

Corporate and Financial Services Review Proposals Paper and the Simpler Regulatory System Bill Package 2007 – Summary of Amendments

This table is based on the reference guide released by the Government on 24 May 2007 as part of the 'Simpler Regulatory System Package' (**Reference Guide**). It summarises the commencement details for, and contains AAR's comments on, each of the topics (and reflects matters as at 25 June 2007). For a more detailed description of the issues and further information about implementation of the proposals, refer to the [Reference Guide](#). References in this table to proposal numbers are to corresponding numbers used in the 'Corporate and Financial Services Review Proposals Paper' dated 16 November 2006 (**Proposals Paper**). Click [here](#) to read our summary of, and comments on, the Proposals Paper. (Issues noted and comments made in relation to the Proposals Paper that also apply to the current Bills are not repeated in this table.)

A. Measures to be Implemented Through Simpler Regulatory System Bill Package	
Proposal	Comments
1. Financial Services Regulation	
1.2 Scope of financial services advice – statement of advice (SOA) exemption – no product recommendation and no remuneration [This proposal will be supported by changes to the relevant regulations.]	<p>The proposal is broadly consistent with what was included in the Proposals Paper, although the draft legislative provisions refine its application.</p> <p>Note that the adviser (and other relevant entities/individuals) is able to receive remuneration for an earlier acquisition of a product (eg a trailing commission) without triggering the requirement to provide an SOA.</p> <p>The record of advice (ROA) must be provided to the client on request.</p> <p><i>This amendment will commence on Royal Assent.</i></p>
1.3 Scope of financial services advice – threshold for requiring an SOA	<p>In the Proposals Paper, the threshold amount was \$10,000 (but is now expected to be \$15,000). (The regulation impact statement in the Explanatory Memorandum (EM) provides some details of how the threshold should be calculated (pp123 and following). However, based on reported feedback to the Government, it is likely many will argue that even the proposed \$15,000 is still too low to have much practical benefit.)</p> <p>Also, while superannuation and retirement savings account (RSA) products are generally exempt from this provision, the Bill now proposes that the exemption (ie the threshold amount) will apply if the client already has an interest in the superannuation or RSA product.</p>

	<p>Some of the mechanics of this proposal, which are noted in the EM, are not clearly reflected in the draft provisions in the Bill. For example, the EM indicates that:</p> <ul style="list-style-type: none"> the threshold amount applies to the initial advice and further investments – it is unclear how this would apply to future amounts and whether a timeframe would apply; and the ROA is required to include the disclosures listed in section 947D(2) (which relate to charges, pecuniary interests and significant costs) – this is not specifically stated in the Bill. <p>The regulation impact statement in the EM (p130) indicates that it is proposed to introduce an anti-avoidance mechanism (with civil or criminal penalties for breaching s946A) aimed at ensuring it is not possible for advisers to divide investments into amounts of less than the threshold to avoid the requirement to produce an SOA. There is no definite indication of when (if at all) this will be implemented. Depending on the circumstances, there would not necessarily be an incentive for advisers to 'breach' the provision in this way, given they would still need to produce (and provide) ROAs for each investment. Anti-avoidance provisions tend to be complex unless they confer wide discretions on the regulator. The compliance burden they are likely to create may undermine the utility of this already narrow concession.</p> <p><i>This amendment will commence on Royal Assent.</i></p>
<p>1.4 Scope of financial services advice – financial services guide (FSG) exemption – public forum [This proposal will be supported by changes to the relevant regulations.]</p>	<p>To avoid the need to provide an FSG, the general advice must be presented in 'the manner prescribed in the regulations'. According to the EM, it is expected that the exemption will apply to sections of the public also (p28). Presumably, the regulations will also clarify what disclosures will be required in these situations.</p> <p>The regulations have not been released.</p> <p><i>This amendment will commence on the earlier of a date fixed by Proclamation or the day after six months from the date of Royal Assent.</i></p>
<p>1.6 Sophisticated investors</p>	<p>As with the existing similar provision in Chapter 6D of the <i>Corporations Act 2001</i> (the Corporations Act), the legislative provision includes specific guidance on the issues that a retail client would need to be capable of assessing (in relation to using financial services and investing in financial products) so that a financial services licensee is able to deal with that client as a sophisticated/wholesale investor, but the issues differ slightly.</p> <p>The Bill provides that a licensee may not treat a retail client as a sophisticated investor if:</p> <ul style="list-style-type: none"> the financial product in question is a general insurance, superannuation or RSA product; or

