

House of Representatives

Supplementary Order Paper

Tuesday, 3 May 2011

Auditor Regulation and External Reporting Bill

Proposed amendments

Hon Simon Power, in Committee, to move the following amendments:

Clause 2

Subclause (1): to omit “, **73, 90, and 91**” (line 5 on page 6) and substitute “**and 73**”.

To insert the following subclauses after *subclause (1)* (after line 6 on page 6):

- (1A) **Part 4** (apart from **section 86**) and **Schedule 2** come into force on 1 July 2011.
- (1B) **Section 86** comes into force on 1 July 2012, unless it is brought into force on an earlier date to be appointed by the Governor-General by Order in Council.

Clause 6

Definition of **accredited body** in *subclause (1)*: to omit this definition (lines 29 and 30 on page 8) and substitute the following definition:

accredited body means a person that is granted accreditation, or is treated as having been granted accreditation, under **sub-part 4 of Part 2**

Definition of **FMA**: to omit “(subject to **subsection (2)**)” (line 27 on page 9).

Subclause (2): to omit this subclause (lines 8 to 11 on page 12).

Clause 9(1)

To insert after “unless it is a” (line 32 on page 13) “partnership that is a”.

Clause 9A

Subclause (1): to insert after “audit is not” (line 18 on page 14) “being”.

Clause 14(3)

To insert after “conditions of” (lines 30 and 31 on page 18) “the”.

Clause 19(1)(c)

To insert after “person are not” (line 19 on page 21) “being”.

Clause 20(1)(b)

To insert after “person are not” (lines 29 and 30 on page 22) “being”.

Clause 23E(1)

To insert the following paragraph after *paragraph (a)* (after line 33 on page 27):

- (ab) obtained the registration by making a false or misleading representation or declaration (whether oral or written); or

Clause 36(b)

To add (line 37 on page 36) “(if any)”.

Clause 45

To add the following subclauses as subclauses (2) to (4) (after line 11 on page 41):

- (2) An accredited body must give all reasonable assistance to the FMA to enable the FMA to act under **subsection (1)**.
- (3) An accredited body commits an offence if the accredited body—
 - (a) fails to comply with **subsection (2)**; or
 - (b) otherwise hinders, obstructs, or delays the FMA in acting under **subsection (1)**.
- (4) An accredited body that commits an offence under **subsection (3)** is liable on summary conviction to a fine not exceeding \$100,000.

Clause 47(1)(b)

To omit “of the” (line 11 on page 42) and substitute “of its”.

Clause 50(1)(a)(iv)

To insert after “**34**,” (line 4 on page 43) “**45(2)**,”.

Clause 73(4)

To omit “or cost” (line 14 on page 60) and substitute “cost, or other amount”.

Clause 75(2)

Paragraph (b): to omit “carry out any issuer audit” (line 18 on page 62) and substitute “act as the auditor in respect of all kinds of issuer audits”.

Paragraph (c): to omit “earlier” (line 19 on page 62) and substitute “earliest”.

Clause 76(2)

Paragraph (b): to omit “carry out any issuer audit” (line 11 on page 63) and substitute “act as the auditor in respect of all kinds of issuer audits”.

Paragraph (c): to omit “earlier” (line 12 on page 63) and substitute “earliest”.

Clause 76A

Subclause (1)(a): to insert after “**section 75**,” (line 28 on page 63) “is a partnership that”.

Subclause (4): to omit “earlier” (line 6 on page 64) and substitute “earliest”.

New clause 79A

To insert the following clause after *clause 79* (after line 2 on page 66):

79A Protection from liability for accredited bodies and others

- (1) An accredited body is not liable for anything it may do or fail to do in the course of the performance or exercise or intended performance or exercise of its functions, powers, or duties under **Parts 1 to 3**, unless it is shown that it acted in bad faith or without reasonable care.
- (2) An officer, an employee, or a person acting on behalf of an accredited body is not liable for anything he or she may do or say or fail to do or say in the course of the performance or exercise or intended performance or exercise of the accredited body’s functions, powers, or duties under **Parts 1 to 3**, unless it is shown that he or she acted in bad faith.

Clause 80(2)

To insert after “body may” (line 13 on page 66) “, subject to any conditions imposed by the FMA,”.

Clause 88: new section 32

Heading to *new section 32*: to insert after “**Disallowance of**” (line 30 on page 78) “**instruments and**”.

