

Corporate Law Economic Reform Program - Policy Framework

Date

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1. The Direction of Corporate Regulation Reform

The Corporate Law Economic Reform Program announced by the Treasurer in March 1997 involves a fundamental review of key areas of regulation which affect business and investment activity. The objective of the Program is to ensure that business regulation is consistent with promoting a strong and vibrant economy and provides a framework which assists business in adapting to change.

Towards this end, the Government is considering fundamental reforms to Australia's companies and securities regulation - reforms which aim to facilitate a more efficient and competitive business environment. This reform program has been developed with the benefit of consultation with the business community and the Business Regulation Advisory Group - a group established by the Treasurer to advise the Government on reform proposals.

Reform of business regulation is a major element of the Government's overall economic program. Removing constraints faced by business, particularly small business, which arise from unnecessary or overly restrictive regulation complements the benefits of sound macroeconomic management and is a key element of the Government's microeconomic reform agenda.

A stronger focus on the effect of regulation on financial markets and the economy as a whole is needed. This will take into account the impact of the regulatory environment on business activity, as regulation directly impacts upon corporate decision making and investment. The aim is to establish a more favourable climate for both investors and business.

The objective of the Program, therefore, is to promote business and market activity leading to important economic outcomes including increased employment, by enhancing market efficiency and integrity and investor confidence. Corporate regulation will be revamped to provide a clear and consistent framework which reflects the contemporary business environment and encourages business, to create wealth, prosperity and jobs.

2. Key Factors Driving Changes to Corporate Regulation

2.1 Globalisation and Market Behaviour

The productivity, dynamism and global integration of Australia's business and financial markets have greatly increased in recent years. Liberalisation of world capital markets in combination with technological developments in information and telecommunication industries have fundamentally altered the nature and operation of business and the financial system. These developments are vitally important for Australia given our need to access overseas capital and to share in the benefits of competition and innovation.

The worldwide liberalisation of trade and capital markets has resulted in Australian firms being increasingly exposed to international competition. It is vital that we have a regulatory framework which permits business to respond to challenges posed by changes in the international marketplace.

In addition, changes in investor behaviour, which are reflected in growing financial sophistication, require a reassessment of the regulatory framework.

2.2 Law has not Kept Pace with Change

The framework of regulation provided by the Corporations Law does not easily accommodate changes in the business environment and financial markets.

A fundamental review is necessary, otherwise the complexity and rigidity of Australia's current business laws will place a costly compliance burden on business in Australia, while failing to adequately protect investors. The evidence suggests that the current framework constrains front business activity and does not take account of the complexity facing management of large enterprises. The imposition of unnecessary costs inhibits business start-ups and development and increases costs to business, investors and consumers alike.

These deficiencies in current business regulation have an impact on Australia's overall economic performance.

The regulatory framework must enable financial markets to grow and adjust to rapid change. For example, corporate regulation needs to be able to adapt to developments such as electronic commerce and financial innovation.

Australia must have a regulatory environment which promotes business activity, market integrity and investor confidence. Australia's corporate regulation needs to take account of regulatory environments in other countries and be consistent with the world's best regulatory practice as adopted by key competing international markets.

3. An Economic Approach to Corporate Regulation

The focus of the reform agenda is to ensure that business regulation facilitates economic activity and job creation. The key principles underlying this review are as follows:

3.1 Market Freedom

Competition plays a key role in driving efficiency and enhancing community welfare. However, free markets do not always operate in a sufficiently competitive, equitable or efficient manner. Business regulation can and should help markets work by enhancing market integrity and capital market efficiency. At the same time, the regulatory framework needs to be sufficiently flexible so that it does not impede market evolution (for example, new products and technologies) and competition.

3.2 Investor Protection

With an increasing number of retail investors participating in the market for the first time, business regulation should ensure that all investors have reasonable access to information

regarding the risks of particular investment opportunities. Regulation should be cognisant of the differences between sophisticated and retail investors in access to information and the ability to analyse it.

3.3 Information Transparency

Disclosure is a key to promoting a more efficient and competitive marketplace. Disclosure of relevant information enables rational investment decision making and facilitates the efficient use of resources by companies. Disclosure requirements increase the confidence of individual investors in the fairness and integrity of financial markets and, by fostering confidence, encourage investment. Different levels of disclosure may be required for sophisticated and retail investors.