		<ul style="list-style-type: none"> the financial product or service is provided for use in connection with a business. <p>These restrictions were not included in the Proposals Paper.</p> <p><i>This amendment will commence on Royal Assent.</i></p>
1.7	Cross-endorsement of authorised representatives [This proposal will be supported by changes to the relevant regulations.]	<p>Much of the detail to implement this amendment (including the types of financial product to which it will apply) will be included in the regulations, which are yet to be made.</p> <p>The Proposals Paper appeared to limit the application of this revised provision to general and life risk insurance. According to the EM (p29), the regulations may extend the cross-endorsement provision beyond general insurance 'if appropriate'. (It is not clear what this means – will there be further consultation on this? We expect the Government received feedback on this issue in response to the Proposals Paper and, if so, that the appropriateness (or not) of extending this provision is already apparent.)</p> <p><i>This amendment will commence on the earlier of a date fixed by Proclamation or the day after six months from the date of Royal Assent.</i></p>
1.9	Product activity and data collection [This proposal will be supported by changes to the relevant regulations.]	<p>No particular title has been given to this document (although there was a suggestion in the Proposals Paper it would have a title such as <i>Financial Product Activity Report</i>). The circumstances in which it must be lodged with the Australian Securities & Investments Commission (ASIC) have been refined from what was included in the Proposals Paper. It can be lodged electronically from 1 July 2008 and must be lodged electronically from 1 July 2009.</p> <p>Although clearer than the Proposals Paper, this change will still impose a new compliance burden on product disclosure statement (PDS) issuers (when the PDS does not have to be lodged with ASIC). The scope of the requirement regarding fees and charges still needs clarification.</p> <p><i>This amendment will commence on 1 July 2008 (when ASIC has established its online report and electronic lodgment mechanisms).</i></p>
1.10	Self-listing and licensed market operators	<p>The provisions in the Bill are broader than the Proposals Paper. For example, the definition of 'listed entity' in relation to licensed market operators and related listed bodies (under new s798C) now also extends to a managed investment scheme (MIS) whose responsible entity is a related body corporate of the market licensee and a trust whose trustee is a related body corporate of the market licensee. In relation to licensed market operators and related participants (under new s798DA), a participant means (in addition to the market licensee and a related body corporate of the market licensee) a partnership if a partner in the partnership is a related entity of the market licensee. It also includes a person who 'conducts or participates in' a business that is in competition with the market licensee or a related body corporate of the market licensee (but only where the person chooses that ASIC will act in place of the market licensee in relation to specified matters, such as admission to, and expulsion and suspension from, the market, disciplinary issues and compliance with the operating rules and the Corporations Act.</p>

