

List of Recommendations

Chapter 4—The compliance committee

Recommendation 1

The Committee recommends that:

- the definition of ‘external director’ and ‘external member’ in sections 601JA and 601JB respectively of the *Corporations Act 2001* should be amended to ensure that:
 - they are independent;¹
 - relatives and de facto spouses of ineligible individuals are ineligible to act on the compliance committee (whether as the board or an external compliance committee)²; and
- the meaning of ‘material’ be clarified.

Recommendation 2

The Committee recommends that the RE be required to:

- report all appointments, retirements, resignations or removals of compliance monitors (whether as members of the board or of a separate compliance committee) to ASIC within a specified period (e.g. 5 business days);
- disclose annually to scheme investors the names of all current compliance monitors; and
- disclose annually to scheme investors the names of compliance monitors who have retired, resigned or been removed in the previous year and the reasons for all resignations and removals.

Recommendation 3

The Committee recommends that ASIC be empowered to remove a member of a compliance committee where ASIC forms the view that the member is not performing adequately or otherwise should not be on the committee. The removal would be subject to reasonable notice requirements and rights to administrative review of ASIC’s decision.

Recommendation 4

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- 1 A definition of ‘independent’ should be developed that reflects the qualities referred to in the introduction to this chapter.
 - 2 The terminology used in the Act is ‘relative or de facto spouse’. ‘Relative’ and ‘de facto spouse’ are defined in section 9 of the Act.

The Committee recommends that the *Corporations Act 2001* be amended to ensure that:

- the requirements in the compliance plan dealing with the arrangements which a compliance committee must make regarding membership, holding of meetings and so on, as far as appropriate, be expressly applied to the board when acting in the compliance monitoring role; and
- the functions and duties applicable to the compliance committee, as far as appropriate, be expressly applied to the board when acting in the compliance monitoring role.

Recommendation 5

The Committee recommends that the *Corporations Act 2001* be amended so that the RE of a registered scheme must establish a compliance committee if a majority of its directors are not external directors.

Recommendation 6

The Committee recommends that the *Corporations Act 2001* be amended to allow a corporate compliance entity to act as a member of a registered scheme's compliance committee.

Recommendation 7

The Committee recommends that the *Corporations Act 2001* be amended to require:

- the compliance plan of a registered scheme to set out detailed minimum standards of competency and integrity which each compliance monitor must meet;
- any amendments to the compliance plan regarding these minimum standards must be approved by a majority of compliance monitors before lodgment of the amendments with ASIC. The copy lodged with ASIC should also be signed by the compliance monitors; and
- the RE to disclose details of the minimum standards annually, preferably at the same time as details of compliance monitors are disclosed.

Recommendation 8

The Committee recommends that ASIC, in consultation with industry, develop guidelines and model minimum standards for competency and—if considered necessary—integrity, for in-house compliance monitors.

Chapter 5—Compliance plan auditing

Recommendation 9

The Committee recommends that the *Corporations Act 2001* should be amended to strengthen the independence of compliance plan auditors to include:

- a general statement of principle requiring the independence of compliance plan auditors;
- a requirement for compliance plan auditors to report to ASIC annually about their management of independence issues according to benchmarks developed by ASIC; and
- a requirement for compliance plan auditors to report to ASIC any attempts to corrupt the integrity of the audit.

Recommendation 10

The Committee recommends the application of qualified privilege and whistleblower protection to employees of the RE and, if not already covered by subsection 601HG(8) of the *Corporations Act 2001*, to employees of, and the compliance plan auditor reporting any suspected breaches of the law to ASIC in good faith and with reasonable cause.

Recommendation 11

The Committee recommends that the Department of the Treasury, in consultation with ASIC and relevant industry stakeholders, look into the feasibility of opening up the field for compliance plan auditors where it is considered that persons other than registered company auditors as defined under the *Corporations Act 2001* could effectively carry out the requirements of a compliance plan auditor.

Recommendation 12

The Committee recommends that the *Corporations Act 2001* be amended to accommodate ASIC's proposals to:

- require the compliance plan auditor to report to scheme members;
- clarify that the auditor's opinion relates to a scheme's performance for the entire year being audited;
- require a compliance plan audit of a newly registered scheme within the first year of its registration;
- require an auditor's opinion on the adequacy of the compliance plan to be included with a scheme's application for registration; and
- clarify that the compliance plan audit need only focus on material issues.

The Committee further recommends that the Department of the Treasury and ASIC should develop a test of materiality.

Chapter 6—Other checks and balances

Recommendation 13

The Committee recommends that ASIC review its NTA and insurance requirements for REs to determine whether they should be subject to periodic adjustment to take into account, for example, CPI rises or the quantum of funds under management.

Chapter 8—Costs and fees

Recommendation 14

The Committee recommends that the Government commission an independent cost/benefit analysis with a view to determining the impact of the *Managed Investments Act 1998* and other relevant legislation. This will then establish a useful benchmark for future studies. The analysis should specifically look at:

- Australia’s performance on costs and fees compared with major overseas financial centres;
- whether and to what extent the MIA has limited or stimulated competition within the industry; and
- whether understanding, transparency and disclosure for consumers has improved and/or is sufficient with regard to managed investments costs and fees.

Recommendation 15

The Committee recommends that the *Corporations Act 2001* be amended to provide for a ‘fair’ treatment criterion in lieu of ‘equal’ treatment but only to provide for differential fees.

The Committee further recommends that what constitutes ‘fair’ treatment should be developed through consultation between the Department of the Treasury, ASIC and industry groups. The Committee notes that the Department is presently consulting with regard to this issue.

Chapter 9—Proposals for change

Recommendation 16

The Committee recommends that the current provisions of the *Managed Investments Act 1998* relating to third-party custodianship, should be monitored by ASIC with regular reports being made to the Parliamentary Joint Committee on Corporations and Financial Services with particular regard to:

- the number of entities opting into third-party custodianship; and
- providing some qualitative comparative analysis of the performance of those entities with, and those without, third-party custodians.

The Committee further recommends that on the basis of these reports, the Committee should regularly review the efficacy of the current opt-in provisions in the Act compared with an alternative opt-out provision regarding optional third-party custodianship.

