



MEDIA RELEASE
PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS
AND FINANCIAL SERVICES

Senator Chapman tables Part 2 of report on
CLERP 9

Senator Grant Chapman, (Liberal, SA) Chairman of the Parliamentary Joint Committee on Corporations and Financial Services, announced today that the Committee has released the second of a two-part report on the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003.

In releasing the report, Senator Chapman made the following comments:

"Part 2 of the report deals with the proposed financial reporting and audit reform amendments.

"In common with many of the submissions to this inquiry, it is the Committee's firm view that there is much to commend in the proposed reforms.

"The Committee believes the Bill will improve the content and reliability of financial reporting, among other things, through its CEO/CFO sign-off requirements and Operating and Financial Review.

"The audit reform proposals should help to restore and maintain public confidence in the assurance role performed by external auditors in relation to a company's financial reports.

"It is not enough merely to impose new requirements on auditors. Companies must bear some responsibility for ensuring their external auditors bring an independent mind to the task of auditing financial reports. Furthermore, enforcement mechanisms must be up to the task of ensuring there is compliance with the new provisions.

"The Committee fully supports the multi-faceted approach taken by the Bill to the regulation of auditors and notes that this conforms with Professor Ian Ramsay's recommended approach.

"Under the Bill, auditors will have to ensure they have systems in place to identify and manage conflicts of interest. They will have to attend AGMs and answer shareholders' questions about the company's accounts. They will have to report on a wider range of corporate malfeasance to ASIC. The Companies Auditors and Liquidators Disciplinary Board will be reorganised to function as a more credible and effective disciplinary outfit. The Auditing & Assurance Standards Board will be

reconstituted as a Commonwealth authority and brought within the supervision of the Financial Reporting Council.

"Auditors' clients will be subject to detailed disclosure requirements regarding non-audit services which their auditors have provided.

"Notwithstanding the Committee's general support for the Bill, the Committee considered there were important omissions from the Bill and also saw scope for a number of amendments. These include:

- the introduction of a requirement for alternative accounting positions to be discussed in financial reports;
- the introduction of additional true and fair view requirements;
- limitation of the auditor rotation requirements to the top 300 listed entities by market capitalisation;
- deletion of the prohibition against a former auditor's taking up a management position with a client if a former auditor from the same firm already occupies such a position;
- clarification of the role of the Financial Reporting Council;
- postponement of the conversion of auditing standards into disallowable instruments until the implications are thoroughly reviewed and any problems resolved;
- introduction of a range of requirements to restore confidence in the Financial Reporting Council and strengthen the standard-setting arrangements in Part 12 of the ASIC Act.

Financial Reporting Council

"The Bill's proposal to give the FRC oversight of the AUASB raised a number of issues about the FRC's performance to date. The central issue was whether the FRC should and could take on new responsibilities.

"The Committee's view after examining the evidence, is that the FRC and the standard-setting regime need some extensive changes. To start with, the FRC needs restructuring to function more efficiently and competently. In addition, it must be more transparent and accountable where issues of public interest are concerned. And finally, the bodies for which the FRC has or will have oversight—the AASB and AUASB, must have more autonomy to ensure the independence of accounting and auditing standard setting.

"The Committee has recommended that:

- the FRC should conduct its meetings in public and seek public submissions on proposals having a public interest element;
- the FRC should have an independent secretariat;
- FRC membership should be appropriately qualified and experienced; and
- the FRC's ability to influence the standard-setting functions of the AASB and AUASB should be restricted.

"Funding of the Financial Reporting Council needs attention. On this point, the Committee welcomes the Government's provision of \$3.4 million in funding to the FRC for 2004-05. However, the Committee wants to ensure that funding will not emerge as a problem in future years and has sought the Government's commitment to fund the FRC and the standard-setting bodies beyond 2004-05.

Mandatory rotation of audit partners

"The Committee is concerned that the Bill's audit *partner* rotation requirements will effectively amount to audit *firm* rotation for many small to medium-sized firms. The irony of this is that familiarity and fee dependence is rarely an issue for partners in smaller firms. Partners in these firms manage a comparatively large number of clients which limits opportunities for extensive client contact. Furthermore, with clients typically paying between \$20,000 to \$100,000, fee dependence, at the most would pose a negligible threat to auditor independence.

