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Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003

Corporations (Fees) Amendment Bill (No. 2) 2003

Susan Dudley
Law and Bills Digest Group
21 June 2004

Contents

Purpose. 1

Background. 1

Main provisions. 2

Audit reform 2

Audit independence. 3

Registration 4

Auditor obligations 4

Auditor oversight 4

Audit standards 5

Financial Reporting 5

CEO and CFO declarations in relation to listed entity's financial reports 5

Financial Reporting Panel 6

Proportionate liability 6

Enforcement 7

Whistleblowers 7

Disqualification of directors. 8

Executive Remuneration 8

Continuous Disclosure. 10

Shareholder participation 11

Other amendments 12

Corporations (Fees) Amendment Bill (No. 2) 2003 12

Concluding Comments. 13

Corporate Accountability 13

Proportionate liability 14

Whistleblowing. 14

Endnotes 14

Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003

Corporations (Fees) Amendment Bill (No. 2) 2003

Date Introduced: 4 December 2003

House: House of Representatives

Portfolio: The Treasury

Commencement: The majority of the provisions commence on 1 July 2004.

Purpose

The purpose of the Bills is to amend the *Corporations Act 2001* to put in place new arrangements to enhance the corporate governance and accountability framework for Australian companies.

Background

In September 2002, the Government released its policy paper *Corporate law economic reform program proposals for reform: paper no. 9 – strengthening the financial reporting framework* (CLERP Paper No. 9) for public comment. This paper set out the Government's key reform proposals to improve the corporate governance and financial reporting framework in Australia.

CLERP Paper No. 9 contained a discussion of the Government's response to the report *Independence of Australian Company Auditors* (Ramsay report). The Ramsay report examined the impact of Australia's existing legislative and professional requirements on the independence of company auditors. It was initiated as a result of overseas work on audit independence moving ahead of the equivalent requirements in Australia and the recognition that Australia was falling behind world's best practice.[1] Concerns about the adequacy of Australian rules governing audit independence were also raised following the failure of a number of listed Australian companies during the first half of 2001.[2]

CLERP Paper No. 9 also examined other elements of corporate governance arrangements for companies. The paper contained a number of recommendations that addressed issues associated with analyst independence, continuous disclosure, prospectus requirements, penalties and ASIC enforcement powers and shareholder participation in company meetings.

Further refinement to the Government's CLERP 9 proposals took place following the release in April 2003 of the Hon Justice Owen's report into the HIH Royal Commission. This report recommended a number of changes to the Corporations Act.

The Bill, as introduced, looks to put into place the recommendations contained within CLERP Paper No. 9 as amended in light of public comment and recommendations of the HIH Royal Commission. The Bill also draws on recommendations made by the Cole Royal Commission that inquired into the building and construction industry as well as implementing recommendations of the Joint Committee of Public Accounts and Audit, in its *Review of Independent Auditing by Registered Company Auditors.*[3]

Main provisions

Audit reform

One of the key elements of the Bill is audit reform. **Schedule 1** of the Bill contains the audit reforms (unless otherwise stated, the provisions contained in the 'Audit Reform' discussion are contained within **schedule 1** of the Bill). In particular the Bill focuses on enhancing auditor independence as well updating registration requirements and auditor obligations, enhancing the arrangements for oversight of audit practices and making auditing standards legally enforceable.

The existing legislative provisions dealing with these aspects of audit regulation are relatively scant. The second reading speech to the Bill states that:

> Currently the regulation of the auditing profession is predominantly the responsibility of the professional accounting bodies. Legislative requirements are minimal and piecemeal. The Bill therefore substantially builds on the current Corporations Act requirement and establishes a comprehensive framework governing the audit standard setting process and auditor independence.[4]

It is well recognised how important it is to have auditor independence and appropriate regulatory checks for auditing arrangements. One commentator describes the importance of this where she writes that:

> Auditor independence is fundamental to the credibility and reliability of auditors' reports. The draft Bill draws on the *HIH Royal Commission (HIHRC) Report* and the *Ramsay Report* in focusing on the importance of an independent audit on capital market efficiency. This is to be achieved through adding value to financial statements by improving reliability, which in turn should assist to lower the cost of capital by

> reducing information risk and enhancing value to capital market by strengthening the credibility of financial statements.[5]

The Bill makes the following amendments to the Corporations Act in relation to auditors.

