



Australian Government
The Treasury

6 June 2007

The Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Suite SG.64
Parliament House
CANBERRA ACT 2600

Dear Secretary

INQUIRY INTO SIMPLER REGULATORY SYSTEM LEGISLATION

I refer to your letter of 24 May 2007 regarding the Committee's current inquiry into the Corporations Legislation Amendment (Simpler Regulatory System) Bill 2007 and supporting Bills (the SRS Bill).

2. As you are aware, the SRS Bill includes a range of amendments to the Corporations Act 2001 and the Explanatory Memorandum outlines the changes and the policy intent behind them. However, it may be of assistance to the Committee if I describe the history of the measures.

***Rethinking Regulation* report: Banks Taskforce**

3. A number of the proposals have their origins in the Rethinking Regulation report by the Taskforce on Reducing the Regulatory Burden on Business, chaired by Mr Gary Banks. The appointment of the Taskforce was announced by the Prime Minister and the Treasurer on 12 October 2005. On 25 October 2005, the Taskforce released an Issues Paper, inviting public submissions on practical options for alleviating the regulatory compliance burden on business. Over 150 submissions were received.

4. In January 2006, the Rethinking Regulation report was presented to the Government. The report included a number of recommendations in the corporate and financial services areas, including that the Government should:

- a. introduce amendments to allow companies to make annual report available on the internet and require hard copies to be sent only to investors who request them (Recommendation 5.20);
- b. raise the thresholds for the definition of a large proprietary company (Recommendation 5.21);
- c. review the reporting requirements for executive remuneration (Recommendation 5.23)
- d. consider removing the requirement for the executive remuneration report to be included in the concise report (Recommendation 5.24));

- e. review the requirement to provide a prospectus when issuing shares and options to employees (Recommendation 5.25);
- f. review the multiple former audit partner restriction (Recommendation 5.26); and
- g. review the requirement for recording telephone calls during a takeover (Recommendation 5.27).

5. The Government's response to the report, released on 7 April 2006, announced that all of those issues except (a) and (f) would be progressed through the Corporate and Financial Services Regulation Review. Issue (a) would be progressed in the next appropriate legislative vehicle. Issue (f) would be reviewed by the end of 2006.

Corporate and Financial Services Regulation Review: Consultation Paper

6. On 7 April 2006 the Parliamentary Secretary to the Treasurer released the *Corporate and Financial Services Regulation Review Consultation Paper*. The Consultation Paper sought comments on a broad range of issues regarding corporate and financial services regulation. The issues were sourced from a variety of sources. The Business Regulation Advisory Group, chaired by Mrs Catherine Walter AM, and the Financial Sector Advisory Council, chaired by Mr Maurice Newman AC, assisted in developing the paper. In addition to issues (b), (c), (d), (e) and (g) above, a range of other matters (56 in total) were grouped into the topics of financial services regulation, company reporting obligations, corporate governance, fundraising, takeovers, collective investments and dealing with regulators were noted and comments sought by 19 May 2006.

7. Over 80 submissions were received from a range of industry and consumer representatives, including industry organisations and individual firms and practitioners. The Business Regulation Advisory Group met on 9 June 2006 to consider the submissions and provide advice to the Parliamentary Secretary to the Treasurer on what topics should be taken forward and in what form.

8. On 14 August 2006, the Parliamentary Secretary announced a proposed way forward on the issues included in the Consultation Paper, which would principally be achieved through further consultation on defined proposals that were developed taking into account comments made in submissions on the consultation paper. The issues were divided into three categories:

- 10 issues that could be implemented through preparation of draft regulations
 - draft regulations were released for public comment in March 2007;
- 28 issues that could be progressed through further consultation on proposals in a Proposals Paper, with a view to including them in an SRS Bill; and
- 8 issues that could be progressed through focused separate consultation
 - these issues are being progressed in various reviews by Treasury and other bodies and are not included in the SRS Bill.

9. The remainder of the issues in the Consultation Paper did not receive support for further development.

Corporate and Financial Services Regulation Review: Proposals Paper

10. On 16 November 2006, the Parliamentary Secretary released the Corporate and Financial Services Regulation Review Proposals Paper, which sought comment on specific proposals divided into the topic areas of financial services regulation, company reporting obligations, auditor independence, corporate governance, fundraising, takeovers and compliance.

11. Of the 28 issues foreshadowed for inclusion in the August 2006 announcement, the Proposals Paper included all except two. The Paper noted (at page 54) reasons why proposals on those issues (concise reporting requirements and parent entity financial statements) would not proceed.

12. Other than those 26 issues, the Proposals Paper also sought comments on a further nine proposals dealing with other matters that had not been included in the Consultation Paper. The additional proposals had varying origins but all were intended to reduce regulatory burden imposed by corporate or financial services regulation and were therefore suitable for inclusion in the Proposals Paper. They related to disclosure requirements for non-cash payment facilities; product disclosure requirements for pooled superannuation trusts; investments by managed investment schemes in unregistered managed investment schemes; self-listing and licensed market operators; distribution of annual reports (issue (a) above); disclosure for stapled securities; 85% notices in takeovers; references to AFSL numbers in disclosure documents; and electronic registration of charges.

13. Over 100 submissions were received on the Proposals Paper. Comments received on nearly all of the proposals were generally supportive, subject to some 'fine tuning' suggestions. However, opinion was sharply divided in relation to:

- Proposal 1.1, which suggested a new 'sales recommendation' framework that would allow persons offering financial products to elect to use as an alternative to the current system of regulated financial advice; and
- one aspect of Proposal 2.2 (thresholds for reporting for large proprietary companies) which proposed that the existing 'grandfathered' relief for certain exempt proprietary companies would no longer be available.

The SRS package

14. In light of the positive response to the Proposals Paper, the SRS Bill was developed, taking into account the suggestions in submissions.

