disadvantage.[10]

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8 National Institute of Accountants, Submission 8, p 8. See also Mr Gerard Meade, Committee Hansard, 30 June 2000, CS32.

9 Mr Stuart Grant, Committee Hansard, 28 June 2000, CS2-3.

10 Gram Engineering Pty Ltd, Submission 13, p 2.

ASIC Class Orders

3.9 Under section 341 of the Corporations Law, the ASIC has the power to make Class Orders relieving companies from some or all of the requirements to prepare, lodge and have audited a financial report. The following is a list of current ASIC Class Orders in relation to the reporting requirements of proprietary companies:

- Class Order 98/0098, *Small proprietary companies which are controlled by a foreign company but which are not part of a large group*;
- Class Order 98/0099, *Anomalies preventing certain large proprietary companies from being grandfathered*;
- Class Order 98/1417, *Audit relief for proprietary companies*; and
- Class Order 98/1418, *Wholly-owned entities*.

3.10 While these Class Orders have reduced financial reporting requirements for some proprietary companies, they have also added to the complexity of the reporting rules. In some cases the conditions of the Class Orders have been unnecessarily onerous. Several submissions pointed to the requirements in CO 98/0098 and 98/1417 as particularly onerous and lacking flexibility.[11] In particular, the Office of Small Business noted that the gearing ratio of 70 per cent in CO 98/1417 was arbitrary and precluded some large proprietary companies from applying for audit relief which would otherwise meet the conditions of the Class Order.[12]

Relief from lodging financial statements - Incat Australia Pty Ltd and D G Brims and Son Pty Ltd

3.11 One of the companies that sought relief from the reporting requirements was the Incat group of companies (Incat Australia Pty Ltd, Incat Chartering Pty Ltd and Incat Tasmania Pty Ltd). The companies, which are categorised as large proprietary companies, are builders of aluminium passenger ferries for the export market and employ 1,000 people. The Incat companies sought relief from lodging financial statements for the years ending 30 June 1996, 1997 and 1998 on the grounds that the requirement to lodge financial reports:

- imposed an unreasonable burden on the companies and created a “competitive disadvantage”;
- imposed an unreasonable burden on an officer of the companies; and
- was inappropriate in the circumstances of the companies.

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11 See Price Waterhouse Coopers, Submission 1, pp 5-7.

12 Office of Small Business, Department of Employment, Workplace Relations and Small Business, Submission 5, p 3.

3.12 Incat's rationale was that such lodgement would lead to a 'competitive disadvantage' in that its customers and competitors in the market would be able to establish Incat's profit margin.[13] While the ASIC accepted that customers would be able to make precise estimates of Incat's average profit margin on ferries built, the more precise information would not disadvantage Incat because its customers could already make an approximate estimate of its profit margin. The ASIC also accepted that it would be possible for Incat's competitors to estimate Incat's profit margins from its accounts, albeit with less precision than its customers. The ASIC concluded that even without access to Incat's financial statements, customers and competitors could make a rough but valid estimate of Incat's costs and profit margins. The ASIC's decision not to grant relief was affirmed by the Administrative Appeals Tribunal (AAT).[14] An appeal by Incat to the Federal Court was dismissed on 4 February 2000.[15]

3.13 In another similar case D G Brims and Sons Pty Ltd sought relief from lodging its 30 June 1997 financial statements. The basis for seeking relief was that it would impose unreasonable burdens, in that by lodging the financial report the company would be left at a competitive disadvantage with suppliers and customers. Following the ASIC's decision not to grant relief, the company sought a review of the decision by the AAT. In this situation the applicant was successful, with the AAT finding that the company had met the criteria for relief. The AAT decided that the compliance with the requirement "would be inappropriate because the public interest in the lodgement of accounts is outweighed in this case by the potential for the company to be subjected to price competition from major competitors with the inherent potential to make the company no longer financially viable."[16]

Overall compliance

3.14 As acknowledged in the ASIC report to the Senate, there is currently no means of identifying which large proprietary companies have failed to comply with the reporting requirements. In particular, non-grandfathered proprietary companies, which do not lodge accounts and are not granted relief, are not required to confirm they are small and not controlled by a foreign company. Although there is no estimate of the number of large proprietary companies affected, the ASIC believed that some companies may not have fully understood their obligations and consequently failed to lodge accounts or other information.

3.15 A further concern is the use of trusts and the restructuring of companies to avoid financial reporting obligations, a practice confirmed by the accounting firm

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13 Mr Lance Balcombe, Committee Hansard, 30 June 2000, CS 65.

14 AAT No T98/130, 9 September 1999.

15 *Incat Australia Pty & Anor v Australian Securities and Investments Commission*, No T23 of 1999, 4 February 2000.

16 AAT No Q1998/296, 25 June 1999, paragraph 27.

Atkinson Gibson.[17] Some proprietary companies may restructure their businesses to bring them below the threshold limits in the large/small test and hence avoid the reporting requirements of the Law:

> Anecdotal evidence suggests that many economically significant businesses are conducted through trusts and other structures which are neither companies nor disclosing entities. These trust and other structures are not required to prepare or lodge accounts under the Corporations Law…It is possible that some proprietary companies may reorganise their affairs such that they cease to be large and are no longer subject to the reporting requirements of the Law. For example, the business could be transferred into a trust or a large business could be spread across a number of companies owned directly by individuals, each of which is a small proprietary company.[18]

Unlevel playing field and compliance with the Accounting Standards

3.16 The ASIC report to the Senate also advised that the existing Law has created an unlevel playing field between different types of entities in terms of their financial reporting obligations. In particular, non-corporate entities such as family trusts and grandfathered large proprietary companies are not required to lodge financial statements.[19] Several submissions expressed concern that some non-grandfathered large proprietary companies could be placed at a disadvantage to their competitors who are grandfathered and are not required to lodge financial statements.[20] According to the ASIC, there are 1,592 non-grandfathered proprietary companies which were previously exempt that are now required to lodge financial statements. Mr Gerard Meade, Chairman of the Legislative Review Board, Australian Accounting Research Foundation, stated that differential reporting was not in the public interest:

> **Mr Meade**—In terms of grandfathering, a number of people who have put in submissions have contended that grandfathering creates an unlevel playing field. We would certainly support that contention in that we have two levels of disclosure by large proprietary companies. Those that were not grandfathered—that is, they were not previously exempt proprietary, they did not have audits conducted—are required to prepare financial reports under the Corporations Law, whereas grandfathered large proprietary companies are not. Having that differential level is seen as something which is really not in the public interest. In terms of companies restructuring, there certainly have been examples where companies and groups have

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17 See Atkinson Gibson, Submission 2, p 2.