"To ensure the legislation does not go beyond what is needed, the Committee has recommended that the definition of 'review auditor' should be amended to reflect the rationale underlying the rotation requirements. The Committee has also recommended that the rotation requirements should only apply to the top 300 listed entities by market capitalisation to protect the interests of smaller audit firms and their clients.

Alternative accounting treatments

"In the interests of more 'user-friendly' financial reports, the Committee has recommended that the Bill should provide reasons for a company's choice of one accounting treatment over another when the choice has a material impact on a company's bottom line.

"The Committee notes that Professor Ian Ramsay, the JCPAA and the HIH Royal Commission have all advocated such a requirement.

True and fair view requirement

"The Committee believes that financial statements should, but do not necessarily, provide users with information that will help them to assess a company's financial position and performance. The Committee has consequently recommended the insertion of a definition to clarify the purpose of the true and fair view requirements. In addition, the Committee has endorsed the JCPAA's recommendations for the inclusion of additional explanatory material in the notes to the financial statements if they do not otherwise give a true and fair view.

'Multiple-officer' restraint

"No evidence was presented to the Committee to show that an audit client's employment of more than one former auditor from the same firm in senior management or on the board posed a serious threat to auditor independence.

"However, the Committee considers the arguments are clear that the 'multiple-officer restraint' will restrict auditors' career opportunities, make it more difficult for accounting firms to attract and keep new recruits and will place unreasonable limitations on companies' choice of people to appoint to senior management positions.

"The Committee believes this provision is ill-founded and excessive, and has recommended that it be deleted from the Bill.

"While the appointment of ex-auditors to senior management of former clients might carry some risks for auditor independence, the Committee's view is that the cooling-off provisions also in the Bill should be sufficient to deal with these.

Auditing standards

"The Committee does not oppose auditing standards having legislative force. However, it appears to the Committee that the conversion of auditing standards into disallowable instruments could adversely affect audit quality and also interfere with Australia's program of convergence with International Standards of Auditing. Until these problems have been examined and resolved, the introduction of amendments giving auditing standards legislative force should be postponed.

"The Committee believes a thorough review should be undertaken to examine these issues.

Conclusion

"The Committee is disappointed that it did not have the time to conduct a wider-ranging investigation into corporate governance matters as part of this inquiry. Nonetheless, it is satisfied that the Bill, incorporating the Committee's amendments, will help to restore confidence in corporate communications and will provide shareholders with additional opportunities to participate in corporate affairs.

The executive summary and the list of recommendations are attached.

Senator Chapman said that the Report is available on the Committee's website http://www.aph.gov.au/senate/committee/corporations_ctte/index.htm or from the secretariat, 02 6277 3541 from 15 June 2004.

For further comment or information: please contact Senator Grant Chapman, Chairman, on 02 6277 3630 or 0408 812 296

EXECUTIVE SUMMARY

Introduction

On 8 October 2003, an exposure draft of the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003 (CLERP 9 Bill) was released for consultation. Announcing the release, the Treasurer commented that:

The Bill takes a balanced approach to corporate regulation, containing measures to enhance auditor independence, achieve better disclosure outcomes and improve enforcement arrangements for corporate misbehaviours, whilst still fostering innovation and wealth creation. The Bill will significantly improve the overall regulatory framework for auditors.¹

On 4 December 2003, the CLERP 9 Bill was introduced into Parliament with the intention that it would be passed for a 1 July 2004 commencement.

The CLERP 9 proposals were first discussed in the policy paper, *Corporate Disclosure, strengthening the financial reporting framework*, released for public comment in September 2002. The paper's release coincided with widespread and heated public interest in corporate governance issues following the spate of corporate collapses in the United States and, to a lesser extent, in Australia.

Australia's corporate failures were nowhere near the magnitude of those in the United States. Nonetheless, the fall-out from just one—the HIH Insurance Group—had a huge impact on individuals and the broader community. Confidence in capital markets was shattered.

Among other things, HIH raised serious questions about the reliability of corporate financial reporting. Were the rules governing its content in need of an overhaul? Could external company auditors be relied on as an assurance mechanism for financial reports?