		<p>There are also some consequential amendments (eg a market operator's operating rules must provide for ASIC to make decisions and take actions in relation to specified matters, such as admission to and expulsion or suspension of the participant from the market). Further, the <i>Corporations (Fees) Act 2001</i> will be amended so that ASIC can impose a fee for the functions conferred on it by the operating rules of a market (as required under these amendments).</p> <p><i>This amendment will commence on Royal Assent. (Arrangements in place before the amendment commences are not affected by the amendment.)</i></p>
1.11	Pooled superannuation trusts and product disclosure	<p>The provisions in the Bill are consistent with the intended outcome in the Proposals Paper.</p> <p><i>The amendments will commence on Royal Assent. (The amendments apply to financial products and financial services provided from the day the amendments commence.)</i></p>
1.12	Registered MISs investing in unregistered MISs	<p>The removal of this prohibition will apply to any unregistered MISs as it is now proposed simply to repeal s601FC(4). This change will be greatly appreciated by affected industry participants. (The Proposals Paper confined the application of the proposed amendment to unregistered MISs operating predominantly outside Australia, which seemed unreasonably restrictive.)</p> <p><i>The amendment will commence on Royal Assent.</i></p>
<p>2. Company Reporting Obligations</p>		
2.1	Executive remuneration [This proposal will be supported by changes to the relevant regulations.]	<p>The Bill seems generally to reflect the Government's intentions as expressed in the Proposals Paper. Some matters to note are:</p> <ul style="list-style-type: none"> • there are further reforms required to complement the changes made by the Bill, which will be included in regulations that are yet to be released; • as a result of consolidating the remuneration disclosure requirements in the Corporations Act, these disclosures will now be made in a company directors' report (instead of a financial report). Accordingly, the Bill introduces a requirement for a company's auditor to express an opinion on the remuneration information that has, as a result of these new requirements, been moved from the audited financial reports into the directors' report (which ensures that this information continues to be scrutinised by an external auditor); • the amendments impose a strict liability offence in relation to the audit of information in the directors' report, which is consistent with the auditor's liability in relation to the company's financial report. Accordingly, the amendments do not change the auditor's exposure to criminal liability; • the Proposals Paper indicated that the Government was considering whether it would be appropriate for the new remuneration

	<p>disclosure requirements to apply to non-corporate disclosing entities – this is not adopted in the Bill; and</p> <ul style="list-style-type: none"> • as anticipated, the amendments require companies to disclose board policy on 'key management personnel' hedging securities that form part of their remuneration, and how the company enforces the policy. As noted in our commentary on the Proposals Paper, the ASX Corporate Governance Council (the Council) has proposed changes to its 'Principles of Good Corporate Governance and Best Practice Recommendations' (released in draft in November 2006), which include: <ul style="list-style-type: none"> • removing areas of regulatory overlap in relation to sign-off on financial statements and disclosure of remuneration policies; and • recommending that the hedging of unvested options be prohibited. <p>According to the ASX website, the Council will release its response to submissions received on the draft proposals and the final version of the revised Principles and Recommendations in mid-2007. It is to be hoped that they will be consistent with the Government's objectives in the Bill and proposed regulations.</p> <p><i>The amendments will commence on Royal Assent (and apply to financial years that begin on or after that date).</i></p>
<p>2.2 Thresholds for financial reporting of large proprietary companies</p>	<p>The Government appears to have responded to concerns about implementation of the proposal as set out in the Proposals Paper. The definition of 'large proprietary company' retains the current structure of needing to meet at least two out of three threshold tests, but the amounts in respect of consolidated gross operating revenue and consolidated gross assets have been significantly increased. (The amendment to the current test suggested in the Proposals Paper would likely have applied to companies not intended to be caught by the proposed change.) There is also provision to prescribe changes to the three thresholds through the Corporations Regulations (which is sensible and will avoid the current situation of having to go through the process of legislative change when this issue needs to be reviewed in the future).</p> <p>This part of the Proposals Paper also referred to the:</p> <ul style="list-style-type: none"> • possible repeal of a law enacted in 1995 that exempted a number of private companies (referred to as 'grandfathered exempt proprietary companies') from the need to lodge audited financial reports. The Government is no longer pursuing this exemption, although those companies will still be required to prepare (but not lodge) audited financial reports; • incorporation of the current relief in ASIC class order 98/1418 in relation to wholly-owned subsidiaries into the Corporations Act. This has not been addressed in the Bill (but the class order will continue to apply). <p><i>The amendments will commence on Royal Assent (and apply to financial years that begin on or after that date).</i></p> <p>Note: The Government has also taken steps to implement the next stage in the process of reviewing and reforming Australia's financial reporting</p>