18 Australian Securities Commission, *Report to the Senate: Review of the First Two years of Operation of Certain Amendments to the Corporations Law by the First Corporate Law Simplification Act 1995*, 5 June 1998, pp 18-19.

19 Australian Securities and Investments Commission, Submission 6, pp 5-6.

20 See for example CPA Australia and the Institute of Chartered Accountants in Australia, Submission 10, pp 9-10 and Atkinson Gibson, Submission 2, pp 1-2.

> restructured with the objective of avoiding classification as a large proprietary company. Once again, that is something that is not desirable, but it is one implication of the small and large test.[21]

3.17 The ASIC also commented on the quality of financial statements lodged and the need for all entities lodging financial statements to comply with at least certain minimum requirements of Accounting Standards to ensure financial statements are prepared on a comparable basis.[22] The ASIC advised that as the full requirements of the Accounting Standards applied only to reporting entities it was possible for large proprietary companies, which claim not to be reporting entities, to disregard those requirements in preparing financial statements.[23] Some of the practices included not recording liabilities for employee entitlements and not depreciating non-current assets. Mr Tom Ravlic, a financial commentator, noted by way of example that two comparable large proprietary companies could produce different financial results depending on their compliance with the Standards:

> Problems have emerged in the past few years with companies required to lodge documents with the Commission putting forward documents that do not comply fully with accounting standards. The Australian Securities and Investments Commission highlighted a handful of companies almost two years ago in a private meeting with the Big Five accounting firms to indicate the sort of non-compliance they found objectionable. The companies looked at were clearly large proprietary companies, but because they considered themselves non-reporting entities they chose not to comply with accounting rules that produce a lower reported result. Two companies with the same assets, same revenues and same expenses could end up with different reported results because one chose to comply – quite properly – with the complete suite of accounting standards and the other sought to apply cosmetic surgery to its numbers for a better look.[24]

3.18 However, as the ASIC advised the PJSC, the reports of companies must still give a true and fair view. The ASIC is of the opinion that this would require all large proprietary companies to observe the recognition and measurement provisions of the Accounting Standards.

Availability of Accounting Standards

3.19 The NIA advised that the Accounting Standards are important for the production of financial reports and are designed to improve the running of businesses. Although the Standards are statutory instruments and referred to in the Corporations Law, they are not freely available on the Internet as are other forms of legislation:

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21 Mr Gerard Meade, Committee Hansard, 30 June 2000, CS 33.

22 Australian Securities and Investments Commission, Submission 6, p 7.

23 See Mr David Knott, Committee Hansard, 30 June 2000, CS 51.

24 Mr Tom Ravlic, Submission 3, p 1.

> This can lead to companies either ignoring them or being oblivious to the existence of the Standards. Neither is a welcome outcome. Free access through the Internet is essential to improve the performance of business and encourage compliance. Maintaining barriers to accessing Standards allows private legislation to govern a public duty. If tax and other legislation that affects business is relatively accessible, then why are the Standards instruments not in a similar position? It seems wholly unfair to expect compliance with the Standards when so few have access to them. In order to reverse this anomaly, the NIA believes the Accounting and Audit Standards should be made freely available on the Internet, this will help reduce compliance costs and improve compliance with the Standards.[25]

3.20 Although it did not seek a response to the NIA's proposal from the Australian Accounting Standards Board, the PJSC believes that the proposal has considerable merit. The improved accessibility of the Standards will enhance the quality of information in financial reports and encourage compliance by proprietary companies as well as public companies.

Alternative reform options

3.21 In addressing the effectiveness of the new reporting system, submissions recommended various changes to the large/small test that would exempt a larger number of proprietary companies or extend the scope of the test to include companies which are presently exempt. Other options for reform included the reinstatement of the previous test of 'exempt proprietary company' and replacing the large/small test with the reporting entity concept.

Reporting entity concept

3.22 The accounting bodies proposed replacing the current test with the reporting entity concept as the basis for financial reporting. The main advantage of the reporting entity concept was that it was generally recognised as the most appropriate test for determining reporting obligations, and, in addition, was not based on arbitrary criteria.[26] The AASB Accounting Standards define a reporting entity as:

> *An entity (including an economic entity) in respect of which it is reasonable to expect the existence of users dependent on general purpose financial reports for information which will be useful to them for making and evaluating decisions about the allocation of scarce resources, and includes but is not limited to the following:*
>
> *(a) a listed corporation*

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25 National Institute of Accountants, Submission 8, pp11-12. See also Mr Gavan Ord, Committee Hansard, 30 June 2000, CS 44.

26 See Mr Gerard Meade, Committee Hansard, 30 June 2000, CS 33.

(b) a borrowing corporation

(c) a company which is not a subsidiary of a holding company incorporated in Australia and which is a subsidiary of a foreign company where that foreign company has its securities listed for quotation on a stock market or those securities are traded on a stock market.