In this second part of the Committee's two-part report, the Committee looks at the measures in the Bill which seek to improve the content and reliability of financial reporting and to safeguard auditor independence.

In chapter 1, the Committee examines the CLERP 9 proposals for a Chief Executive Officer/Chief Financial Officer sign-off on financial reports and the addition of an Operating and Financial Review. The Committee also reviews submissions advocating a requirement for auditors' reports to include a discussion of alternative accounting treatments and proposals for clarification of true and fair view requirements.

The quite extensive reforms to safeguard the independence of external company auditors are discussed in chapters 2 to 11.

¹ The Commonwealth Treasurer Press Release, *Government releases exposure draft legislation on audit reform and corporate disclosure*, 8 October 2003.

Overview

Submissions to the Committee's inquiry indicated widespread general support for the objectives of the financial reporting and auditor independence reforms although there was some disagreement about how these objectives might best be achieved. Among the Bill's more contentious proposals were those to impose mandatory rotation requirements on lead and review auditors; the employment restrictions applying to former audit partners—the 'multiple-officer' restraint; the restrictions placed on auditors' provision of non-audit services to auditing clients; the creation of a Financial Reporting Panel and the conversion of auditing standards into disallowable instruments.

Evidence on the Bill's proposed reconstitution of the Auditing & Assurance Standards Board into a Commonwealth authority attracted a great deal of comment on the standard-setting framework as a whole and, in particular, the Financial Reporting Council (FRC). The Committee has made several recommendations to ensure the independence of the standard-setting institutions and to improve the transparency and functioning of the FRC.

The following summarises the Committee's conclusions about some of the more contentious issues examined during the inquiry.

Summary of main issues

Financial reporting—true and fair view requirement

The exposure draft of the Bill proposed amendments to improve the application of true and fair view requirements to financial reports. The amendments were based on the recommendations of the Joint Committee of Public Accounts and Administration (JCPAA)² and were endorsed by the HIH Royal Commissioner.

For reasons unknown to the Committee, these amendments were dropped from the Bill.

The Committee agrees with the findings of the JCPAA and the HIH Royal Commissioner that the significance of the true and fair view requirement for financial reporting appears to have been forgotten.³

To correct this shortcoming, the Committee has recommended that a definition of 'true and fair view' should be inserted into the *Corporations Act 2001*. This definition should emphasise the rationale behind the true and fair view requirement that financial statements must provide users with information they would reasonably need in order to make informed decisions regarding their securities or other interests.

² JCPAA, *Report 391, Review of Independent Auditing by Registered Company Auditors*, Canberra, August 2002, pp. 83-4.

³ The HIH Royal Commissioner says in this regard that, 'If as I suspect, preparers of accounts have forgotten the significance of true and fair view, they ought to be reminded'. *The Failure of HIH Insurance*, The HIH Royal Commission, Vol 1, Canberra, April 2003, p. 139.

The Committee has also recommended that the true and fair view requirements advocated in the JCPAA report be adopted.

Financial Reporting Council

The Bill's proposal to add the Auditing & Assurance Standards Board (AUASB) to the institutional standard-setting framework set out in Part 12 of the *Australian Securities and Investments Act 2001* (ASIC Act) attracted widespread criticism of the FRC's performance.

The Committee was satisfied that the evidence reflected definite problems with the FRC's transparency and accountability which raised questions about its suitability as the oversight body for the Australian Accounting Standards Board (AASB) and the reconstituted AUASB. In addition, the Committee identified problems with the existing legislation and funding arrangements which the Committee saw as posing a threat to the independence of standard-setting arrangements.

The Committee has consequently made recommendations to safeguard the independence of the FRC and the standard-setting bodies for which it has oversight. More particularly, the Committee has recommended that:

- the FRC should conduct its meetings in public and seek public submissions on proposals having a public interest element;
- the FRC should have an independent secretariat;
- FRC membership should be appropriately qualified and experienced;
- the Government should commit to funding the FRC, AASB and AUASB on a permanent basis; and
- the FRC's ability to influence the standard-setting functions of the AASB and AUASB should be limited.