Audit independence

Schedule 1 Part 3 amends Division 1 of Part 2M.4 of the Corporations Act to enhance auditor independence. The Bill sets down restrictions in relation to the appointment of company auditors to perform audit functions. The Bill provides that an auditor is not regarded as being independent if there is a 'conflict of interest situation' (**Schedule 1, section 324CA**). A 'conflict of interest situation' is defined in **proposed sections 324CD** as being a situation where:

> (a) the auditor, or professional member of the audit team, is not capable of exercising objective and impartial judgement in relation to the conduct of the audit of the audited body, or
>
> (b) a reasonable person, with full knowledge of all relevant facts and circumstances, would conclude that the auditor, or a professional member of the audit team, is not capable of exercising objective and impartial judgement in relation to the conduct of the audit of the audited body.

The Bill specifies a number of employment, personal and financial relationships that give rise to a conflict of interest situation such as when the individual auditor owes more than $5,000 to the audited body (**proposed section 324CE-CH)**.

The Bill also sets down rules for retirees from audit firms such as:

- a former partner of the audit firm must not become a director or member of the senior management of a client for which he or she has acted as a member of the audit team within two years of leaving the audit firm (**proposed section 324CI**), and
- no more than one former partner of an individual audit firm can sit on a company's board at any given time (**proposed section 324CK**).

The Bill also puts in place new arrangements for audit rotation. For listed public companies, the lead audit partner and review partners must rotate after five years, regardless of the size of the company (ASIC has discretion to extend the five years to seven years) (**proposed section 324DA**).

Auditors will also be required to provide a written declaration stating that there has not been a contravention of the auditor independence requirements of the Act or an applicable code of conduct (**proposed section 307C).**

Registration

The Australian Securities and Investment Commission is responsible for registering company auditors. The Bill proposes to implement a revised competency regime that will need to be satisfied by an auditor before they can become registered. The Bill (**schedule 1, part 2**) states that auditors will need to meet:

- educational requirements (including the need to complete a course in auditing) (**item 51**), and
- training requirements. The training requirements will be met if the auditor can demonstrate that they meet auditing competency standards or they have practical experience in auditing (**item 52**).

ASIC will be permitted to impose conditions on company auditors in relation to their registration (**schedule 1 item 59**).

Auditor obligations

Auditors of listed public companies must attend the AGM (**schedule 1, part 5, item 116**). Questions may be submitted in writing to the auditor for answer at the annual general meeting. Under the bill the auditor is under no obligation to answer the questions **(item 115).**

The Bill expands the duties of auditors under the Corporations Act. **Schedule 1, part 7, item 123** provides that an auditor is required to report all significant breaches of the Corporations Act to ASIC. The auditor will be required to report other breaches of the Corporations Act to ASIC if they will not be adequately dealt with by the company directors.

Auditor oversight

The Companies Auditors and Liquidators Disciplinary Board (CALDB), which is established under the ASIC Act, is responsible for the discipline of auditors. CPA Australia, the Institute of Chartered Accountants in Australia and the National Institute of Accountants have in place rules and professional codes of ethics that govern their member's professional conduct.

Under the existing structures of the CALDB, there are concerns about its operational capacity and perceptions that it lacks independence from the accounting profession. **Schedule 1 Part 8** of the Bill changes the structure of the CALDB so that it comprises 12 members rather than three.

Audit standards

The Auditing and Assurance Standards Board (AUASB) develops and publishes auditing standards. However they do not have the force of law. The AUASB is currently funded and staffed by the accounting profession.

