

Chapter 1

Introduction

Background

1.1 The Corporations Amendment (No. 1) Bill 2010 was introduced into the House of Representatives on 24 June 2010 and reintroduced—following the August federal election—on 29 September 2010. On 30 September, the Senate referred the bill to the Senate Economics Legislation Committee for inquiry and report by 16 November 2010.

1.2 The bill has three main elements. The first is to change the way that people are able to access information held on company registers. Specifically, the bill will require persons seeking a copy of the register of members to apply to the company, stating the purpose for which they will use the register. The company can refuse to provide a copy of the register if the purpose is improper. The second aspect of the bill enhances the Australian Securities and Investment Commission's (ASIC) powers to investigate offences relating to insider trading and market manipulation. It also enables an interception agency to apply for warrants in the course of a joint investigation into these offences. Thirdly, the bill increases criminal penalties for insider trading and market manipulation under Part 7.10 of the *Corporations Act*.

Conduct of the inquiry

1.3 The committee advertised the inquiry in *The Australian* on 13 and 27 October 2010 and invited written submissions by 15 October 2010. The committee received ten submissions which are listed in Appendix 1.

1.4 A public hearing was held on 3 November 2010 in Sydney. The committee received evidence from Treasury officials and officers from ASIC, as well as representatives from Chartered Secretaries Australia, the Law Council of Australia, the New South Wales Council for Civil Liberties and the Rule of Law Institute. A list of those who gave evidence is presented in Appendix 2.

1.5 The committee thanks those who participated in the inquiry.

Structure of the report

1.6 The report has three chapters. The remainder of this chapter looks at criticism of the Explanatory Memorandum (EM) to the bill by the Senate Standing Committee for the Scrutiny of Bills. Chapter 2 presents the committee's evidence on the issue of accessing information in company registers. Chapter 3 considers the committee's evidence on the provisions to extend ASIC's powers to detect insider trading and market misconduct offences through extended search warrant and telecommunications interception powers.

Criticism of the Explanatory Memorandum

1.7 In October 2010, the Senate Standing Committee for the Scrutiny of Bills made a number of criticisms of the EM to the bill. Specifically, the committee noted that it is:

...extremely concerned about the poor quality of the explanatory memorandum to this bill, in which a number of the items are not explained or are inadequately explained, and the index is incorrect in many ways. Particular care should be taken to ensure that explanatory memoranda which adopt a narrative style (rather than a more traditional structure in which each item is referred to in numerical order) still adequately address and cross-reference each provision in a bill.¹

1.8 In this context, the Scrutiny of Bills Committee highlighted the absence of any explanation in the EM to the bill's search warrant provisions. It noted that while the index to the EM states that paragraph 2.6 explains items 1 to 3, the paragraph is 'in fact a very brief paragraph that relates to an amendment to section 1019G of the Corporations Act'.² Chapter 3 of this report looks at the issue of the bill's search warrant provisions in more detail and the Scrutiny of Bills Committee's concerns that these provisions may trespass unduly on personal rights and liberties.

1.9 Treasury has informed the Senate Economics Legislation Committee that a revised EM with a new index and an explanation for the rationale and scope of the bill's search warrant provisions will be forthcoming. The committee trusts that the revised EM will address the Scrutiny of Bills Committee's concerns.

1 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest 8/10*, 27 October 2010, p. 19.

2 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest 8/10*, 27 October 2010, p. 20.