Mandatory rotation of audit partners

The rotation requirements provide that an auditor who plays a significant role in the audit of a listed entity⁴ for five successive financial years (or for more than five out of any seven successive financial years) must retire from that role for at least two successive financial years.

Although this proposal was generally well received, the Committee accepted the evidence that rotation requirements went further than was needed for small- to middle-tier firms and, in fact, would threaten their viability.

The rotation requirements are intended to promote auditor independence by limiting the impact of fee dependence and the familiarity threat. The Committee accepted that for some firms, usually the small- to middle-tier firms, these threats are minimal at best because audit partners generally manage several clients, all who pay relatively small fees.

⁴ The rotation obligation applies to individual auditors (i.e. sole practitioners) and, for audit firms and authorised audit companies, the lead and review auditors.

Furthermore, the application of the rotation requirements to review auditors—as the term is defined in the Bill—did not reflect that review auditors perform very different roles from firm to firm. In small- to middle-tier firms in particular, review auditors are likely to perform a merely technical role in an audit and have little face-to-face client contact. The likelihood that the independence of review auditors in these circumstances could be compromised through fee dependence or the familiarity threat is considered to be negligible.

Despite this, the rotation requirements apply across all firms, regardless of their size and regardless of whether auditor independence—real or perceived—is in issue.

The fact that some firms will not have enough lead and review auditors to meet the rotation obligations and thus continue to provide auditing services is of great concern to the Committee. For some firms, the *auditor* rotation requirements will amount to audit *firm* rotation which the Explanatory Memorandum for the Bill said was not an acceptable option.⁵ Furthermore, the evidence strongly suggests that in Western Australia and South Australia particularly, suitable alternative services will not necessarily be available to clients of displaced firms.

To ensure the legislation is appropriately directed and does not go further than is required, the Committee has recommended that the definition of 'review auditor' should be amended to reflect the rationale underlying the rotation requirements. The Committee has also recommended that the rotation requirements should only apply to the top 300 listed entities by market capitalisation to protect the interests of smaller audit firms and their clients.

'Multiple-officer' restraint

The Bill provides that a person who has been a member of an audit firm or director of an audit company cannot become an officer of an audited body if another person who is or was a member or director of the auditor at a time when the auditor undertook an audit of the audited body is also an officer of the audited body.⁶

No evidence was produced to the Committee to indicate that the benefits to be gained from this provision—if any—would outweigh the restrictions placed on auditors' career opportunities and the availability of suitably experienced and qualified former auditors to occupy senior corporate positions.

The Committee has recommended the deletion of this proposed provision from the Bill.

Auditors' provision of non-audit services

The Bill's proposal to require listed companies to disclose in the annual directors' report details of all non-audit services provided by their external auditors and the fee paid for each service attracted diverse views. Of the proposal's critics, some favoured

⁵ Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003, Explanatory Memorandum, Parliament of the Commonwealth of Australia, House of Representatives, pp. 20-21.

⁶ Proposed section 324CK Corporations Act.

a blanket ban while others were prepared to accept legislative prohibition of specific non-audit services such as valuations, tax advice and internal auditing.

The Committee was not satisfied on the evidence before it that a blanket ban could be justified. Furthermore, the Committee did not favour selective legislative prohibition mainly because of the likelihood that it might be over- or under-inclusive and fail to accommodate instances where the threats posed by self-review might be non-existent.

The Committee concluded that the Bill's disclosure requirements presented a workable and cost-effective safeguard of auditors' independence in this area. The Committee believes that the 'threats and safeguards' approach advocated in *Professional Statement FI—Professional Independence*⁷ will provide a useful supplement to the legislation.

Financial Reporting Panel

The Committee supports the Bill's proposal to establish the Financial Reporting Panel as a useful alternative dispute resolution mechanism.

The Committee rejected arguments for the Panel to have a pre-publication jurisdiction. Among other things, the Committee considered this could limit the Panel's post-publication jurisdiction while posing threats to auditors' independence and professionalism.

The Committee could see no reason for requiring a company to obtain the consent of the Australian Securities and Investments Commission's consent as a precondition for referring a matter to the Panel and recommended that this precondition be deleted from the Bill.