The Financial Reporting Council (FRC) is established by the *Australian Securities and Investment Commission Act 2001* (ASIC Act). It provides broad oversight to the process of setting accounting standards in Australia and has other functions in relation to accounting standards.

Schedule 1, part 1, item 44 replaces section 337 and 339 of the Corporations Act with new provisions which make auditing standards legally enforceable in the same way as accounting standards are currently legally enforceable. The AUASB will continue to develop the audit standards however it will be established as a statutory body under the ASIC Act and funded jointly by Government, the accounting profession and business.[6]

Under new section 336, auditing standards made by the AUASB will be disallowable instruments meaning that the standards must be tabled in Parliament and are subject to disallowance by the House of Representatives or the Senate.

The Bill expands the role of the FRC to include providing broad oversight of the process of setting auditing standards in Australia and other functions in relation to audit standards and monitoring the effectiveness of auditor independence in Australia (**schedule 1, part 1, item 14**).

Financial Reporting

CEO and CFO declarations in relation to listed entity's financial reports

Where a company is listed on the Australian Stock Exchange (ASX), the Bill proposes that the Chief Executive Officer and the Chief Financial Officer must make a formal declaration to the companies board of directors that the:

- financial records have been maintained in accordance with the Corporations Act, and
- that the financial statements comply with the accounting standards and give a true and fair view (**schedule 2, item 2**).

This amendment implements a recommendation by the Joint Statutory Committee of Public Accounts and Audit, Report No. 391, *Review of Independent Auditing by Registered Company Auditors.*

Financial Reporting Panel

The explanatory memorandum to the Bill states that:

> Currently where there is dispute between ASIC and companies on the application of accounting standards and the true and fair view requirement contained in the Corporations Act, ASIC must initiate legal proceedings in order the resolve the matter. The Bill establishes a Financial Reporting Panel (FRP) to resolve disputes between ASIC and companies concerning accounting treatments in financial reports. The FRP represents a less expensive method of resolving these disputes and allows matters to be heard by persons with particular expertise. This will overcome the concerns about the unfamiliarity of courts with subject matter concerning the application of accounting standards and the true and fair view.
>
> ……Following a hearing, if the FRP considers it warranted, it will encourage companies to voluntarily restate their financial reports in a manner that is considered consistent with the accounting standards and the true and fair view……
>
> The FRP's findings will not be binding on either ASIC or the company and the dispute may ultimately be pursued in the Court.[7]

Part 3 of Schedule 2 of the Bill amends the ASIC Act to establish the FRP.

Companies will not be able to refer matters to the FRP prior to publishing their accounts. Prior to publishing the accounts, only ASIC will be permitted to refer matters to the FRP.

The **Corporations (Fees) Amendment Bill (No. 2) 2003** provides for a fee to be levied on companies that refer matters to the FRP.

Proportionate liability

The Bill amends the ASIC Act, the Corporations Act and the *Trade Practices Act 1974* to ensure that 'proportionate liability' applies to claims for damages for economic loss or property damage arising from misleading or deceptive conduct (**schedule 3**). The explanatory memorandum notes that proportionate liability involves a defendant being liable only for that portion of the damage for which the defendant is judged to be responsible.[8]

Currently joint and several liability applies to actions under these statutes for misleading and deceptive conduct. Under joint and several liability, an injured party may recover the full amount of their loss from an individual even though they only partially contributed to the plaintiff's loss. Chief Justice Rogers in the Supreme Court of New South Wales in *AWA Ltd v Daniels, t/a Deloitte, Haskins and Sells* noted the difficulties associated with joint and several liability:

> A well insured defendant, who may perhaps be responsible for only a minor fault, in comparison with the fault of other persons, may nonetheless be made liable, at least in the first instance, for the entirety of the damage suffered by the plaintiff. The defendant may indeed seek contribution from other persons responsible for the major damages. Why should the whole of the burden of possible insolvent wrongdoers fall entirely on a well insured, or deep pocket defendant.[9]

The explanatory memorandum to the Bill notes that joint and several liability is contributing to the high cost of professional indemnity insurance.