	framework. On 8 June, the Government released a discussion paper on financial reporting by unlisted public companies. Currently, these companies are subject to similar annual reporting requirements as listed public companies. The paper examines the issue of whether some type of differential reporting framework should be introduced for these companies based on the existing differential requirements for proprietary companies. The closing date for submissions is 3 August 2007.
2.3	<p>Change in office holders</p> <p>This is consistent with the Proposals Paper. The Bill will also introduce some consequential amendments (eg in relation to liability of the company to notify ASIC of a change in officeholders where the officeholder has already notified ASIC, and updating of the Small Business Guide in Part 1.5 of the Corporations Act to refer to the new arrangements).</p> <p><i>This amendment will commence on the earlier of a date fixed by Proclamation or the day after six months from the date of Royal Assent.</i></p>
2.4	<p>Company addresses [This proposal will be supported by changes to the relevant regulations.]</p> <p>The Proposals Paper suggested that the purpose of this proposal was to streamline updating of all company addresses by allowing addresses to be updated through a common form. While the formal recognition of a 'contact address' will no doubt be welcomed by companies, the provisions in the Bill do not necessarily meet the objective of streamlined notification. Presumably the regulations will address this aspect and hopefully also require the company to nominate a preferred address for communications from ASIC.</p> <p><i>This amendment will commence on the earlier of a date fixed by Proclamation or the day after six months from the date of Royal Assent.</i></p>
2.6	<p>Reduced compliance burden associated with voluntary deregistration</p> <p>This is consistent with the objective outlined in the Proposals Paper.</p> <p><i>This amendment will commence on the earlier of a date fixed by Proclamation or the day after six months from the date of Royal Assent.</i></p>
2.7	<p>Upfront payment of annual fees for companies [This proposal will be supported by changes to the relevant regulations.]</p> <p>This is consistent with the objective outlined in the Proposals Paper. The EM indicates it will be possible for companies to pay annual review fees for a period of 10 years with a single lump sum payment. Presumably:</p> <ul style="list-style-type: none"> • this will be clarified in the regulations (yet to be made); • a lump sum payment for a period of less than 10 years (but more than one) will be permitted; and • the proposal will also extend to registered schemes and registered Australian bodies (see proposed s1351(4)(b) which refers to these entities also). <p><i>This amendment will commence on the earlier of a date fixed by Proclamation or the day after six months from the date of Royal Assent.</i></p>
2.8	<p>Electronic distribution of annual reports</p> <p>This is consistent with the details included in the Proposals paper. While this will be a very welcome development for companies, registered MISs and disclosing entities, there will no doubt be further lobbying of the Government to extend similar concessions to enable electronic distribution of other documents such as PDSs, annual statements, transaction confirmations etc.</p> <p><i>The amendments will commence on Royal Assent and apply to reports for a financial year that ends on or after that date. (Notifications to</i></p>

	<p><i>members about the form in which they may elect to receive annual reports under s314(1AB) must be provided after that section commences (ie the date of Royal Assent). However, this does not apply if a member has previously notified the company (under s316(1)(a)) that the member does not wish to receive annual reports.)</i></p>
<p>3. Auditor Independence</p>	
<p>3.1 Anomalies arising from CLERP 9</p>	<p>The Government has taken the opportunity to extend the proposed changes to the auditor independence requirements outlined in the Proposals Paper. The refinements addressed by the Bill are as follows.</p> <p><i>Amendments identified in 3.1 of the Proposals Paper – incorporation into the Corporations Act:</i></p> <ul style="list-style-type: none"> The amendments to the Corporations Regulations dealing with: the 'ordinary course of business exemption'; clarification that cheques and savings accounts are not intended to be covered by the prohibition on loans by an audit firm to its client; and giving ASIC the power to extend the current 21-day period within which an auditor is required to resolve a conflict of interest situation. Note: The wording and the structure of the amendments in the Bill to incorporate these provisions differs from the current corresponding provisions in the Corporations Regulations, apparently for consistency with other (related) changes being implemented under the Bill. <p><i>The amendments will commence on Royal Assent.</i></p> <ul style="list-style-type: none"> The current ASIC class order relief relating to the auditor's independence declaration. Note: The requirements are to some extent different from the current class order relief, but they achieve the aim of addressing the timing inconsistency that currently exists between the Corporations Act, the Accounting Standards and the ASIC class order in relation to when the independence statement may be signed relative to the signing of the directors' report and the auditor's report. <p><i>The amendments will commence on Royal Assent and apply to reports for a financial year that ends on or after that date.</i></p> <p><i>Improvements arising out of public consultations on the comparative review of Australia's auditor independence requirements:</i></p> <p>These amendments were not specifically mentioned in the Proposals Paper.</p> <ul style="list-style-type: none"> The multiple former audit firm partner restriction, which was introduced as part of CLERP 9 in response to recommendations of the HIH Royal Commission (and imposed restrictions on employment relationships between an auditor and the audit client by prohibiting any more than one former partner of an audit firm, at any time, being a director of, or taking a senior management position with, the client), will no longer apply in relation to a former partner of an audit firm or former director of an audit company who has ceased to be a member of the firm/company for at least five years.