3.23 Underlying the rationale for adopting the reporting entity concept is the view that the Law should only impose reporting obligations on companies that are reporting entities, as it is only these entities that have dependent users of financial reports. Some entities will almost always be characterised as reporting entities, for example, disclosing entities, publicly listed companies, listed trusts and other companies which raise funds from the public. However, there are other types of entities that do not exhibit the characteristics of a reporting entity. They include some small proprietary companies, sole traders, family trusts, partnerships and wholly-owned subsidiaries of Australian reporting entities. These entities are outside the scope of the Corporations Law and are normally exempt from preparing general purpose financial reports in accordance with the Accounting Standards:

> If a proprietary company either does not have readily identifiable users who are dependent on the company providing them with financial information, or it has users, but they are able to demand financial information from the company (e.g. a major lender), then there should be no requirement for these companies to prepare and lodge financial reports. Alternatively, where there are users who do not have access to financial information from a proprietary company tailored to their specific needs, the company should prepare general purpose financial reports.[27]

Modifying the threshold limits

3.24 There was a general view that the criteria comprising the large/small test are somewhat arbitrary. The MTAA, which was concerned about the additional costs associated with the audit requirement, recommended that the current assets, revenue and employee threshold limits should be doubled.[28] This change was strongly supported by the Office of Small Business, which noted that the current assets and revenue limits are too low and did not take account of high volume/low margin businesses. As a result manufacturing companies that are capital and labour intensive have a higher representation in the large category compared to other industry sectors.[29] The accounting firm Price Waterhouse Coopers also raised the practical difficulties in classifying a proprietary company as large or small on the basis of threshold limits that are applied only at the end of the financial year:

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27 CPA Australia and the Institute of Chartered Accountants in Australia, Submission 10, p 6.

28 Motor Trades Association of Australia, Submission 7, p 17.

29 Office of Small Business, Department of Employment, Workplace Relations and Small Business, Submission 5, p 3.

> There are some proprietary companies whose activities are seasonal or who, for example, may negotiate significant new business immediately prior to the end of their financial year which cannot be deferred until after the end of the financial year for commercial reasons. Such proprietary companies may then be caught under either of these tests. Whereas we acknowledge that, within certain limits, the tests also provide an opportunity for proprietary companies to structure their affairs in such a way as to avoid being classified as large, the classification can be somewhat artificial for proprietary companies that are temporarily affected by seasonal or other changes and which at other times throughout the financial year would be no different from many other proprietary companies which, on the basis of the criteria, are classed as small.[30]

3.25 Mr Ian Langfield-Smith, Lecturer at the Department of Accounting and Finance, Monash University, recommended that companies classed as large should also include any proprietary company that has more than 20 members.[31] Other suggestions for improvement involved incorporating the following additional criteria to the large/small test:

- a return on capital, to take account of businesses which have large capital outlays but fluctuating margins[32]; and
- a debt to equity ratio, to bring small proprietary companies that are highly geared within the reporting system.[33]

Exempt proprietary company

3.26 The Australian Institute of Company Directors (AICD) strongly supported the reinstatement of the previous test. It advised that proprietary companies should be classified according to the shareholding of the entity. In particular, there appeared to be two broad groups of proprietary companies based on ownership:

- family-owned types of companies; and
- subsidiaries of disclosing entities.

3.27 The AICD recommended that the requirement to prepare and lodge audited financial statements with the ASIC should only apply to subsidiaries of disclosing entities, while companies in the first group should be required to apply all the measurement requirements of the Accounting Standards. The existing exemption to wholly owned subsidiaries should continue.[34] In addition, the AICD recommended

30 Price Waterhouse Coopers, Submission 1, p 2.

31 Mr Ian Langfield-Smith, Submission 11, p 5.

32 National Institute of Accountants, Submission 8, p 2.

33 Price Waterhouse Coopers, Submission 1, p 2.

34 Australian Institute of Company Directors, Submission 9, p 2.

that as part of a reversion to the previous test, all directors of companies be required to sign and lodge a declaration of the company's solvency with the annual return. The AICD acknowledged that a declaration of solvency would provide some assurance to the community at large that the company is a solvent entity and is able to meet its future obligations. This may also reassure creditors and employees about the company's financial position, as well as making directors more responsible for the affairs of the company by focussing attention on their current obligations for solvency:

> **Mr Service**—We have been discussing this issue, because the institute is very committed to transparency in those organisations which have a general responsibility to the public; that is, those who raise capital, borrowings or deal with the public on a large scale where there is a wide interest in their solvency. One of the things we believe ought to happen, particularly if the committee is of a mind to get rid of the present large/small definition, is that every company should have to have all its directors sign and lodge with its annual return a declaration of solvency. We think that that, amongst other things that are of public importance, will actually make directors really think about this solvency issue. We are all seeing situations in the courts where directors simply have not addressed their minds to whether or not their companies are solvent. Whilst as shareholders they may suffer, very often a lot of other people suffer as well.
>
> I think it is fair to say the institute would not even be uncomfortable if you were to recommend that proposal and that part of it ought to be that, when a company has signed its declaration of solvency, it should have an obligation to give a copy of that declaration to every one of its employees. They are one of the groups of people that need protection and, I have to say, are not adequately protected in fact by the law at the moment. The average employee does not go to ASIC and say, 'Can I look at this company's accounts?' Employees ought to know that their employer is solvent. We think, in terms of public policy, that would be quite effective in really making directors think about what their responsibilities are. They already have those responsibilities but, clearly, some of them do not address them.[35]

35 Mr James Service, Committee Hansard, 28 June 2000, CS 4.

CHAPTER 4

CONCLUSIONS AND RECOMMENDATIONS

General conclusions

4.1 The PJSC concluded that there are fundamental conceptual and practical problems with the new financial reporting system for proprietary companies. Because of these problems the new system has not achieved the objectives set for it. While the new system has eliminated reporting requirements under the Corporations Law for 99.4 per cent of all proprietary companies, small proprietary companies are still subject to the full requirements of the Accounting Standards if they meet the definition of a 'reporting entity' as defined in the Standards. At the same time, small proprietary companies are less accountable in a public manner. On the other hand, proprietary companies which are classified as large according to the large/small test but are non-reporting entities can disregard the full requirements of the Standards. Other objectives of the system, such as reducing compliance costs and eliminating the complexity of the reporting rules, have not been met for the same reasons.

4.2 The PJSC was particularly concerned about the complexity of the rules for determining the reporting requirements of proprietary companies. Although in many cases applying the requirements of the Law, that is the large/small test, involves the application of threshold limits, the rules for determining reporting obligations have proven to be complex, unnecessarily onerous and costly. This is largely due to:

- an inconsistency between the reporting requirements under the Law and the reporting entity concept of the existing accounting standards;
- the existence of ASIC Class Orders which are not widely understood; and
- the ASIC's discretion to grant relief from the reporting requirements.