In January 1995, the *Inquiry into the Law of Joint and Several Liability, Report of Stage Two* was published. This report noted that, at that time, there were at least four different types of proportionate liability that operated in the various jurisdictions around the world.[10] This Bill implements the second of these types of proportionate liability noted in the report – proportionate liability when the plaintiff is partly at fault (**schedule 3, item 2)**. Therefore, proportionate liability will apply to any claims for damages for economic loss or property damage brought about by misleading and deceptive conduct either under the ASIC Act, Corporations Act or the TPA.

The main disadvantage of proportionate liability is that if the defendant can establish that other parties have contributed to the loss, the onus will then be placed upon the plaintiff to take legal action against these parties. If these other parties are insolvent or cannot be located, the plaintiff will not receive full compensation for his or her loss.

Enforcement

Whistleblowers

CLERP 9 will provide protection to employees, officers and subcontractors who engage in 'whilstleblowing'. Under proposed **proposed section 1317AA** of the Bill 'whistleblowing' takes place where:

> (d) the discloser has reasonable grounds to suspect that the information indicates that
>
> (i) the company has, or may have, contravened a provision of the Corporations legislation; or
>
> (ii) an officer or employee of the company has, or may have, contravened a provision of the Corporations legislation; and
>
> (e) the discloser makes the disclosure in good faith.

'Whistleblowing' can increase awareness of corporate misconduct and hence accountability for this misconduct through the reporting of misconduct either to positions of authority within the organisation or to external regulators. The Bill endeavours to provide protection to whistleblowers who report misconduct internally or to ASIC (**schedule 4, item 2)**. However, the whistleblower must disclose their identity if seeking the protection of the legislative provisions. Furthermore, the whistleblower is only protected in relation to disclosure of breaches of the Corporations Act. It does not cover breaches of regulatory arrangements overseen by for example, the Australian Prudential Regulatory Authority.

Disqualification of directors

The Corporations Act sets down circumstances where a director may be disqualified from managing a corporation. Existing section 206B sets down the circumstances where there is an automatic disqualification, namely conviction for an offence. The period of disqualification is five years after the day of conviction or if the defendant serves a term of imprisonment, five years after the day on which they are released from prison. **Schedule 4, item 4** amends section 206B of the Corporations Act, giving the Court a discretion to disqualify the director for an additional period of fifteen years or less.

In addition, section 206D of the Corporations Act provides that a Court may disqualify a director from managing a corporation for up to ten years if in the previous seven years:

- the person had been an officer of two or more corporations that had failed
- the manner in which the Corporations were managed was wholly or partly responsible for the failure, and
- the disqualification is justified.

Schedule 4, item 6 increases the maximum period of disqualification to twenty years.

Executive Remuneration

Existing sections 300 and 300A of the Corporations Act set down the rules relating to disclosure of executive remuneration. Section 300 provides that the annual director's report must contain details of the options over shares granted to company directors and the five most highly remunerated officers of the company during the financial year. Section 300A imposes additional obligations on listed companies. Section 300A states that the directors' report must also include details of the nature and the amount of the company directors' remuneration, the remuneration details for the five most highly paid senior managers as well as an explanation of the relationship between remuneration policy and company performance.

The Corporations Act currently also contains provisions that deal with approval and disclosure of termination payments for office holders. Under section 200B termination payments for officeholders generally must be voted on by shareholders. A payment need not be voted on if:

- it was given to the person under an agreement between the company and the person as part of the consideration for agreeing to hold the position,
- it was a genuine payment by way of damages for breach of contract, or
- the value of the termination payment does not exceed the financial limits set out in 200G(2) of the Corporations Act.