	<p><i>The amendments will commence on Royal Assent.</i></p> <ul style="list-style-type: none">• The former audit partner 'cooling-off' restriction period, which currently imposes a mandatory period of two years from the date of departure from the firm before a former partner of an audit firm (or a former director of an audit company) who was on the audit team can become an officer of the audit client (and there is a similar restriction on the lead or review auditor of an authorised audit company), will, as a result of the amendments, commence from the date of the auditor's (annual or half year, as the case may be) report in respect of the latest audit in which that partner or director participated (and there will be a corresponding amendment in relation to a former lead auditor or review auditor of an audit company). <p><i>The amendments will commence on Royal Assent.</i></p> <ul style="list-style-type: none">• The existing specific restrictions on financial investments in an audit client, which extend to all partners in a firm or directors in an audit company who are not involved in an audit and not in a position to influence the outcome of an audit, will be removed. Instead, the restriction will apply only to those with a close connection with a particular audit (ie the professional members of the audit team, referred to in the US as 'covered persons'). This new 'covered person' approach will require related (consequential) amendments, including to the definition of a 'professional members of the audit team'. <p><i>The amendments will commence on Royal Assent and will apply to an audit of the financial report for a financial year or an audit or review of the financial report for a half-year in a financial year, if the financial year begins on or after the date of Royal Assent.</i></p> <p><i>Miscellaneous technical amendments designed to improve the operation of the existing auditor independence requirements (in the light of operational experience since the requirements were introduced under CLERP 9 in 2004)</i></p> <p>The main amendments are as follows:</p> <ul style="list-style-type: none">• ASIC presently has limited powers to exempt members of audit firms who are registered company auditors from the auditor independence requirements (in Division 3 of Part 2M.4 of the Corporations Act). ASIC's existing relief powers will be extended to cover members of an audit firm who are not registered company auditors, former members of an audit firm, former directors of an audit company and former professional employees of an audit company. The Corporations Act currently enables ASIC to grant specific relief from the auditor independence requirements to these categories of persons. The amending provisions will enable ASIC to make class orders in relation to these persons (where relevant criteria are satisfied, which are the same as the criteria that apply to ASIC's current relief powers).• To address a current anomaly, the amending provisions will clarify that a registered company auditor, an audit firm or an authorised audit company is eligible to be appointed as the auditor of a compliance plan for a MIS.
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	<ul style="list-style-type: none"> The amending provisions will clarify that an individual person and an authorised audit company can be appointed by a financial services licensee to audit its financial statements. <p><i>Each of these miscellaneous amendments will commence on Royal Assent.</i></p>
<p>4. Corporate Governance</p>	
<p>4.1 Related party approval thresholds [This proposal will be supported by changes to the relevant regulations.]</p>	<p>The proposed amendments are consistent with the changes put forward in the Proposals Paper. The actual threshold will be included in regulations.</p> <p><i>The amendments will commence on 1 July 2007 and relate to a company's financial year that begins on or after that date.</i></p>
<p>4.2 Director amounts threshold</p>	
<p>5. Fundraising</p>	
<p>5.1 Quoted securities rights issue disclosure</p>	<p>The proposed amendments are consistent with the changes put forward in the Proposals Paper. As noted in the EM (p85), the amendments are technical and quite complex, perhaps unnecessarily so. They deal separately with the 'right' to apply for securities or interests in MISs and an 'offer' of securities or interests. An example of this is the inclusion of the 'rights' in the definition of 'securities' under Chapter 7 (s761A), which ensures that the investor protections contained in that Chapter apply to relevant activities in relation to such rights. As noted in the EM (p93), a financial adviser offering advice in relation to the rights to a retail client would, therefore, be subject to the full Chapter 7 licensing, conduct and disclosure requirements.</p> <p>Note also that consistent with relief available under the Australian Securities Exchange Listing Rules, it will be possible (subject to conditions) to exclude from a rights offer persons in specific overseas jurisdictions who would otherwise be entitled to participate in the issue.</p> <p>There are also a number of consequential amendments, in particular:</p> <ul style="list-style-type: none"> stating that failure to comply with the key provisions applying to rights issues conducted without disclosure (ie under these amended provisions) is included as one of the contraventions on which ASIC may rely to make a determination under s713 and s1013FA of the Corporations Act to exclude an offer of continuously quoted securities (and financial products) from the reduced disclosure requirements; and clarifying the application (or not) of the relevant enforcement and contravention provisions under the Corporations Act.