Inconsistent requirements

4.3 As the ASIC and the accounting bodies noted in their submissions, the introduction of the large/small test has created an inconsistency in relation to the reporting requirements of proprietary companies.[1] The inconsistency arises because the Accounting Standards contain a separate test for determining a company's financial reporting obligations. As the Law stands, large proprietary companies are required to prepare financial reports, which include financial statements made out in accordance with the Standards. However, the Standards apply the reporting entity test

1 See Australian Securities and Investments Commission, Submission 6, p 7 and CPA Australia and the Institute of Chartered Accountants in Australia, Submission 10, pp 7-9.

to determine which companies must comply with the full requirements of the Standards when preparing their accounts. As the accounting firm, Ernst & Young noted, "since the reporting entity concept is recognised in the Accounting Standards, it is still possible for a large proprietary company to argue that it is not a reporting entity and therefore prepare financial statements that do not comply with the Accounting Standards."[2] According to the ASIC, many companies appear to take the view that they can disregard those requirements completely as the full requirements of many Accounting Standards apply only to reporting entities.[3] Conversely, small proprietary companies, which no have reporting requirements under the Law, are required to prepare general purpose financial statements if they are reporting entities, regardless of whether it is a small or large proprietary company. While in many cases applying the large/small test and the reporting entity concept result in the same outcome, and hence the reporting requirements are the same, there are often situations where this is not the case.

4.4 The ASIC has recently reviewed the application of the reporting entity test and issued a draft information release which outlines the accounting requirements applicable to both reporting and non-reporting entities.[4] The draft release advises that all entities reporting under Chapter 2M of the Corporations Law, whether classified as reporting or non-reporting entities, must apply the recognition and measurement requirements of the Standards "in order to determine the financial position and profit or loss of the entity." Non-reporting entities must also consider disclosures that are necessary to give a "true and fair view" even though they may not be directly prescribed by the Standards. This would include disclosure according to Accounting Standards of significant related party transactions (AASB 1017) and the classification of financial instruments (AASB 1033). In its written submission and evidence to the PJSC, the ASIC expressed concern over the incorrect classification of some entities and the level of disclosure in financial statements:

> ASIC reviews of financial reports have revealed that some companies which claimed to be non-reporting entities should have been classified as reporting entities. The practices of some companies that claimed not to be reporting entities included not recording liabilities for employee entitlements and not depreciating non-current assets. The draft release outlines ASIC's view that the current Law requires the measurement and recognition requirements of accounting standards to be applied to both reporting entities and non-reporting entities so that financial reports reflect all assets, liabilities, revenues and expenses. If the measurement and recognition requirements are not applied, there is no assurance that a company's balance sheet reflects all and only all assets and liabilities, and that a company's profit and loss statement reflects all and only all revenues and expenses. The net assets and

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2 Ernst & Young, Submission 14, p 2.

3 See Australian Securities and Investments Commission, Submission 6, p 7.

4 See Australian Securities and Investments Commission, Submission 6, Attachment 4.

> profit/loss of each entity could be determined at the whim of their directors and the results of different entities would not be comparable.[5]

4.5 The submissions from Incat Tasmania Pty Ltd, the National Institute of Accountants (NIA) and the accounting bodies also addressed at length the inconsistency in reporting requirements. In the view of the PJSC, this inconsistency is the main reason for the complexity that exists in determining the reporting requirements of proprietary companies. It has also lead to the incorrect classification of entities as non-reporting entities and the resulting non-compliance with the relevant accounting standards. The existence of the anomaly also has implications for the accountability of proprietary companies in a public manner and the quality of financial information lodged with the ASIC. As the ASIC draft release noted, many companies that were incorrectly classified as non-reporting entities had a large number of creditors and employees and it was "reasonable to expect the existence of users dependent on general purpose financial reports."[6] The PJSC believes that reporting and non-reporting entities, which hold out their financial reports to be general purpose financial statements, must comply with the recognition and measurement requirements of the Standards. This would be consistent with the provisions of the Law requiring financial reports to give a "true and fair view".

ASIC's discretionary powers to grant relief

4.6 Section 342(1) states that to make an order under section 340 (specific exemption orders) or 341 (Class Orders), the ASIC must be satisfied that complying with the relevant requirements of Parts 2M.2, 2M.3 and 2M.4 relating to financial records, financial reporting, and the appointment and removal of auditors would:

(a) make the financial report or other reports misleading; or

(b) be inappropriate in the circumstances; or

(c) impose unreasonable burdens.

4.7 Section 342(2) sets out the criteria which the ASIC must have regard to in deciding whether the audit requirement would impose unreasonable burdens. They include the expected cost/benefits of compliance and any practical difficulties faced by the company in complying with the audit requirement. Section 342(3) requires the ASIC to take account of several factors in assessing the benefits under section 342(2).[7]

4.8 The majority of submissions advised that the criteria for audit relief in sections 342(2) and (3) are appropriate, although the NIA suggested two additional criteria to which the ASIC should have regard, namely the company's past compliance

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5 Australian Securities and Investments Commission, Submission 6, p 8. See also Mr David Knott, Committee Hansard, 30 June 2000, CS 51.

6 Australian Securities and Investments Commission, Submission 6, Attachment 4, p 4.

7 These provisions reflect the recommendations by the PJSC in its 30 August 1995 report.

history and the type of relationship between shareholders. But the real issues in relation to the granting of relief were the ASIC's discretionary powers to grant relief from the lodgement of financial statements and its interpretation of the criteria in section 342.[8] As stated by the accounting firm, Atkinson Gibson, the ASIC's discretionary powers and the process of applying for relief are a disincentive for many companies to seek relief:

> Some of my clients have little faith in the exemption process given their perception that exemptions are rarely granted. This does not provide any incentive for them to engage in the exemption process.[9]

4.9 Submissions drew attention to two cases where a company sought relief from the lodgement of its financial statements: Incat Australian Pty Ltd and D G Brims and Sons Pty Ltd. As noted in Chapter 3 of this report, both cases were similar in so far as the claim for relief was based on the issue of unreasonable burden in that by lodging financial statements the companies would be at a disadvantage with their competitors. The AAT upheld the ASIC's decision not grant relief in one case but found that relief should be granted to the applicant in the other case. Although the subject of both decisions was based on the Law as it was prior to the *Company Law Review Act 1998* (prior to 1 July 1998), they illustrate the difficulties that still apply in the Law, in particular to section 342.