These provisions regarding disclosure of executive remuneration have recently been augmented by Principle 9 of the Australian Stock Exchange's *Principles of Good Corporate Governance and Best Practice Recommendations*. Principle 9 states that a company should remunerate fairly and responsibly. The company should follow certain practices, including providing disclosure in relation to the company's remuneration policies.

In addition to this the Australian Accounting Standards Board recently issued *AASB 1046 Director and Executive Disclosure by Disclosing Entities*. Financial reports will need to be prepared in accordance with this standard.

In recent years, significant media, political and shareholder attention has focused on the high levels of executive remuneration. The principal concern is that executive pay is not adequately linked to company performance. This issue has become particularly prominent as some executive pays have increased significantly despite the fact that their companies have experienced performance problems (such as NAB's failed homeside venture – the company had $4 billion in write-downs yet the bank's CEO Frank Cicutto received a $1 million pay increase). There has also been general concern regarding adequate disclosure of executive remuneration to shareholders.

Despite this general outcry, the advocates of high executive pay argue that high salaries are needed to attract talented staff and that full disclosure of executive remuneration may in fact place upward pressure on executive pay.[11]

The Bill acknowledges concerns about executive remuneration and makes some changes to the arrangements relating to executive pay. In particular the Bill amends section 300A to require disclosure of the remuneration of directors in relation to both the listed entity and the consolidated entity (therefore disclosure across the entire corporate group). The Bill also amends section 300A so that remuneration policies in regard to directors and senior managers of consolidated entities will also need to be disclosed. Regulations will be made which will set out further guidance as to the type of information that will need to be disclosed to satisfy the remuneration disclosure and remuneration policy disclosure requirements in amended section 300A (**schedule 5, item 11-14**).[12]

The explanatory memorandum to the Bill states that:

> Shareholders should be placed in a position where they can understand the nature of the remuneration including any performance hurdles or contingencies on which the payment is based…..
>
> This will ensure shareholders are informed about the framework and main components of remuneration and understand the relationship between performance and remuneration…..

The Bill requires the remuneration disclosure to be made in a clearly dedicated section of the annual directors' report - the remuneration report (**schedule 5, item 10**).

Schedule 5, item 8 provides that at the annual general meeting of the company, shareholders must be given the opportunity to consider the directors' remuneration report and to ask questions. Shareholders must also vote on the report. The vote is a non binding vote and therefore does not have any legal force.

The Bill also proposes to tighten up section 200B which deals with approvals for termination payments so that damages for breach of contract and payment in consideration for joining the company exceptions have a financial limit (**schedule 5, item 4-5**).

By enhancing the disclosure requirements in relation to executive pay, these provisions should increase a company's accountability for setting the level of executive pay.

The Australian Labor Party (ALP) argues that the changes in the Bill to executive remuneration are inadequate and it proposes to move a series of amendments to this part of the Bill.[13]

Continuous Disclosure

The Bill amends the Corporations Act so that civil liability in relation to continuous disclosure breaches will be extended to individuals (ie not just the company) (**schedule 6, item 1 and 2**).

ASIC will be empowered to issue infringement notices with fixed penalties for breaches of the continuous disclosure regime. It is proposed that infringement notices should only be used in relation to less serious contraventions of the continuous disclosure regime (**schedule 6, item 9**).

In relation to infringement notices, the provisions will operate in the following way:

- If ASIC considers that an entity has contravened the continuous disclosure regime, ASIC notifies the entity in writing of the nature of the case against it (**proposed section 1317DAD**).

- ASIC then holds a hearing at which the entity is permitted to give evidence and make submissions (**proposed section 1317DAD**)

- If, following the hearing, ASIC forms an opinion that a contravention has occurred, it may issue an infringement notice notifying the entity of its opinion and indicating that the breach may be addressed through compliance with the infringement notice (**proposed section 1317DAC**).

- Compliance with the infringement notice entails payment of the financial penalty and remedying inadequate disclosure as specified in the notice (**proposed section 1317DAF**).