	<i>The amendments relating to rights issues will commence on Royal Assent and the amendments abolishing the requirement for a prospectus or PDS for a rights issue will apply to rights issues offered on or after the date of Royal Assent.</i>
5.2 Small scale offerings	<p>The proposed amendments are consistent with the changes put forward in the Proposals Paper.</p> <p><i>The amendments will commence on Royal Assent and will apply to offers of securities made on or after that date.</i></p>
5.3 Secondary sale issues	<p>The proposed amendments are consistent with the changes put forward in the Proposals Paper.</p> <p>The Government sought comments on whether any further changes would be required in relation to the issue of the cleansing notice. The Proposals Paper noted concerns about technical problems arising because of the requirement to release the cleansing notice before the day on which the sale offer is made. The amendments allow for the cleansing notice to be provided at any time before the sales offers are made (rather than before the day on which the offers are made).</p> <p><i>The amendments will commence on Royal Assent.</i></p>
5.4 Employee unlisted share schemes disclosure	<p>The proposed amendments are broadly consistent with the changes set out in the Proposals Paper (although the proposal that provisions relating to the self-acquisition of shares by companies would not apply in the context of ESSs, subject to specified safeguards) has not been included in the Bill and is the subject of further consultation – see below 5.4 ESSs (<i>in relation to one aspect of the proposal on self-acquisition of shares</i>)).</p> <p>The EM notes (p87) that, at this stage, only ESSs involving the <i>issue</i> of securities may use an OIS; a prospectus must still be prepared for an ESS relating to a <i>sale</i> of securities.</p> <p>The EM adds (p168) that submissions received in response to this issue in the Proposals Paper generally supported the approach, although some argued that the proposed relief did not go far enough. In particular, smaller companies might query whether the changes will make it easier for them to offer ESSs. While some of the legal barriers have been lifted, the associated costs (eg the requirement for an OIS, which means that companies must have audited financial accounts) may mean that, from a practical viewpoint, the reforms are not very effective for them. The EM says that there is a need to maintain an appropriate balance between providing relief to industry and protection for ESS participants. The Government has, however, indicated that it may consider some of the technical suggestions it received relating to operation of the proposals during any further consultations with industry in the future.</p> <p><i>The amendments will commence on Royal Assent and will apply to ESSs and contribution plans offered on or after that date.</i></p>
5.5 Prospectus and PDS advertising rules	<p>The proposed amendments are broadly consistent with the changes set out in the Proposals Paper. (As indicated in the Proposals Paper, the Government has not changed the requirements relating to advertising for <i>unquoted</i> securities prior to lodgment of a disclosure document.)</p>

