

CHAPTER 1

INTRODUCTION

Company Law Review Act 1998

1.1 The *Company Law Review Act 1998* altered the core rules affecting the way a company is run. The Act rewrote the provisions of the Corporations Law dealing with the registration of companies, company meetings, share capital, financial reporting and annual reports, deregistration and reinstatement of defunct companies, and company names. The Act received assent on 29 June 1998 and commenced operation on 1 July 1998.

1.2 The Parliamentary Joint Statutory Committee on Corporations and Securities (PJSC) tabled two reports on these matters, having previously examined the provisions of the Exposure Draft Bill and the final Bill which was introduced into the Parliament.¹

The Committee's Inquiry

1.3 On 10 July 1998, the Treasurer, the Hon Peter Costello, MP, asked the PJSC to examine certain matters arising from the passage of the *Company Law Review Act 1998*. The matters referred to the PJSC were as follows:

(a) *The Government opposes the following amendments:*

- Directors of a listed company should be elected by a proportional voting system;
- Companies should be required by the Corporations Law to report on compliance with environmental regulation (section 299(1)(f) of the Corporations Law);
- Listed companies should disclose information, which is disclosed to, or required by, foreign exchanges (section 323DA of the Corporations Law).

(b) *The following matters have been the subject of complaint and/or concern expressed to the Government by the business community:*

- Companies should be obliged to report any proceedings instituted against the company for any material breach by the company of the Corporations

1 Parliamentary Joint Statutory Committee on Corporations and Securities, *Report on the Draft Second Corporate Law Simplification Bill 1996*, November 1996; and *Report on the Company Law Review Bill 1997*, March 1998.

Law, or trade practices law, and, if so, a summary of the alleged breach and the company's positions in relation to it;

- An application to register a proprietary company should include a copy of its constitution;
- Listed companies must give at least 28 days notice of a general meeting (section 249HA of the Corporations Law);
- Listed companies should be required to disclose more information relating to proxy votes (section 251AA of the Corporations Law).

(c) The Government requests that the Committee generally examine the following matters:

- Listed companies should be required by law to establish a corporate governance board;
- Listed companies should be required by law to establish an audit committee;
- Whether the directors and executive officers of a company should be obliged to report to the auditor any suspicion they might have about any fraud or improper conduct involving the company;
- Whether a director of a listed company should have the power to call a meeting of members (section 249CA of the Corporations Law);
- Whether listed companies must specify a place, fax number and electronic address for the purpose of receiving proxy appointments (section 250BA of the Corporations Law);
- Whether listed companies' annual reports should include:
 - (a) discussion of broad policy for determining the nature and amount of emoluments of board members and senior executives of the company; and
 - (b) discussion of the relationship between such policy and the company's performance; and
 - (c) details of the nature and amount of each element of the emolument of each director and each of the five named officers of the company receiving the highest emolument (section 300A of the Corporations Law).

1.4 The PJSC also considered in Chapter 6 of this Report the proposed new section 117(2)(ka) of the Corporations Law “Applying for registration” namely, that:

(ka) for a company limited by shares or an unlimited company, a statement that the written agreement referred to in sub-paragraph (k)(i);

(i) includes a summary of the rights and conditions attaching to the shares agreed to be taken up;

(ii) sets out the total number of persons who have consented to be members and the information referred to in sub-paragraphs (k)(i) and (k)(ii);

(iii) contains a statement that, if a constitution has not been adopted, the Replaceable Rules will apply and that they create a contract between the members the terms of which may alter if the Replaceable Rules change after the company is registered.

1.5 On 27 July 1998, the PJSC advertised nationally inviting submissions from interested parties and practitioners of the Law. Following the federal election in October 1998, the PJSC readvertised the terms of reference of its inquiry on 19 December 1998. The PJSC received 90 written submissions and held public hearings in Canberra on 25 February 1999, Melbourne on 16 June 1999, Perth on 16 August 1999 and Sydney on 17 and 18 August 1999.

1.6 On 2 August 1999, the Minister for Financial Services and Regulation, the Hon Joe Hockey, MP, requested the PJSC to examine the operation of sections 249D and 249Q of the Corporations Law and the proposed regulation making power in Schedule 6 of the Corporate Law Economic Reform Program Bill 1998. The PJSC resolved to consider these matters in the context of its inquiry into matters arising from the Company Law Review Act. The terms of reference of the inquiry were advertised nationally on 14 and 16 August 1999. The PJSC received 21 written submissions and held a public hearing in Canberra on 1 September 1999.

1.7 This Report is based on the written submissions and evidence received by the PJSC in the course of its inquiry. A list of submissions is included at Appendix 1 to this Report. A list of witnesses who appeared before the PJSC is included at Appendix 2.

1.8 The matters discussed in this Report are examined in chapters which deal with each of the terms of reference of the inquiry. The final chapter of this Report examines other matters raised in submissions.