Subsection (1): to omit “determinations of the Board as if the” (line 33 on page 78) and substitute “instruments and determinations of the Board as if the instrument or”.

Subsection (1)(a): to omit “issue of a” (line 35 on page 78).

To insert the following subsection after *subsection (1)* (after line 1 on page 79):

- “(1A) The instruments and determinations referred to in **subsection (1)** must be presented to the House of Representatives in accordance with section 4 of the Regulations (Disallowance) Act 1989.

Subsection (2): to insert after “The” (line 2 on page 79) “instruments and”.

Clause 88: new section 34A(1)

To omit “6 months” (line 9 on page 80) and substitute “9 months”.

Clause 88: new section 34C(4)

To omit “6-month” (line 27 on page 81) and substitute “9-month”.

Clause 90

To insert the following subclause after *subclause (2)* (after line 14 on page 82):

(2A) Section 42B(1) is amended by adding the following paragraphs:

“(e) prescribing matters for the purposes of **section 34B(2)(d)**:

“(f) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.”

Subclause (3): to omit this subclause (lines 15 to 21 on page 82) and substitute the following subclause:

(3) Section 42B(2) is amended by omitting “or the Board” in each place where it appears.

Clause 97(3)

To omit “this Act” (line 33 on page 87) and substitute “the principal Act”.

Schedule 1

To insert the following items after the item relating to *new section 199(1A)* of the Companies Act 1993 (after line 33 on page 89):

Financial Markets Authority Act 2011 (2011 No 5)

Paragraph (a) of the definition of **financial markets participant** in section 4: insert “accredited,” after “appointed,” in each place where it appears.

Definition of **law enforcement or regulatory agency** in section 4: add:

“(i) an accredited body (within the meaning of **section 6(1)** of the **Auditor Regulation and External Reporting Act 2010**)”.

Part 1 of Schedule 1: insert before the item relating to the Financial Advisers Act 2008 “**Parts 1 to 3 of the Auditor Regulation and External Reporting Act 2010**”.

Item relating to Schedule 1 of the Securities Act 1978: to omit this item (lines 1 to 3 on page 95).

Part 2 of Schedule 2

To insert the following item after the item relating to regulation 17(4) of the Airport Authorities (Airport Companies Information Disclosure) Regulations 1999 (after line 16 on page 100):

Financial Service Providers (Dispute Resolution—Reserve Scheme) Rules 2010 (SR 2010/250)

Definition of **generally accepted accounting practice** in rule 3: omit “approved”.

Explanatory note

This Supplementary Order Paper—

- amends the commencement clause so that most of *Part 4* and *Schedule 2* come into force on 1 July 2011. *Part 4* amends the Financial Reporting Act 1993 and *Schedule 2* makes consequential amendments relating to that Part:
- amends *clause 23E(1)* to provide for the cancellation of the registration of an audit firm where the firm obtained registration by making a false or misleading representation or declaration:
- amends *clause 45* to require accredited bodies to provide reasonable assistance to the Financial Markets Authority (FMA) when it is performing its monitoring function under that clause. A failure to comply with this duty is an offence punishable by a maximum fine of \$100,000. *Clause 50* is also amended to allow the FMA to exercise certain powers if an accredited body breaches the duty (for example, cancel the accreditation of the body or censure the body):
- inserts *new clause 79A*. This new clause protects accredited bodies from liability relating to the performance or exercise of functions, powers, or duties under *Parts 1 to 3*, unless it is shown that the body acted in bad faith or without reasonable care. The clause also protects an officer or employee of an accredited body unless it is shown that the person acted in bad faith:
- amends *clause 80* to clarify that if the FMA shares information or documents with an accredited body, the use of the information or documents is subject to any conditions imposed by the FMA:
- amends *new section 32* in *clause 88* to expressly clarify that certain disallowable instruments (for example, financial reporting standards and auditing and assurance standards issued by the External Reporting Board) must be presented to the House of Representatives under section 4 of the Regulations (Disallowance) Act 1989:
- amends *new sections 34A and 34C* in *clause 88* to extend the period within which the External Reporting Board must prepare a draft strategy for establishing different tiers of financial reporting from 6 months after commencement to 9 months after commencement:
- makes various changes relating to the enactment of the Financial Markets Authority Act 2011 (including specifying *Parts 1 to 3* of this Bill as being financial markets legislation for the purposes of that Act and specifying that an accredited body is a financial markets participant and a law enforcement or regulatory agency (as defined in that Act)):
- makes a number of other minor drafting or technical changes.