- The financial penalty, which must be specified in the infringement notice is either $33,000, $66,000 or $100,000, depending on whether the entity is a listed or unlisted disclosing entity and whether the entity had previously contravened the continuous disclosure provisions. If the entity is listed, the financial penalty will depend on the entity's market capitalisation (**proposed section 1317DAE**).

- Compliance with an infringement notice is not taken as an admission by the entity of liability or a contravention of the Corporations Act. Furthermore, if it complies, the entity is not subject to existing or further civil or criminal proceedings in relation to the alleged contravention, subject to certain exceptions (**proposed section 1317DAF**).

- ASIC must not publish that a notice has been issued or that an entity has failed to comply with a notice (**proposed section 1317DAJ**).

- If the entity fails to comply with the infringement notice with the period of time specified in the infringement notice, ASIC cannot enforce the infringement notice. Instead, ASIC may bring civil proceedings against the entity in relation to the same alleged contravention (**proposed section 1317DAG**).

Shareholder participation

The Bill contains amendments to streamline paths of communication between the company and its shareholders in relation to notifying company meetings, distributing annual reports, authenticating proxy appointments and submitting proxy forms (**schedule 8**).

Disclosure of director's participation in directorships of other listed companies will also need to be disclosed in the company annual report.

The ALP proposes a series of further amendments to the shareholder participation provisions in the Bill to increase the opportunities for shareholder involvement in company decision making.[14]

In particular, the ALP considers that the following amendments to the Bill should be made to further empower shareholders:

- Requiring shareholder approval (non-binding) where a director chairs more than 1 top 300 listed company
- Requiring disclosure of information about directors prior to being elected (such as their relationship with the company and other directors)
- Requiring disclosure of the qualifications of company secretaries
- Amend section 250A(4) to ensure that the voting intentions of shareholders are carried out
- Requiring the disclosure of resolutions withdrawn prior to the AGM
- Requiring the disclosure of beneficial ownership in the annual report of the company, and
- Requiring trustees of super funds to note their proxies in relation to the listed companies that they invest in and disclose their voting policy and notice record and to require fund managers to disclose their voting policy and their voting record.

Other amendments

The Bill also contains minor amendments relating to conflict of interest situations (**schedule 10**) and exemptions from the disclosure requirements under chapter 7, financial services and markets of the Corporations Act (**schedule 7**).

In relation to the conflict of interest provisions, the ALP proposes significant changes to those provisions as it considers that the current arrangement in the Corporations Act do not adequately deal with conflicts of interest.

Corporations (Fees) Amendment Bill (No. 2) 2003

The **Corporations (Fees) Amendment Bill (No. 2) 2003** provides for a fee to be levied on companies that refer matters to the FRP.

Concluding Comments

The Bill implements broad sweeping reforms to the regulation of auditors in Australia. This follows recommendations made in the Ramsay report and the findings of the HIH Royal Commission and follows similar moves internationally to strengthen auditor independence mechanisms. The Bill also improves regulatory oversight of auditors and their operations.

The Bill also addresses other topical corporate governance issues, including remunerating directors and executives, shareholder participation in company decision making and enforcing continuous disclosure obligations.

The ALP has expressed broad general support for the provisions in the Bill. It has however proposed a series of amendments to the Bill which it considers will refine and enhance the scope of its operation and in particular, it focuses upon issues regarding executive remuneration and shareholder participation in company decision making and conflict of interest in decision making.

Corporate Accountability

It is not clear that the amendments in these Bills will prevent a recurrence of corporate collapses such as HIH. It has been argued, for example, that the changes to auditor independence requirements will not prevent financial reports being generated that are not full and transparent. Some commentators have noted that:

