

Responses from the coal face

The release of the governments long-awaited – some would say long overdue – package of reforms to audit regulation and corporate governance disclosures brought a flurry of responses. Below is a summary of what some of those in Australia's business community said in their official commentaries on the CLERP draft Bill.

Association of Chartered Certified Accountants

Like most commentators, the ACCA's Richard Francis sees merit in some of the proposals put forward by the Federal government. Strong support is expressed by the ACCA for the proportionate liability regime that is included in the package of reforms and requirements for better management discussion and analysis in annual reports.

'ACCA is on record as supporting proportionate liability for auditors, which will ensure auditors are answerable for their own mistakes but not for the full consequences of a corporate failure where management and others may have played the major role,' Francis asserts.

'We also welcome proposals to allow audit firms to incorporate. And the proposed changes to listed company reporting, such as the requirement to publish an Operating and Financial Review with a wide range of financial and non-financial information, will bring Australia into line with best practice around the world.'

Francis, however, feels some measures such as those seeking to enhance the perception of auditor independence could go too far.

'A cooling-off period of up to two years before an audit partner can go to work for a client is accepted international practice and provides an effective safeguard against conflicts of interest,' Francis notes.

'But a four-year ban, as the bill proposes, is an unnecessary restriction and can deprive companies of access to much needed skills.'

CLERP 9 makes some additional demands on companies to disclose more fully the details of remuneration paid to company executives and company directors. ACCA raises questions about whether such disclosures tackle the substantive issues involved in rewarding individuals for the creation of value for the entity.

ACCA is also concerned at the emphasis placed by the bill on measures to deal with executive pay. 'No-one can reasonably disagree with greater disclosure, or with giving shareholders the opportunity to register non-binding votes on executive salary packages and company pay policies,' Francis notes.

'Where such measures have been adopted, they have encouraged shareholder participation and exercised a corrective influence on executive pay. But market

confidence is not mainly about ‘fat cat’ salaries – it is about knowing that executives stand to gain from building long-term shareholder value rather than from short-term fluctuations in the share price.’

Australian Accounting Research Foundation

The AARF’s executive director, Richard Mifsud, will have transitional issues on his mind as the research foundation’s staff prepares to become a part of the public sector infrastructure. He faces the same challenges as his accounting standards board counterparts in moving from the oversight of the accounting bodies into a model that is overseen essentially by people without the same professional calling.

‘Clearly the CLERP 9 draft legislation has wide-ranging implications for audit reform and corporate governance in Australia,’ says Mifsud. ‘We will endeavour to work closely with the Government and the Financial Reporting Council on how the proposed legislative reforms, particularly those provisions relating to the future setting of auditing standards, may best be operationalised.’

Australian Institute of Company Directors

The AICD expressed general support for the direction of the package although it did rustle up some concerns that arose from its initial analysis. AICD chief executive John Hall said the institute was concerned about both the proposals for the corporate regulator to be able to fine companies for breaches of the Corporations Act disclosure rules and the non-binding vote that can be exercised by company shareholders on the remuneration packages for directors and executives.

‘Directors are concerned about the level of executive remuneration and the need to ensure that executive remuneration is structured in the interests of the company. We support the increased disclosure of remuneration proposed in the draft Bill, however, the proposal requiring shareholders to cast a non-binding vote on executive remuneration policy is not the solution to excessive executive remuneration. It has the effect of blurring the responsibilities of the board,’ says Hall.

‘Oversight of the management of the company is the role of the board, not the shareholders. Shareholders should express their views on remuneration levels at annual general meetings and through their vote on the election of directors.’

Fines for alleged flaws in company disclosures are still a matter for animated discussion within the ranks of AICD members and Hall says the proposal gives the ASIC powers that defy the principle of the separation of powers commonly followed in democratic societies.

‘We continue to be concerned with the proposal granting the Australian Securities and Investments Commission the power to fine for breaches of continuous disclosure,’ Hall

asserts. 'This proposal grants judicial power to a regulator in circumstances where there is no evidence that the existing laws are inadequate.'

Australian Securities & Investments Commission

The corporate regulator issued no media release or public comment on the CLERP 9 proposals despite the fact the draft Bill gives it some more bullets to fire at those it suspects to have engaged in corporate misbehaviour.

CPA Australia

The larger of the three key accounting bodies asks a rhetorical question in the headline of its media missive on the release of CLERP 9 out of captivity and into the wild. CPA chief executive Greg Larsen asked whether the CLERP proposals actually deal with the big picture in the area of corporate governance reform.

