



ASIC

Australian Securities & Investments Commission

Building the CLERP 9 Administrative Framework

**Policy to implement the
*Corporate Law Economic Reform
Program (Audit Reform and
Corporate Disclosure) Bill 2003***

An ASIC guide

February 2004

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Introduction

1 ASIC welcomes the introduction of the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003* (the Bill). The intended starting date of the Bill (subject to any particular transitional arrangements) is 1 July 2004.

2 The Bill strengthens the existing legislative regime, particularly the audit regulation and general corporate governance framework. This will mean change for a number of bodies currently regulated under the *Corporations Act 2001* (the Act). We will do our best to give guidance to help you plan for these changes, but we also expect you to plan ahead to make the changes required under the Bill.

3 ASIC faces a large administrative task in preparing to implement the Bill in a comparatively short time. This guide describes how ASIC, in order to build an administrative framework, plans to issue guidance. We encourage you to engage in the policy

development process by making comments on our policy proposals as they are issued. Your participation makes for better policy outcomes and better administration of the regime.

Special note We want to give you information about our plans for policy and processes as soon as we can to help you plan effectively. While we have done our best to cover the main issues in this guide, you will also need to prepare your own plans. It is possible we have missed some issues or have not taken into account the way the new legislation will affect specific industry situations. *We are keen to hear from you on our general approach, and what might be missing from it, as well as your answers to specific questions.*

What this guide is about

The Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003

4 On 4 December 2003, the Federal Government introduced the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003* (the Bill) into Parliament. The Government plans that the Bill will take effect as legislation on 1 July 2004. However, in some cases particular provisions in the Bill may commence on a later date. For example, the obligation to have adequate arrangements to manage conflicts of interest will not commence until 1 January 2005.

Target audience of this guide

5 This paper has been written for all those who are potentially affected by the Bill including shareholders, listed companies, those involved in auditing, and those who offer financial services or financial products (including securities).

6 We suggest you read this guide carefully: it is designed to explain not only the details of what we plan to do, but also why we have decided to do things that way. It also gives a road map explaining how everything fits together.

The aims of this guide

- 7 Our aim in providing this guide is to tell interested parties about:
- (a) ASIC's key messages and expectations, so that people understand the context for our policy and related publications;
 - (b) the policy, guides and other papers that ASIC expects to release concerning the Bill; and
 - (c) what our publications will contain and how they fit together to form a coherent administrative response to the Bill.

How this guide is organised

- 8 This guide is divided into four sections:

- (a) **Section A** gives an overview of our approach to the Bill, and our key messages and policy themes;
- (b) **Section B** summarises our general approach to developing policy and the policy publications we intend to issue;
- (c) **Section C** explains what each of our publications on CLERP 9 will contain and the timetable for its release;
- (d) **Section D** discusses how you can keep up to date or contact ASIC regarding CLERP 9 developments.

Important note The timing and content of ASIC's policy and other publications depends on the timing of the Bill's progress through Parliament and whether changes are made during the legislative process.

A Our approach to the Bill

9 In this section, we describe our key messages and policy themes so people can understand the context for our policy and related publications.

Our role and the aims of the Bill

10 ASIC's key role is to develop administrative policy and processes so that we can implement the Bill effectively and efficiently. In carrying out this role, we will make sure that our policy is consistent with the aims of the Bill.

11 The Bill aims to improve the operation of the market by promoting transparency, accountability and shareholder participation. For example, the Bill sets up a framework with the following features:

- (a) measures to improve the reliability and credibility of financial statements through enhanced auditor independence;
- (b) better enforcement arrangements (including for continuous disclosure);
- (c) measures for audit firms to better allocate and manage risk;
- (d) better disclosure to shareholders and improved shareholder participation; and
- (e) a specific duty on financial services licensees (including analysts) to manage conflicts of interest.

Our overall approach

Key principles

12 Our approach to implementing the legislative framework set out in the Bill is based on some key principles. The principles are that we should:

- (a) give full effect to the legislation as enacted by the Parliament, recognising that the final form of the legislation is the result of detailed consultation;
- (b) develop policy that is consistent with the main aims of the Bill;
- (c) give guidance that will help people meet their obligations under the new regime;

- (d) focus on administrative implementation of the Bill, taking into account any amendments to the Bill during its progress through Parliament and the issue of any draft and final regulations;
- (e) develop policies by working closely with those developing internal ASIC systems and processes to implement the Bill; and
- (f) help those affected by the Bill understand how we will implement the new legislative framework.

