

Changes lighten load a little

Last week's introduction into parliament of the **Simpler Regulatory System Bill** coincided, quite by chance, with the announcement in the United States of measures to reduce the compliance burden imposed on American issuers by the audit-related requirements of the Sarbanes-Oxley regime.

The bill is the next piece of the government's response to the Banks Regulation Taskforce, which reported back in January 2006. The bill is intended to reduce red tape in the corporate and financial services sectors by rasping off some of the rougher edges of regulation across a range of areas covered by the Corporations Act. These include company reporting, auditor independence, fund-raising, corporate governance and the provision of financial advice.

The Australian and US measures are responses to real political pressure on governments and regulators to reduce what business sees as excessive and inefficient regulation that is unduly focused on process and measurement at the expense of outcome.

There is a widely held view that too much time and too many corporate resources are being spent, particularly by boards, on compliance related matters at the expense of "really" running the business. In the current debate about the role of private equity, "going dark" is seen to confer a competitive advantage on privately

held companies because it relieves them of the burden of complying with (and documenting their compliance with) the sorts of regulatory and governance controls that publicly held entities must grapple with every day.

In the US, the Paulson Committee expressed concern that excessive regulation was driving foreign issuers out of US markets, although research indicates that foreign issuers that are prepared to embrace the rigorous requirements receive a substantial valuation premium (over foreign issuers listing in other markets) for doing so.

Concern that an excessive compliance burden is affecting corporate performance in Australia would seem equally open to debate, having regard to the performance both of individual companies and of the market as a whole over recent years.

That said, at a micro level the individual changes contained in the draft legislation are, for the most part, welcome.

The bill addresses, on a case-by-case basis, a collection of specific regulatory inconsistencies and irritants that have made it onto the reform wish list through the government's long consultation process.

Some of the red tape in company reporting will be trimmed, with

improved arrangements for filing in a number of areas.

For medium-sized private companies, the threshold above which they are required to provide audited accounts will be significantly increased. Public company shareholders will receive electronic annual reports unless they request otherwise. The complex rules for auditor independence will be refined.

A few straggly branches in fund-raising and takeovers regulation are to be trimmed, including the ill-conceived provisions for telephone

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monitoring during takeover bids introduced in 2002 and some of the more grating inconsistencies between the product disclosure statement and prospectus regimes. The latter will be particularly welcomed by listed trusts and stapled securities issuers.

In the financial services area, the obligation to provide financial services guides and statements of advice in a range of simple advice situations will be wound back. The bill was not seen as the proper place to sort out the obvious and

continuing problems with consumer protection in financial advice, but this remains on the agenda for both the government and the opposition.

In among the housework are two more policy-driven changes. The first is the decision to remove some of the regulatory impediments to employee share ownership in unlisted companies. The second is the decision to lift the monetary threshold for requiring member approval for non-commercial related party transactions (regrettably, as it is the fact rather than the quantum of such transactions that shareholders should focus on).

So will the bill deliver a simpler regulatory system? Probably not — that would require a more substantial rethink of corporate and financial services regulation at the level of structure rather than detail. The bill does not attempt to engage with deeper thinking about regulation that might begin to address more complex issues (like opacity) that contribute to inefficient outcomes in the implementation of regulation by both regulated and regulators. This necessary work remains to be done. Nevertheless, the bill's practical changes will help lighten the compliance load in some areas — always a valuable exercise, despite its obvious limitations.

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