Comparison of the SRS Bill with the Proposals Paper

15. There were some elements of the Proposals Paper that were not included in the SRS Bill.

- *Proposal 1.1 (sales recommendation)*. The sales recommendation proposal was the subject of focused consultation, including a workshop in April 2007 where a range of stakeholders were represented. However, no generally agreed view was reached on preferred options for a revised approach. Accordingly, this matter will be the subject of ongoing development for possible inclusion in a future legislative vehicle.
- *Proposal 1.5 (non-cash payment facilities)*. The proposal regarding non-cash payment facilities will proceed by way of regulations.

- *Proposal 1.8 (Policy statement 146 – training requirements)*. This proposal will be implemented through a review by the Australian Securities and Investments Commission (ASIC).
- *Proposal 2.2 (thresholds for large proprietary companies)*. The aspect of the proposal regarding grandfathering of exempt proprietary companies was not included in light of the comments received regarding the additional regulatory burden on affected companies.
- *Proposal 2.5 (share and member reporting)*. The proposal regarding notification of top 20 shareholders by public companies will proceed by way of regulations.
- *Proposal 5.4 (employee share schemes)*. One aspect of the proposal regarding employee share schemes, being relief for self acquisition of shares by subsidiaries of listed companies, did not proceed because approval requirements relating to the Ministerial Council for Corporations could not be completed in sufficient time. It is proposed that this amendment will proceed in a subsequent legislative vehicle. In the meantime, ASIC may give relief to affected parties through Class Orders.
- *Proposal 7.1 (breach reporting period)*. This proposal is being implemented through the Financial Sector (Simplifying Regulation and Review) Bill 2007 because other amendments to the same section will be made by that Bill.
- *Proposal 7.2 (Australian Business Number reference)*. Implementation of this proposal has been deferred to a future legislative vehicle pending further consultation to confirm that all Australian Financial Service Licence holders have and/or are entitled to obtain an ABN.

16. There were some elements included in the SRS Bill that were not included in the Proposals Paper.

- *Auditor independence*: The Proposals Paper dealt with incorporating into the Corporations Act a number of modifications that had been made through the Corporations Act and ASIC Class Orders.
 - In addition, the SRS Bill included a number of amendments arising out of the discussion paper titled *Australian Auditor Independence Requirements: A Comparative Review* (15 November 2006). Treasury undertook a targeted consultation process on the review with the key stakeholders: ASIC, the Financial Reporting Council, the major audit firms and the professional accounting bodies. All stakeholders agreed refinements should be made to adjust the rules regarding:
 - : the multiple former audit partner restriction (issue (f) of the Banks Taskforce, referred to above);
 - : the former audit partner ‘cooling off’ restriction; and
 - : the adoption of a ‘covered person’ approach in relation to the financial relationship restrictions.
 - Also included in the SRS Bill is a group of minor technical amendments to the auditor independence requirements in light of experience since the requirements were introduced in 2004.

- *Approval of certain changes to constitutions of non-profit companies and company names:* At present certain administrative decision-making may be delegated by the Minister to officials of the Department. Amendments have been included to allow those functions also to be delegated to officers of ASIC.
- *Proposal 1.7 - Cross-endorsement of authorised representatives:* The Proposals Paper discussed an issue and proposed a solution regarding cross-endorsement in the context of general insurance. It was pointed out in submissions that the same issue with cross-endorsement might arise in other sectors. The SRS Bill has framed the provision so that, if required, regulations could also be made outside the general insurance sector. However, at this stage it is only the general insurance sector that would be addressed in the regulations to be made in support of the SRS Bill provisions.

Consideration by the Ministerial Council for Corporations

17. Under the Corporations Agreement between the Commonwealth and the States and Territories, the Commonwealth must not introduce a Bill amending the Corporations Act in relation to certain matters unless it has been agreed to by the Ministerial Council for Corporations. Further, such provisions must be exposed for public consultation unless the Council agrees otherwise.

18. The Ministerial Council was sent draft provisions included in the SRS Bill in relation to which it has a deliberative role. The Parliamentary Secretary sought the Ministerial Council's agreement to the form of provisions and waiver of the public consultation period on the basis that the history of consultation that had occurred to date, and many calls for the measures to be in place as soon as possible, meant that further public consultation on the draft provisions was not warranted. The Ministerial Council agreed to the text of the provisions and to waive the public consultation period.

19. Also in accordance with the Corporations Agreement, the Ministerial Council was sent drafts of the entire Bill and Explanatory Memorandum for comment prior to introduction.

Concluding comments

20. I note that for a number of the measures in relation to financial reporting to be effective in relation to the current reporting period (i.e. 2006–07), it will be necessary to have the SRS Bill commenced prior to 1 July 2007. Indeed, parts of the SRS Bill have been drafted on the assumption that they would have commenced by then (see Schedule 1, Part 2). Accordingly, if the package is not passed by the Parliament during the Winter session, it is highly likely there would need to be some amendments to the Bill to ensure it would operate effectively.

21. I note that the Parliamentary Secretary to the Treasurer has received a number of representations from interested parties urging the Government to ensure it is passed in time to be effective for the current reporting period.

22. Finally, I note that some aspects of the SRS Bill refer to the making of regulations that will be required before the provisions will become fully operational. Those regulations are currently in the process of being drafted. It is anticipated that they will be released over the coming weeks.

23. Thank you for the opportunity to make this submission. Should the Committee consider it useful, relevant Treasury officers would be pleased to appear at a hearing in connection with the package.

Yours sincerely

A handwritten signature in black ink, appearing to read "Geoff Miller". The signature is written in a cursive style with a large, sweeping initial 'G'.

Geoff Miller
General Manager
Corporations and Financial Services Division