		<i>These amendments will commence on the earlier of a date fixed by Proclamation or the day after six months from the date of Royal Assent (and will apply to an advertisement or publication made after that date).</i>
5.6	Stapled securities disclosure [This proposal will be supported by changes to the relevant regulations.]	<p>The proposed amendments are broadly consistent with the changes set out in the Proposals Paper. They enable a replacement PDS to be lodged to correct an error or omission in the original PDS in relation to an offer of interests in an MIS that are offered as part of a stapled security. The replacement PDS provisions are consistent with the current replacement prospectus provisions under the Corporations Act. (The supporting regulations have not been released.)</p> <p>There are a number of minor consequential amendments, as well as amendments that clarify the application of relevant enforcement and remedy provisions.</p> <p><i>The amendments will commence on Royal Assent and will apply to any PDS lodged with ASIC at the time of commencement or after that date.</i></p>
6. Takeovers		
6.1	Remove telephone monitoring during takeover bids	<p>The proposed amendment is consistent with the change outlined in the Proposals Paper. There will also be consequential amendments to repeal the relevant penalty provisions under the Corporations Act.</p> <p><i>The amendments will commence on Royal Assent.</i></p>
6.2	85 per cent notices	<p>The proposed amendments are consistent with the changes outlined in the Proposals Paper. (The amendments will also result in repeal of the notification requirements imposed on the company as a result of receiving an 85 per cent holding notice from a person. There will also be consequential amendments to repeal the relevant penalty provisions under the Corporations Act.)</p> <p><i>The amendments will commence on Royal Assent.</i></p>
7. Compliance		
7.3	Simplifying returns of company particulars	<p>The proposed amendments are consistent with the changes outlined in the Proposals Paper.</p> <p><i>This amendment will commence on the earlier of a date fixed by Proclamation or the day after six months from the date of Royal Assent. It will apply to returns of particulars issued on or after the commencement date.</i></p>
7.4	Electronic registration of charges [This proposal will be supported by changes to	<p>The proposed amendments are consistent with the changes outlined in the Proposals Paper. (The supporting regulations have not been released.)</p> <p>The ASIC website has a section on its Charges Project, which is updated periodically to report on progress. It is intended that the facility will be operational by 1 July 2007 to allow for electronic registration of charges (and electronic lodgment of relevant documentation) from</p>

the relevant regulations.]	that date. The amendments also provide ASIC with the ability to apply to the court to have the register rectified in circumstances where the electronic system to register the charge fails (to ensure that the timing of registration and priority of charges is maintained). ASIC will also be able to issue electronic certificates providing details of a registered charge. <i>The amendments will commence on 1 July 2007.</i>
Other Initiatives in the Simpler Regulatory System Bill Package	
Auditor independence requirements	These initiatives were not specifically included in the Proposals Paper but are an extension of other suggested changes discussed in the Proposals Paper. For a discussion of these and the related amendments, refer to the discussion above in 3.1 <i>Anomalies arising from CLERP 9</i> .
Body corporate names Constitutions of non-profit companies	These initiatives were not included in the Proposals Paper but are sensible amendments, particularly in the context of the Government's objective to streamline, where possible, administrative processes for corporations. The proposed amendment in relation to approval of identical and otherwise unacceptable company names provides that the Minister 'may' delegate this function. We assume the Minister will exercise this discretion and sign the instrument to effect the delegation once the Bill is enacted. <i>These amendments will commence on 1 July 2007.</i>
B. Measures to be Implemented Through Other Bills	
Topic	Comments
7.1 Breach reporting period	On 21 June 2007, the Financial Sector Legislation Amendment (Simplifying Regulation and Review) Bill 2007 was introduced into the House of Representatives (and the Bill has now been referred to the Senate Economics Committee for inquiry and report by 31 July 2007). The Bill reflects and builds on the Government's commitment to cutting red-tape as indicated in its response to the Banks Inquiry and its subsequent discussion paper <i>Streamlining Prudential Regulation: Response to Rethinking Regulation</i> (released on 4 December 2006). It contains a number of proposals to streamline and simplify prudential regulation (in a manner that is consistent with the findings of the Banks Inquiry Report), including: <ul style="list-style-type: none">• streamlined breach reporting;• greater flexibility through exemption powers, enforceable undertakings and discretion under prudential standards;