The precedent value of the Panel's rulings was the subject of quite extensive discussion. Although the Committee's view on a reading of the relevant provision in the Bill is that the Panel's rulings were not intended to have precedent value, the Committee believes that the Bill should clarify this and has made a recommendation accordingly.

On the basis that auditors have a stake in reports that come before the Panel, the Committee has recommended that auditors should be entitled to attend and make submissions at Panel hearings which concern reports they have audited.

Auditing standards

The Committee heard a great deal of evidence that auditing standards as disallowable instruments would not necessarily improve audit quality and would pose a considerable threat to Australia's program of convergence with International Standards of Auditing.

In addition to these concerns, questions were raised about whether the auditing standards as a whole could be successfully converted into a format compatible with enforcement under corporations legislation.

⁷ This statement is based on the internationally harmonised standard for professional auditor independence agreed by the 120 nations who are members of the International Federation of Accountants. The CPAA and ICAA have adapted this standard 'to reflect Australian community expectations'. See *New Australian standard for audit independence*, CPA news release 23 May 2002.

The Committee is not opposed to auditing standards having legislative force. However, it has recommended that introduction of amendments giving auditing standards legislative force be postponed until the changes can be effected without threatening international convergence and audit quality. The Committee believes a thorough review is necessary to resolve these issues.

Conclusion

The Committee would have liked the opportunity to conduct a more wide-ranging review of corporate governance matters as part of its inquiry. However, time constraints did not allow for this.

Nonetheless, the Committee believes the Bill, incorporating the amendments recommended by the Committee, will help to restore confidence in corporate communications to the market and provide shareholders with more extensive opportunities for participation in corporate affairs.

RECOMMENDATIONS

RECOMMENDATION 1

1.34 The Committee recommends the Chief Executive Officer (CEO) and Chief Financial Officer (CFO) sign-off requirement should be amended to accommodate practical contingencies and allow for the CEO's and CFO's reasonable reliance on information provided by others when making the certification.

RECOMMENDATION 2

1.65 The Committee draws the Government's attention to the apparent inconsistency between the proposed Operating and Financial Review requirements, concise reports and AASB 1039 and recommends that the necessary amendments be made to avoid a duplication of requirements.

RECOMMENDATION 3

1.90 The Committee recommends that where alternative accounting treatments are possible in an accounting standard, and where the alternative/s not selected could have resulted in the company recording a loss for the financial year, or substantial losses rather than gains, or have materially affected its solvency, then the reason for the choice of the more favourable alternative over the less favourable alternative must be disclosed by the external auditor.

RECOMMENDATION 4

1.134 The Committee recommends that the Bill should insert a definition of 'true and fair view' into the *Corporations Act 2001* to clarify that its purpose is to ensure that the financial reports of a disclosing entity or consolidated entity represent a view that users of the reports (including investors, shareholders and creditors) would reasonably require to make an informed assessment of matters such as investment in the entity or the transaction of business with the entity.

RECOMMENDATION 5

1.135 The Committee recommends that sections 297 and 305 of the *Corporations Act 2001* should be amended:

- to provide that, in undertaking the assessment of a true and fair view, directors must consider the objectives contained in section 224(a) of the ASIC Act and must include a statement in the financial report that they have done so;
- to delete the footnote that states: If the financial statements and notes prepared in compliance with the accounting standards would not give a true and fair view, additional information must be included in the notes to the financial statements under paragraph 295(3)(c);
- to add new subsections for the following:
 - (a) In the case of conflict between sections 296 (compliance with accounting standards) and 297 (true and fair view), the notes to the financial statements must indicate why, in the opinion of the directors, compliance with the accounting standards would not give a true and fair view of the financial performance and position of the company;
 - (b) The notes to the financial statements must include a reconciliation to provide additional information necessary to give a true and fair view.

RECOMMENDATION 6

3.18 The Committee recommends that the Government explore ways in which the administrative functions and statutory obligations of the Australian Accounting Standards Board and the Auditing & Assurance Standards Board can be managed so as to avoid duplication of costs and effort.