'CPA Australia's concerns are in response to initial indications of extensive reforms to audit regulation, but what appears to be limited focus on the wider financial reporting framework and the responsibilities of other key stakeholders including boards and management,' the CPA release notes.

Greg Larsen said that while auditors doing the wrong thing need to be dealt with, the CLERP proposals do not deal adequately with things in a holistic sense.

'Logic dictates that inappropriate practices must be discouraged from the outset. That means tackling the conduct and practices of a much wider group of roles; that includes boards of directors, staff who prepare financial reports, the internal and external audit functions, along with the roles of institutional investors, credit rating agencies, financial analysts and investment banks,' Larsen explains.

CPA Australia welcomes the government's general endorsement of the professional independence guidelines contained in professional statement 'F1'.

'Existing professional independence guidelines are based on a framework that requires auditors to assess all potential risks to independence before continuing or accepting an engagement. We want to ensure that this framework is not compromised by the selective inclusion of specific risks into legislation,' said Mr Larsen.

Audit rotation for partners in accounting firms will be five years, according to the draft Bill, but there will be some exemptions for those accountants in regional areas that could be granted by the ASIC. Such relief would probably extend the rotation period to seven years in those circumstances the Commission believes warrants those things. 'We will also want to see some practical limitations placed on compulsory audit partner rotation to avoid penalising smaller audit firms – it will need to be something more than extending the time frame to 7 years,' says Larsen.

CPA Australia also expresses support for the proposed proportionate liability regime and the concept of incorporating audit firms.

Institute of Chartered Accountants in Australia

The ICAA is also a body that supports the proportionate liability model advocated in the legislation among other proposals. ICAA chief executive Stephen Harrison says the proposed financial reporting panel is an idea that needs further development. While the FRP can hear matters after annual reports are issued, a provision for pre-vetting accounting treatments should be included in the deal, Harrison states.

‘We are supportive of a post-finalisation FRP but we are disappointed that CLERP 9 has not picked up Justice Owen’s recommendation in the HIH Royal Commission report which argued for a pre-finalisation panel,’ Harrison argues.

‘What the Institute and indirectly the HIH Royal Commission recommend is a FRP that would also be designed for companies and auditors that have genuinely contentious accounting issues to have them considered before the financial statements are finalised.’

Harrison continues to hammer the government over the takeover of audit standard setting. He notes that there appears to be no support for this proposal other than from the corporate regulator.

‘The ICAA is not aware of any support for this proposal other than that coming from ASIC, with the recent FRC Bulletin observing that the vast majority of submissions made by stakeholders on this subject opposed the proposal,’ Harrison states.

The ICCA has two major concerns with the movement of the auditing and assurance standards infrastructure into the control of the public sector. It could undermine the international comparability of standards as well as lead to political interference in that process.

‘We hope Parliament demonstrates leadership with this new responsibility as it could play a key role in determining the quality and international harmonisation of audit standards,’ Harrison says. ‘What we don’t want to see is auditing standards becoming a political football where their quality could be undermined through political whim.’

KPMG

This Big Four accounting firm supports the release of the legislation and sees it as being a positive step in increasing the transparency in the Australian capital market. Michael Coleman, National Managing Partner – Risk and Regulation, points out, however, there are issues of practicality associated with implementing the legislation.

‘We look forward to working with the Financial Reporting Council and the Australian Securities & Investments Commission to ensure that the legislation can be applied in a practical sense in order to achieve the Government’s objectives,’ Coleman says.

‘From first reading of the draft legislation, we see difficulties in the practical application of some aspects of the draft legislation such as audit standards having the force of law and the proposed additional obligations on auditors encapsulated in Section 311.’

PricewaterhouseCoopers

PwC chief executive Tony Harrington came out in his firm’s media release attacking aspects of CLERP 9 as being rather prescriptive in areas. Harrington notes there is only a short time for responses and that some of the material needs greater consideration.

He warns the example of the speedy introduction of legislation in the US containing various corporate governance and accounting rules should serve as a lesson to Australian legislators.

Moving too quickly on some measures might impair the chances of achieving a quality regulatory outcome, Harrington notes.

‘In the US, the rules-based Sarbanes Oxley legislation was rushed through in the last stages, resulting in a regulatory environment that is less than best practice and that has imposed an undue compliance cost on business,’ Harrington asserts.

‘We now need to carefully think through the consequences of this proposed legislation. If we get this right and convert our traditionally principled approach to governance into practical legislation, we’ll not only be taking a big step towards restoring confidence in capital markets, but also doing much to enhance and attract business and investment to Australia.’