4.10 The two cases also highlight the inconsistencies that can occur when the determination of a company's reporting requirements are left to the interpretation of the criteria in section 342 by the ASIC and the AAT. There was also a general view among the submissions that in many instances relief should be granted and the requirements for relief, which are set out in the ASIC policy statements, are unnecessarily onerous and restrictive.[10] The NIA reflected the comments of submissions in stating that:

> Most firms would not seek the relief if they did not honestly believe it is required. Related to this is the issue of what factors ASIC takes into account when coming to its conclusion. The NIA believes that paragraph 342(2)(e) of the Corporations Law should be interpreted as widely as possible to give companies every opportunity to prove that it would be an unreasonable burden or is inappropriate in the circumstances to require them to comply. Further, the requirements themselves for seeking relief should not be made so onerous as to make it difficult to seek relief, they should be simplified and be inexpensive to comply with. There is no point requesting relief from

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8 See for example Mr Ian Langfield-Smith, Committee Hansard, 28 June 2000, CS 15-17 and Mr Reece Agland, Committee Hansard, 30 June 2000, CS 43.

9 Atkinson Gibson, Submission 2, p 2. See also National Institute of Accountants, Submission 8, p 10.

10 For example, ASIC Policy Statement 43, *Accounts and audit relief*, paragraph 27, describes the only circumstance where it will grant relief on the grounds of 'competitive disadvantage'.

> one set of requirements if to do so requires the same amount of time and expense.[11]

Unlevel playing field and 'grandfathered' large proprietary companies

4.11 In its August 1995 report, the PJSC recommended that the "grandfathering clause" in the First Corporate Law Simplification Bill should be subject to a three-year sunset provision. This would have the effect of eliminating the differential regulation of large proprietary companies. The PJSC could see no basis for regulating some large proprietary companies differently from other large proprietary companies. If the rationale for requiring large proprietary companies to lodge audited accounts was that they exercised significant economic influence and it was therefore reasonable to expect potential users of their accounts, then all large proprietary companies should be subject to the same reporting requirements. Exemptions or the granting of relief for large proprietary companies, the PJSC argued, should only be available if, in the particular circumstances of the company, the requirements imposed an unreasonable burden.[12] The principal recommendations in the August 1995 report addressed these circumstances.

4.12 The PJSC concluded that the grandfathering arrangements are a significant shortcoming of the new reporting system, particularly as these companies comprise a high proportion of the population of large proprietary companies. According to the ASIC report to the Senate, approximately 42 per cent of all large proprietary companies are 'grandfathered'.[13] As the ASIC report to the Senate acknowledges, this situation has created an unlevel playing field through information asymmetry. The grandfathering of certain large proprietary companies has placed new entrants and smaller, less diversified companies at a competitive disadvantage and encouraged a market in grandfathered companies.

4.13 The unlevel playing field has also imposed barriers to effective competition and increased the likelihood of market inefficiencies. The accounting firm Atkinson Gibson described the anti-competitive impact of the reporting requirements on large proprietary companies which are not grandfathered:

> Some of my clients are competing against large Australian companies and/or multi-national companies. Some are finding the commercial marketplace a very hostile environment. They are concerned that they could be the target of a takeover by a larger predatory company/and or "squeezed"

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11 National Institute of Accountants, Submission 8, p 10.

12 See Parliamentary Joint Committee on Corporations and Securities, *Report on Items 1-4, Schedule 4 of the First Corporate Law Simplification Bill 1995*, 30 August 1995, pp 15-16.

13 Australian Securities Commission, *Report to the Senate: Review of the First Two years of Operation of Certain Amendments to the Corporations Law by the First Corporate Law Simplification Act 1995*, 5 June 1998, p 18.

> in the market place by a large competitor who has a disproportionately larger financial resource.
>
> Such activity is not uncommon and involves predatory pricing and poaching of staff. Thus the issue makes some of my clients feel very vulnerable and view the requirement by government for them to make financial information public as an act which at the very least weakens their position and at worst could lead to the demise of their business. This is a serious issue to them.[14]

Insolvent trading

4.14 Financial accounts and the auditing of them are important measures of corporate governance. Quite apart from their value to directors and shareholders, they help to ensure that those who deal with the company, for example, creditors and employees, can be confident in their dealings with it. Creditors and other users of financial statements are interested in knowing a company's revenues, assets and liabilities, and, if the company is trading actively, whether the company is solvent regardless of its size and economic impact. Employees also have an expectation that the company can meet its current and future obligations and their entitlements will not be threatened. It is important therefore that creditors, potential creditors and others are able to make appropriate decisions confident in the information that is disclosed by the company.

4.15 The PJSC believes that as a result of recent changes to the Law there is a greater need for directors to address their current obligations for solvency. One of the changes to the Law introduced by the *Corporations Law Amendment (Employee Entitlements) Act 2000* was to extend the existing duty on directors not to engage in insolvent trading. Section 588G of the Law prohibits insolvent trading by directors. The Employee Entitlements Act extends that prohibition so as to place directors under a duty not to engage in a non-debt uncommercial transaction.[15] Directors who breach this new duty are personally liable for the uncommercial transaction. This new duty on directors provides creditors and employees with an additional safeguard beyond the existing prohibition on insolvent trading. As the PJSC's report on the Employee Entitlements Bill noted, the amending legislation was aimed at companies that are structured and managed so as to deliberately fail and therefore avoid their obligations to creditors and employees.[16]

4.16 A shortcoming of the large/small test is the exclusion of companies in which there may be a significant public interest. These companies are not required to prepare

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14 Atkinson Gibson, Submission 2, pp 1-2.