RECOMMENDATION 7

3.19 The Committee recommends that the Government explore ways of combining the administrative and technical teams of the Australian Accounting Standards Board and the Auditing & Assurance Standards Board to provide a working environment that meets the expectations of suitably qualified professionals.

RECOMMENDATION 8

3.38 The Committee recommends that Note 2 be deleted from proposed subsection 227B(1) of the Bill so that the Auditing & Assurance Standards Board will not be required to divert resources on unnecessary work.

RECOMMENDATION 9

4.24 The Committee recommends that the *Australian Securities and Investments Act 2001* should be amended to ensure that the Financial Reporting Council:

- (a) is required to conduct its meetings in public. This should not prevent meetings occasionally being held as closed proceedings where the matters are of such sensitivity that that is appropriate.
- (b) conducts public consultation on proposals within its functions and responsibilities that have a public interest element.

RECOMMENDATION 10

4.31 The Committee recommends that urgent provision should be made for an adequately staffed and funded secretariat, independent of the Department of the Treasury and other Government departments, for the Financial Reporting Council.

RECOMMENDATION 11

4.52 The Committee recommends that the *Australian Securities and Investments Act 2001* should be amended so that members appointed to the Financial Reporting Council must have knowledge of, or experience in, business, accounting, auditing or law; or can demonstrate a sufficient involvement in the investment community or interest in corporate reporting to bring a user's perspective to the Council.

RECOMMENDATION 12

4.53 The Committee recommends that the membership mix of the Financial Reporting Council should be evenly weighted between preparers of financial statements; accountants and auditors; and business and public interest representatives and users.

RECOMMENDATION 13

4.70 The Committee recommends that the Government should confirm that it will provide the funding for the Financial Reporting Council, the Australian Accounting Standards Board and the Auditing & Assurance Standards Board on a permanent basis beyond 2004-05.

RECOMMENDATION 14

4.93 The Committee recommends that the Bill should be amended so that the Financial Reporting Council will not have a function of 'determining the Auditing & Assurance Standards Board's (AUASB's) broad strategic direction'. Instead, the Financial Reporting Council should produce and make public its critique of the AUASB's strategic direction as part of the Financial Reporting Council's oversight function.

RECOMMENDATION 15

4.94 The Committee recommends that the Bill should be amended so that the Financial Reporting Council will not have a function of 'approving' the Auditing & Assurance Standards Board's (AUASB's) priorities, business plans and budgets. Instead the Financial Reporting Council should produce and make public its critique of the AUASB's priorities, business plans and budgets.

RECOMMENDATION 16

4.95 The Committee recommends that the *Australian Securities and Investments Act 2001* should be amended so that the Financial Reporting Council will no longer have a function of 'determining the Australian Accounting Standards Board's (AASB's) broad strategic direction'. Instead, the Financial Reporting Council should produce and make public its critique of the AASB's strategic direction as part of the Financial Reporting Council's oversight function.

RECOMMENDATION 17

4.96 The Committee recommends that the *Australian Securities and Investments Act 2001* should be amended so that the Financial Reporting Council will no longer have a function of 'approving' the Australian Accounting Standards Board's (AASB's) priorities, business plans and budgets. Instead the Financial Reporting Council should produce and make public its critique of the AASB's priorities, business plans and budgets.

RECOMMENDATION 18

4.137 The Committee recommends that the professional accounting bodies should liaise with the Australian Securities and Investments Commission (ASIC) to ensure that their complaints-handling procedures meet benchmarks which ASIC considers are necessary for effective complaints handling.

RECOMMENDATION 19

4.140 The Committee recommends that the Bill should be amended to ensure that the new responsibilities for the Financial Reporting Council should not come into force until:

- the Financial Reporting Council has an adequately staffed and funded secretariat that is independent of the Department of the Treasury and other Government departments; and
- the Government confirms that the Financial Reporting Council will be government-funded beyond 2004-05.

RECOMMENDATION 20

5.39 The Committee recommends that an auditor attending the annual general meeting of an entity should be required to answer shareholders' reasonable questions about:

- critical accounting policies adopted by management and the basis upon which the financial statements were prepared; and
- the auditor's independence.