> Where auditors are found to be dishonest, allow inducements to compromise their work or are dilatory or incompetent, they deserve to be punished. That is a matter for not being professional. Yet incongruously, auditors can be as honest as possible, have impeccable integrity and be competent and intrepid to the hilt, but if they follow the conventional accounting rules, almost certainly they will be signing off on what mostly is financial nonsense! The lynchpin of auditing has been left out of the discussion to date – for the necessity that accounting data are serviceable in the uses ordinarily made of them lies at the core of the audit function. As it is, auditors are on 'a mission impossible'….
>
> 'Audit failure' is currently depicted as primarily a matter of a lack of auditor independence. That is contestable. In Australia the Ramsay Report on 'auditor independence' (2001), like its predecessors that have looked at the quality of audit and the public's expectations of them, confines the independence debate to the ethical dimensions of the auditor-client relationship. The proposed reforms ignore the constraint imposed by accounting rules upon the auditor's ability to form an 'independent opinion' on financial statements. Thus, they have little likelihood of being successful.[15]

Despite this limitation, it would seem that the changes to the law proposed in the Bill do put the profession on notice that their conduct will be more closely scrutinised by regulators.

Proportionate liability

The amendments which provide that proportionate liability rather than joint and several liability applies in relation to misleading and deceptive conduct, are a significant change to the law. The Bill proposes to apply proportionate liability to misleading and deceptive conduct claims for economic loss and property damage under the ASIC Act, Trade Practices Act (TPA) and the Corporations Act. Proponents of proportionate liability argue that these amendments will help to keep down the cost of professional indemnity insurance as plaintiffs will be unable to restrict their legal proceedings to the defendant with the deepest pockets (often the person who has liability insurance). However, restricting the amount of damages that may be recovered from the defendant with the deepest pockets will, in some circumstances, result in the plaintiff being denied full compensation for the loss that they have suffered. For example if one of the defendants involved in the contravention is insolvent, the plaintiff will not be compensated for that defendant's contribution to the plaintiff's loss.

The Bill proposes to apply this principle of proportionate liability to section 52 of the TPA. Section 52 is one of the key consumer protection measures in the TPA. It is important for Parliament to note that this amendment appears to curtail the level of consumer protection that section 52 will give to consumers.

Whistleblowing

In relation to the 'whistleblowing' amendments, there would arguably be benefit in extending these provisions to other regulatory regimes. For example, with the recent NAB foreign currency crisis, there would be advantages in extending these provisions to areas where the Australian Prudential Regulatory Authority has a regulatory function.

Endnotes

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1 Ian Ramsay, *Independence of Australian Company Auditors: Review of Current Australian Requirements and Proposals for Reform*, Melbourne, October 2001, p. 6.

2 Ibid., p. 6

3 Joint Committee of Public Accounts and Audit, *Review of Independent auditing by registered company auditors,* Canberra, 2002.

4 The Hon Peter Costello, 'Second Reading Speech, Corporate Law Economic Reform (Audit Reform and Corporate Disclosure) Bill 2003', House of Representatives, *Debates*, 16 February 2004, p. 24841.

5 Elizabeth Johnstone, 'CLERP 9', *Law Institute Journal*, December 2003.

6 Corporate Law Economic Reform Program, Proposals for Reform: Paper No. 9, Canberra, 2002, p. 19.

7 *Explanatory Memorandum Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003*, p. 146.

8 *Explanatory Memorandum*, op. cit., p. 153.

9 (1992) 10 ACLC at 1022.

10 Professor Jim Davis, *Inquiry into the Law of Joint and Several Liability*, 1995, Canberra, p. 32.

11 John Unkles, 'Executive remuneration under the spotlight', *Journal of Banking and Financial Services*, August-September 2003, pp. 2–3.

12 Copies of the regulations are located on Department of Treasury web-site.

13 Parliamentary Joint Committee on Corporations and Financial Services, *CLERP (Audit Reform and Disclosure) Bill 2003 Part 1 Enforcement, executive remuneration, continuous disclosure, shareholder participation and related matter*s, June 2004, p. 258–259.

14 Ibid., pp. 260–261.

15 Graeme Dean, Frank Clarke and Peter Wolziner, 'Auditor independence reforms – recycled ideas*',Abacus,* March 2002.