15 Section 588FB of the Law defines 'uncommercial transaction' as a transaction that a reasonable person in the company's circumstances would not have entered into having regard to the benefits and detriment to the company of entering into a transaction and the respective benefits to other parties to the transaction.

16 See Parliamentary Joint Statutory Committee on Corporations and Securities, *Report on the Corporations Law Amendment (Employee Entitlements) Bill* 2000, April 2000.

or lodge accounts, and hence are less accountable in a public manner. As the ASIC report to the Senate acknowledges, there are likely to be companies that are excluded because they do meet the current threshold limits which have creditors, potential creditors, employees and others who would access those companies' accounts if they were publicly available.[17] Conversely, where a company has prepared and lodged accounts, there is the question of the value of the financial report to creditors and other users.

Reform options

4.17 A number of reform options were proposed to address the shortcomings in the new system. The first option was to replace the large/small test with the reporting entity concept. The option advocated by the accounting bodies would require only those companies meeting the reporting entity test in the Accounting Standards to prepare and lodge audited accounts. If the reporting entity concept is not adopted, the second option would be to retain the existing large/small test with minor changes. Several submissions favoured maintaining the large/small test and improving its efficacy. This would be achieved by removing the grandfathering provisions and increasing the threshold limits for large proprietary companies. The third option was to reinstate the previous distinction between exempt and non-exempt proprietary companies as advocated by the AICD. Under this option, all company financial statements that are required to be lodged with the ASIC would be audited.

4.18 The PJSC was not persuaded that the large/small test should be retained either in its current form or with the changes suggested to improve the efficacy of the test. The use of an arbitrary albeit quantitative test can result in some companies being incorrectly classified and some companies, in which there is a significant public interest, not having to prepare and lodge financial statements. The PJSC believes that the operation of the large/small test will continue to be ineffective if the reporting requirements can be circumvented and if the ASIC is unable to identify which large proprietary companies have failed to comply with their reporting obligations.

4.19 Reporting requirements under the Law and those in the Accounting Standards serve different purposes. The former are used to determine which proprietary companies need to prepare financial statements and have them audited, and the latter concept is applied to proprietary companies that are required to prepare financial statements and have them audited. While replacing the large/small test with the reporting entity concept would align reporting requirements under the Law with those in the Accounting Standards, the PJSC believes that the current definition and application of the concept is impractical and relies on a subjective judgement. It is open for different people (directors and auditors who are required to make such a determination) to arrive at different conclusions as to whether a particular company is

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17 Australian Securities Commission, *Report to the Senate: Review of the First Two years of Operation of Certain Amendments to the Corporations Law by the First Corporate Law Simplification Act 1995*, 5 June 1998, p 20.

a reporting entity.[18] In applying the reporting entity test, the PJSC believes that directors and auditors must not only consider the relationship between shareholders and management, but also whether there are existing and potential users of the accounts who may be dependent on the financial reports.

4.20 Of the three options put forward, the PJSC favours the reinstatement of the previous test of 'exempt proprietary company' to reflect the two broad groups of proprietary companies: family-owned type companies and subsidiaries of disclosing entities. The reporting requirements of the Law should reflect these separate groups and the nature and size of share ownership in proprietary companies. While this approach may result in certain non-exempt proprietary companies reporting publicly, even if there may be no significant public interest, the existing reporting requirements create a far greater problem by excluding proprietary companies that are reporting entities from the requirement to prepare and lodge audited general purpose financial reports. The exempt proprietary test should nevertheless recognise that there is a demand for financial information by creditors and others, and recent developments in the Law affecting the duties of directors.

Audit requirement

4.21 While the benefits of the audit requirement are clear, the PJSC found it difficult to assess their magnitude. The arguments for exempting all proprietary companies from the audit requirement focussed solely on the costs a company incurs in preparing accounts and the audit of those financial statements. The arguments have some merit but they ignore the needs of creditors, employees and others in the community who may be affected if the company fails. Audited financial statements assist those outside the company to monitor its performance and to derive some assurance that the company is a solvent entity. It also reduces the potential for managers and other insiders from misusing their inside information. As the NIA observed:

> the larger the company, the greater the damage that can be done by fraud or mismanagement and the greater the temptation to take advantage of a position of power. And while yes they [shareholders] should be more involved, often many shareholders of proprietary companies will leave the day to day running of the company to management, who would be in a position to hide information that would otherwise be available through annual financial reports. [19]

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18 This issue was considered by the PJSC in its March 1995 report. In that report the PJSC stated: "The Committee supports the views put to it…that the reporting entity test does not provide a test of sufficient certainty to allow an objective assessment to be made of whether a company falls within the entity test, when compared with the small/large distinction provided in the Bill." See Parliamentary Joint Committee on Corporations and Securities, *Report on the First Corporate Law Simplification Bill 1994*, 2 March 1995, p 16.

19 National Institute of Accountants, Submission 8, p 8.

4.22 The PJSC believes that it would not be appropriate to relieve all proprietary companies of the audit requirement for several reasons. This option would not be consistent with the reporting entity concept in the Accounting Standards, as some proprietary companies, particularly those that seek to raise equity or loan capital, will almost always exhibit the characteristics of a reporting entity. Users of financial reports, who are unable to access financial information about the entity, depend on high quality financial reports from the company in making their resource allocation decisions. For reporting entities that have dependent users of those reports the need for audited financial statements will always outweigh other considerations. But, as submissions noted, for some proprietary companies the issue is more complex. The PJSC nevertheless concluded that the ownership of the company is a better indicator of the need to impose an audit requirement under the Law than the arbitrary test of a company's economic significance.