RECOMMENDATION 21

5.40 The Committee recommends that the chairman of an entity should allow shareholders a reasonable opportunity to ask the auditor reasonable questions about:

- critical accounting policies adopted by management and the basis upon which the financial statements were prepared; and
- the auditor's independence.

RECOMMENDATION 22

5.42 The Committee recommends that an auditor attending an annual general meeting should be permitted to table written answers to shareholders' questions which have been lodged in accordance with proposed section 250PA of the Bill if the auditor has prepared answers in this form.

RECOMMENDATION 23

6.52 The Committee recommends the deletion of the provision in the Bill (proposed section 324CK) prohibiting more than one former audit firm partner or audit company director from becoming an officer of a body audited by the audit firm or audit company.

RECOMMENDATION 24

6.109 The Committee recommends that purposive definitions for 'lead auditor' and 'review auditor' should be adopted to reflect the rationale underlying the rotation requirements. In particular, the Committee recommends that the definition of 'review auditor' should be amended to ensure that a rotation obligation will not apply to a review auditor in circumstances where:

- the review auditor performs a merely technical role in the audit; and
- the review auditor's contact with the audit client could not be regarded as material to the day-to-day conduct of the audit as a whole.

RECOMMENDATION 25

6.112 The Committee recommends that the Bill should be amended so that the rotation requirements only apply to the top 300 listed entities by market capitalisation. In arriving at this cut-off point, the Committee took into account the various suggestions made by witnesses and the statistics provided by The Institute of Chartered Accountants of Australia on the auditing market in Australia.

RECOMMENDATION 26

6.115 The Committee recommends that amendments should be made to the Bill accommodate short-term postponement of auditor rotation by the Australian Securities and Investments Commission if this is not already provided for elsewhere in the *Corporations Act 2001*.

RECOMMENDATION 27

8.15 The Committee recommends that the relevant provisions with respect to the registration of an authorised company auditor be amended to remove the Australian Securities and Investments Commission's power to impose restrictions and conditions retrospectively and to limit the exercise of its discretion in this regard by the prescription of appropriate criteria.

RECOMMENDATION 28

9.19 The Committee recommends that, in relation to the membership of the Companies Auditors and Liquidators Disciplinary Board, some of the members from the accounting profession should be appointed on an individual basis rather than as representatives of a professional association; auditors and/or liquidators should be included in the selections from the accounting profession; and consideration should be given to including users of financial reports appointed from the public, private and not-for-profit sectors.

RECOMMENDATION 29

10.39 The Committee recommends that the role of the Financial Reporting Panel should be restricted to making determinations on financial reports after their publication. The Committee does not support proposals for the Panel to have a 'pre-publication' jurisdiction.

RECOMMENDATION 30

10.41 The Committee recommends that lodging entities should be able to refer matters to the Financial Reporting Panel without having to obtain the consent of the Australian Securities and Investments Commission (ASIC). The notification and referral procedures presently in the Bill would have to be amended to accommodate a lodging entity referral and would include the requirement for a lodging entity to notify ASIC of a referral. In particular, the lodging entity should be subject to the same notification procedures (amended as appropriate) that presently apply when ASIC refers a matter to the Panel.

RECOMMENDATION 31

10.51 The Committee recommends that the Bill should clarify that the determinations of the Financial Reporting Panel should not have a wider application as precedents for the interpretation of financial reporting requirements.

RECOMMENDATION 32

10.76 The Committee recommends that an auditor should be entitled to attend the proceedings of the Financial Reporting Panel if the financial reports audited by that auditor are in dispute. The Committee recommends that the auditor should have rights to be notified of a referral, to have its response included with the Australian Securities and Investments Commission's referral and to make submissions to the Panel.

RECOMMENDATION 33

10.91 The Committee recommends that the Government should amend the Bill to require the Financial Reporting Panel to provide a copy of its determinations including reasons for these determinations to the Australian Accounting Standards Board.

RECOMMENDATION 34

11.51 The Committee recommends that the provisions in the Bill under which auditing standards will be disallowable instruments should not be proceeded with until a thorough review determines how legislative backing can be achieved without threatening international convergence and audit quality. Once these issues are resolved, the Committee would support the conferral of legislative backing on auditing standards.