3.4 Cost Effectiveness

The benefits of business regulation must outweigh its associated costs. The regulatory framework should take into account the direct and indirect costs imposed by regulation on business and the community as a whole. What Australia must avoid is outmoded business laws which impose unnecessary costs through reducing the range of products or services, impeding the development of new products or imposing system-wide costs.

The regulatory framework for business needs to be well targeted to ensure that the benefits clearly exceed the costs. A flexible and transparent framework will be more conducive to innovation and risk taking, which are fundamental elements of a thriving market economy, while providing necessary investor and consumer protection.

3.5 Regulatory Neutrality and Flexibility

Regulation should be applied consistently and fairly across the marketplace. Regulatory distinctions or advantages should not be conferred on particular market structures or products unless there is a clear regulatory justification. The regulatory framework should also avoid creating incentives or opportunities for regulatory arbitrage.

The regulatory framework should be sufficiently flexible to permit market participants to respond to future changes in an innovative, timely and efficient manner. Regulation should be designed to facilitate predictability and certainty.

3.6 Business Ethics and Compliance

Clear guidance regarding appropriate corporate behaviour and swift enforcement if breaches occur are key elements in ensuring that markets function optimally.

The Government is committed to the strong and effective enforcement of corporate law and will continue to provide substantial resources to the Australian Securities Commission to enforce the law.

Fostering an environment which encourages high standards of business practice and ethics will remain a central objective of regulation, as will effective enforcement.

4. Reform Agenda

Proposals developed as part of the Corporate Law Economic Reform Program will apply the principles set out above in order to promote business and economic development. The Program is being progressed through a consultative process involving business, market participants and interest groups. These processes will continue with comment being invited on six reform program papers which will be progressively released.

4.1 Accounting Standards

The proposals for reform are framed to give greater recognition to the impact of Australian accounting standards on the economic efficiency and competitiveness of Australian firms. The aim is to ensure that accounting standards reflect contemporary conditions and are facilitating Australian business. It is also recognised that there is a need to work towards international agreement on accounting standards and harmonising Australian standards with international standards, which will have a beneficial effect on Australian business.

4.2 Fundraising

Reform proposals will facilitate more cost-effective raising of capital by removing impediments to fundraising and improving capital market efficiency. In this context, the Government is examining reforms to assist and meet the special fundraising needs of font and medium enterprises. Consideration will be given to reforming the prospectus requirements to ensure that investors are provided with relevant and cost-effective information, as well as clarifying the liability of those involved in the capital raising process.

4.3 Directors' Duties and Corporate Governance

To address concerns that current regulation inhibits sound business judgments, changes are being considered to the Law to give greater certainty in this area. Consideration is also being given to whether shareholders need enhanced avenues to seek redress for wrongs committed against their company, thereby enabling them to take greater responsibility for the governance of corporations.

4.4 Takeovers

Proposals to give greater certainty for bidders for corporate control whilst providing adequate protection for shareholders are being considered. Proposals are being examined which would clarify the compulsory acquisition rules.

Consideration is also being given to reforms which will address transaction costs and facilitate the resolution of disputes without unnecessary resort to litigation.

4.5 Electronic Commerce

To modernise the Law and facilitate sweeping changes in market activity arising from electronic commerce, regulation is to be updated to facilitate greater use of technology by Australian business and financial markets.

4.6 Futures and Securities Markets

The emergence of derivatives in world capital markets and the blurring of distinctions between derivatives and other financial products requires a fundamental reassessment of securities and futures market regulation. The proposals will aim to ensure that regulation facilitates the development of new financial products and encourages competition between market providers.

5. Next Steps

The Government will take into account comments received on the six reform program papers and will develop legislative proposals to implement the reform agenda. Following further consultation on the draft legislative proposals, the Government proposes to introduce into Parliament in 1998 a comprehensive legislative program to revamp the Corporations Law to facilitate better outcomes for Australia's business community, investors and consumers.

6. Conclusion

Recent developments in the global and Australian business environment place increasing importance on ensuring the productivity of Australian firms. Driving business growth, facilitating economic development and creating jobs are national priorities.

Significant reform and streamlining of Australia's corporate law is required. Developing a regulatory framework which responds to the demands of the contemporary business environment will make a major contribution to achieving Australia's economic goals.

For further information on the Government's Corporate Law Economic Reform Program contact:

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