Recommendations

4.23 The PJSC recommends that:

1. **The previous distinction between exempt and non-exempt proprietary companies be reinstated, to replace section 45A of the Law;**

2. **All directors of proprietary companies be required to sign and lodge a declaration of solvency with their annual reports;**

3. **In preparing financial statements, reporting and non-reporting entities apply all the recognition and measurement requirements of the Accounting Standards; and**

4. **All company financial statements, which are required to be lodged with the ASIC, should be required to be audited.**

Senator Grant Chapman
Chairman

LABOR SENATORS' AND MEMBERS' MINORITY REPORT

The terms of reference required the Committee to examine:
- the small/large criteria in section 45A of the Corporations Law;
- the appropriateness of having requirements for audit and the lodgement of financial statements for some classes of proprietary companies;
- the appropriateness of the criteria for the exercise of ASIC's discretion to provide relief from the accounting provisions in subsections 342(2) and (3) of the Corporations Law;
- the manner in which ASIC has exercised that discretion; and
- the effectiveness and costs of the process of ASIC providing exemptions from the audit requirements in Chapter 2M of the Corporations Law through the exercise of an administrative power.

The Labor members of the Committee wish to comment on the first two terms of reference.

1. APPROPRIATENESS OF HAVING REPORTING REQUIREMENTS

The objective of requiring companies to lodge and audit financial accounts must be to ensure that all relevant end-users have access to that information and that information is accurate.

While the Labor members acknowledge that for some proprietary companies the only relevant end-users are the shareholders[1], the Labor members do not believe that is true for all proprietary companies. Financial accounts provide information to shareholders, creditors, employees and others in order to enable those people to make decisions concerning their dealings with a company.

These considerations make it appropriate for there to be requirements for the audit and lodgement of financial accounts for some classes of proprietary companies.

2. SMALL/LARGE CRITERIA

2.1 Small/Large Criteria

As discussed at paragraph 2.2 of the Committee's report, the previous classification of proprietary companies as exempt and non-exempt reflected the status of the company but was not a consistent rationale for identifying companies in which there was a public interest. Financial accounts provide important information to a range of people and is necessary to assist them in their dealings with a company.

Further, as ASIC suggested, in determining reporting requirements for proprietary companies regard must be had to recent legislative changes to the Corporations Law which facilitate their fundraising from the public and to the current focus of

[1] The Labor members of the Committee note that section 293 of the Corporations Law permits shareholders with at least 5% of the votes in a small proprietary company to direct the company to prepare a financial report.

Parliament on employee entitlements, including the Corporations Law Amendment (Employee Entitlements) Act.[2]

Regard must also be had to the cost to companies of complying with reporting requirements.

All of these considerations confirm the need for the reporting requirements of proprietary requirements to be linked to the public interest and the economic significance of the company.

Submissions from Bentleys MRI, Institute of Chartered Accountants and CPA Australia, Mr Ian Langfield Smith and Incat Pty Ltd suggested the above objective would best be achieved by adopting a "reporting entity" concept. However, as the Committee has previously concluded the reporting entity concept "does not provide a test of sufficient certainty to enable an objective assessment to be made of whether a company falls within the entity test."[3]

Reverting to the previous exempt-proprietary rule, as suggested by the Australian Institute of Company Directors (AICD) and Atkinson Gibson would also not achieve the desired objective. Further, as suggested by the AICD in evidence it gave to the Committee, the definition of "exempt proprietary company" is "somewhat convoluted" and should be refined and simplified, with an emphasis on family-owned companies[4].

The Labor members of the Committee also note that claims of a loss of commercial privacy must be balanced against the benefits of limited liability which companies enjoy. Since shareholders are only liable for the amount of capital they have contributed to a company, creditors need to be able to reassure themselves that the company has sufficient capital to pay their debts. One way of obtaining this reassurance is to review the accounts of the company.

The AICD has suggested that all companies be required to lodge a solvency declaration. The limitations of this suggestion are that if it is a representation as to solvency, it is only at a particular point in time and, without additional financial information, stakeholders cannot determine the level of solvency or changes in the level of solvency from time to time. Without change to the Corporations Law, such a declaration would also not assist in determining liability, or rebutting defences, under the insolvent trading provisions.

Retaining the current small/large test is favoured by ASIC, PricewaterhouseCoopers and the National Institute of Accountants. The Labor members of the Committee agree it provides the best approximate of the economic significance of, and public interest in, a company.

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[2] ASIC, Submission to the Parliamentary Joint Statutory Committee on Corporations and Securities – Review of Aspect of the Regulation of Proprietary Companies, 21 March 2000, p. 2

[3] Parliamentary Joint Committee on Corporations and Securities, *Report on the First Corporate Law Simplification Bill 1994*, 2 March 1995, p.16

[4] Hansard, 28 June 2000, pg. CS 3-4

This is supported by statistics from ASIC as to the number of time lodged accounts of large proprietary companies are accessed. ASIC concluded in the 1988 report that there is a significant level of use of the accounts of proprietary companies which lodge accounts.

Accordingly, the Labor members believe that the small/large test best meets the objectives of reporting requirements for proprietary companies.

2.2. Simplicity

An additional objective of the small/large test, is to simplify and clarify the law and to reduce reporting requirements for most proprietary companies.

As previously discussed, the "reporting entity" concept would not achieve this objective. Mr Agland from the National Institute of Accountants told the Committee:

> "Definition 45A has the advantage of having three criteria and these criteria are easy to understand and easy to apply….The reporting entity concept, on the other hand, relies too heavily on subjective decision making of the directors who may, for one reason or another, not wish to report, even though they should. It is a difficult test to police and one that is dependent on expert knowledge to make an accurate decision."

On its face, the definition of exempt proprietary company seems simple. However, the Labor members note the comments from the AICD discussed above. Further, the transition to the small/large test has meant that 99.4% of all proprietary companies which would have been required to prepare financial statements prior to the *First Corporate Law Simplification Act* now have no financial reporting requirements.[5]

2.3. Areas of Concern

The Labor members of the Committee however, are not blind to the concerns raised in the submissions in regard to the small/large test.

One issue raised was the inconsistency between the small/large test and the reporting entity concept, with the result that lodged accounts are not prepared in accordance with the full requirements of accounting standards.

However, as ASIC advised the Committee, the reports of companies must still give a true and fair view of its financial position and the Labor members support the view of ASIC that this would require all large proprietary companies to observe the recognition and measurement provisions of accounting standards. Accordingly, this is a regulatory matter, rather than a factor supporting a change in the small/large test.