	<ul style="list-style-type: none"> • simpler processes for appointing actuaries and auditors and enhanced cooperation with professional bodies; and • proposals simplifying the <i>Life Insurance Act 1995</i> and the <i>Superannuation Industry (Supervision) Act 1993</i>. <p>The Bill also includes amendments implementing the Government’s response to the Review of Part 23 of the <i>Superannuation Industry (Supervision) Act 1993</i>.</p>
C. Measures to be Implemented Through Regulations	
Topic	Comments
1.5 Non-cash payment facilities	This seems to be consistent with the Proposals Paper. The Government has not indicated when the regulations will be released.
2.5 Share and member reporting requirements	This seems to be consistent with the Proposals Paper. The Government has not indicated when the regulations will be released.
D. Projects for Further Separate Consultation	
Topic	Comments
1.1 Scope of financial services advice — sales recommendation	When Chris Pearce (Parliamentary Secretary to the Treasurer) launched the Proposals Paper in November 2006, he highlighted the plan to redefine the scope of financial services advice and introduce a sales recommendation framework as one of 12 significant proposals relating to financial services regulation set out in the Proposals Paper ¹ . Mr Pearce was also reported in the <i>Australian Financial Review</i> as saying that, in developing this proposal, he was trying to match the law with the reality of the market – ie to put in place a legal

¹ Launch of the Corporate and Financial Services Regulation Review Proposals Paper, Australian Stock Exchange, Sydney (16 November 2006)

² 'Advice reforms split staff by title' by Alison Kahler, *Australian Financial Review*, Friday, 17 November 2006, p64.

	<p>framework that reflects how consumers seek financial advice and how business provides it.² The proposal was also intended, as with proposal 1.3 (<i>Threshold for requiring an SOA</i> – see above), to make it easier for small investors to access financial advice. The rationale was that not everyone who buys a financial product has received personal financial advice in relation to that purchase and, in situations where this occurred, a person who simply provides a sales recommendation without taking account of the consumer's objectives, financial circumstances and needs should not have to meet all of the consequential regulatory requirements (including to provide an SOA).</p> <p>However, it seems that while the underlying objective is generally supported, concerns have been raised with the Government about appropriate mechanisms under the current framework to achieve the required outcome³.</p> <p>The Government has not indicated at this stage when or how it expects to resolve this issue.</p>
<p>1.8 Policy Statement 146 — training requirements</p>	<p>In the information release, ASIC announced it is currently conducting a review (prior to issuing a consultation paper) focusing on:</p> <ul style="list-style-type: none"> • the appropriateness of current training standards for providers of general advice and providers of advice on general insurance products; • the description of the knowledge and skills categories in Appendix A of PS 146 (eg whether there should be a larger number of categories that have a narrower focus); • the administration and ease-of-use of ASIC's training register (including how courses are placed onto the register); and • recognition of prior study and training. <p>ASIC has been meeting with relevant stakeholders who have also raised concerns about the quality of some courses currently offered and ASIC has called for any further information that stakeholders are able to provide on this topic.</p> <p>ASIC says it will release a public consultation paper in July 2007 to seek broad input on the review.</p>
<p>5.4 ESSs (in relation to one aspect of the proposal on self-acquisition of</p>	<p>The Government has not given a timeframe for the consultation process or implementation of this proposal.</p> <p>(For details of other changes affecting ESSs, see 5.4 <i>Employee unlisted share schemes disclosure</i> above.)</p>

³ For example, the Association of Superannuation Funds of Australia has suggested a more appropriate way to address the issue would be to consider reforms to the definition of 'financial product advice' (see ASFA submission to the Parliamentary Joint Committee on Financial Services and Regulation on the Corporations Legislation Amendment (Simpler Regulatory System) Bill 2007, dated 6 June 2007).

shares)	
7.2 Australian Business Number Reference	The Proposals Paper noted that there would need to be changes to the ABN database before this proposal could be implemented. The Government has not given a timeframe for the consultation process or implementation of this proposal.