A second issue raised was that non-grandfathered proprietary companies are at a competitive disadvantage to grandfathered proprietary companies and that a market has been created in grandfathered proprietary companies.

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[5] ASIC, Submission to the Parliamentary Joint Statutory Committee on Corporations and Securities – Review of Aspect of the Regulation of Proprietary Companies, 21 March 2000, p. 3

In its submission, ASIC suggested that the unlevel playing field created by grandfathering could be addressed by:

- removing grandfathering or making it subject to a sunsetting provision;
- extending grandfathering to all companies which would have met the previous exempt proprietary company definition; or
- not requiring any proprietary company to lodge accounts but have their accounts audited.

The Labor members would recommend that the consequences of removing grandfathering or making it subject to a sunsetting provisions be examined by the Government.

A third issue raised was that a proprietary company could reorganise their affairs such that they cease to be large and are no longer subject to the reporting requirements of the Corporations Law.

It should be noted that section 45A already refers to entities that the company "controls" in calculating the gross operating revenue and gross assets of the company. Any attempt to modify and extend this concept would need to be balanced against the loss of simplicity in the definition of a small proprietary company.

A fourth issue raised was that ASIC could not identify those companies which are large proprietary companies but not complying with reporting companies. The Labor members of the Committee acknowledge that it would be easier to identify which companies are non-exempt proprietary companies from information on shareholders already lodged with ASIC. However, for the reasons outlined above, the Labor members prefer to retain the small/large test.

The Labor members also note that no estimate was provided of the extent of this problem, and would hope that most proprietary companies would want to comply with the Law.

ASIC has recommended that the problem could be partially addressed by requiring each proprietary company to report annually to ASIC that the directors have considered whether the company is large or small for its last financial year, and requiring the company to state whether it was small or large.[6]

The final issue raised was that companies can be re-classified as a small or large company each year depending on seasonal factors and exceptional events, such as asset sales.

The Labor members of the Committee note however, that statistics collected by ASIC indicate that the majority of companies lodging accounts exceeded all the criteria, not just the two criteria necessary to be classified as a large proprietary company, and that the majority of the companies were well above the criteria comprising the large/small test. This is discussed more fully at paragraph 2.12 of the Committee's Report.

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[6] Ibid., p. 9

The Labor members also note that ASIC has a discretion to make exemption orders and class orders under section 342 of the Corporations Law.

3. RECOMMENDATIONS

The Labor members are not convinced that there is sufficient impetus for another legislative change to the reporting requirements of proprietary companies, nor that it would be desirable to revert back to the previous exempt and non-exempt proprietary company classification. Of all the options examined, we believe that the small/large test best meets the objectives of reporting requirements for proprietary companies. While the small/large test has some problems, all the other suggested alternatives also have shortcomings.

The Labor members of the Committee recommend that the existing small/large test continue for the time being.

The Labor members of the Committee recommend that the Government examine the consequences of removing the grandfathering provisions or making it subject to a sunsetting provision.

The Labor members of the Committee recommend that the Corporations Law be amended to require each proprietary company to report annually to ASIC that the directors have considered whether the company is large or small for its last financial year, and to state whether the company was small or large.

The Labor members recommend that ASIC continue to collect and review, to the best of its resources, the statistics of the kind presented by it to the Committee and also, if the previous recommendation is adopted, the number of companies which state they are large or small each year. The Labor members recommend that ASIC report to the Committee in 2 years on its review.

Mr Bob Sercombe, MP

Senator Stephen Conroy

Senator Barney Cooney

Mr Kevin Rudd, MP

APPENDIX 1

LIST OF SUBMISSIONS

1	Price Waterhouse Coopers
2	Atkinson Gibson
3	Mr Tom Ravlic
4	Bentleys MRI
5	Office of Small Business, Department of Employment, Workplace Relations and Small Business
6	Australian Securities and Investments Commission
7	Motor Trades Association of Australia
8	National Institute of Accountants
9	Australian Institute of Company Directors
10	CPA Australia and the Institute of Chartered Accountants in Australia
11	Mr Ian Langfield-Smith
12	Incat Tasmania Pty Ltd
13	Gram Engineering Pty Ltd
14	Ernst & Young

APPENDIX 2

LIST OF WITNESSES

Wednesday, 28 June 2000

Motor Trades Association of Australia

Mr Michael Delaney – Executive Director

Mr Geoff Gardner – Deputy Executive Director

Australian Institute of Company Directors

Mr James Glen Service – Member, Accounting and Financial Advisory Committee

Mr Stuart Grant – Member, Accounting and Financial Advisory Committee

Mr Rob Elliott – National Manager, Policy and Research

Office of Small Business, Department of Employment, Workplace Relations and Small Business

Mr Thomas Fisher – Assistant Secretary, Office of Small Business

Mr Anthony David Greenwell – Director, Finance and Tax Policy

Ms Margret Adelaide Lee – Assistant Director, Finance and Tax Policy

Private capacity

Mr Ian Langfield-Smith

Friday, 30 June 2000

CPA Australia and The Institute of Chartered Accountants in Australia

Ms Jan West – Deputy President, The Institute of Chartered Accountants in Australia

Mr Gerard Meade – Chairman, Legislation Review Board, Australian Accounting Research Foundation

Mr Colin Parker – Director, Accounting and Audit, CPA Australia

Mr Keith Reilly – Technical Consultant, Accounting Standards, The Institute of Chartered Accountants in Australia

Mr Richard Mifsud – Senior Project Director, Australian Accounting Research Foundation

National Institute of Accountants

Mr Neil Leslie Marshall – Chief Executive Officer

Mr Reece Agland – General Counsel

Mr Gavan Russell Ord – Technical Policy Manager

Australian Securities and Investments Commission

Mr David William Knott – Deputy Chairman

Mr Shane Tregillis – National Director, Regulation

Ms Jan McCahey – Chief Accountant

Mr Douglas David Niven – Deputy Chief Accountant

Incat Australia Pty Ltd

Mr Lance Bradley Balcombe – Company Secretary and Chief Financial Officer