What you can expect of us

13 In our policy and process-related publications we have set ourselves some key goals of what you can expect of us. These goals are:

- (a) to *give timely guidance*, to help those affected by the legislation manage any changes needed to their businesses as new legislative obligations begin;
- (b) to *set clear and objective minimum standards* in our guidance; and
- (c) to *work with those affected by the Bill* (including professional bodies, industry associations, ASX and shareholders) to support a smooth transition under the Bill.

What we expect of you

14 In our policy and process-related publications we have set some key expectations of regulated entities, individuals and industry. These expectations are that:

- (a) *those affected by the Bill will need to plan well ahead* to help create a smooth transition and manage compliance with the new legislative framework;
- (b) *compliance is the responsibility of the regulated entity* – those affected by the new legislative framework will need to put in place adequate measures, processes and procedures to meet any new legal obligations when they commence;
- (c) regulated entities and industry will *need to keep up to date with developments* on the progress of the Bill (including amendments to the Bill and any regulations) and its implications for our plans to administer the new legislative framework; and

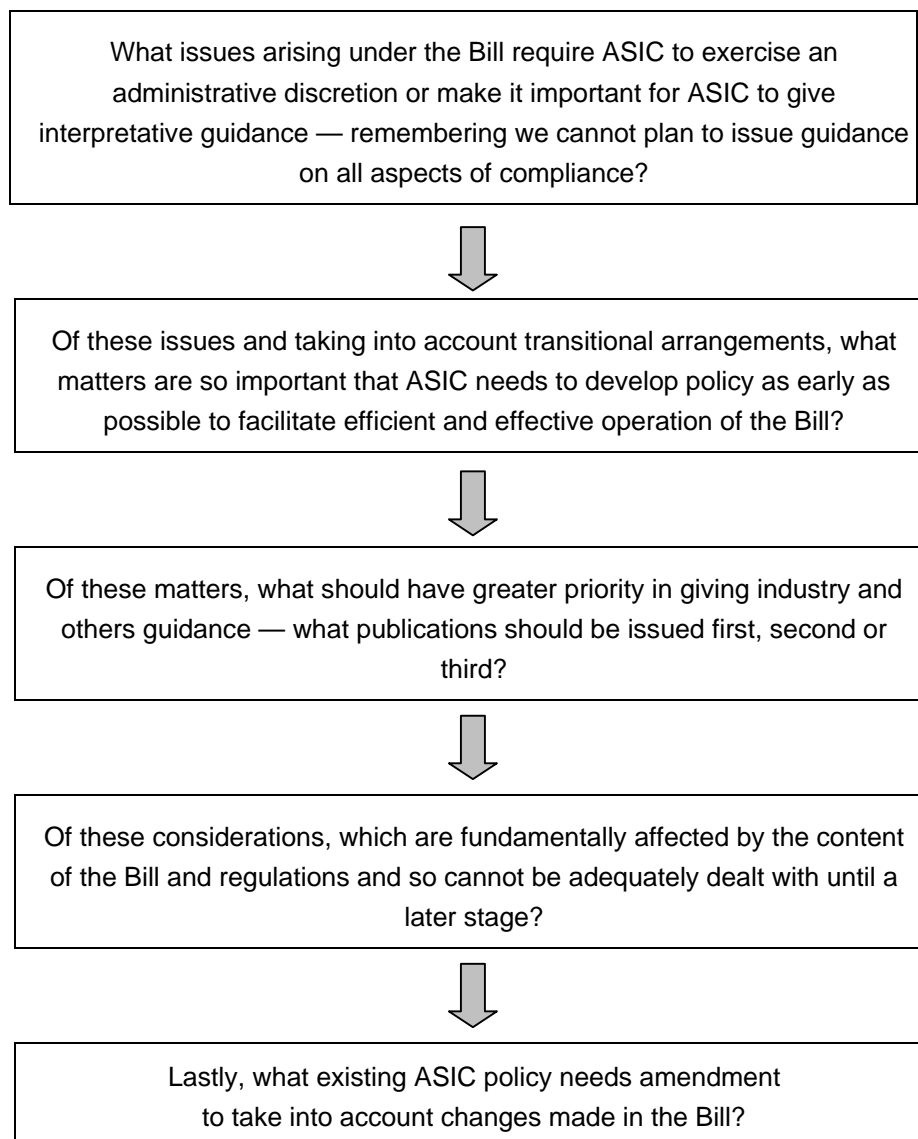
- (d) industry and professional associations will assist their members to plan for and manage transition under the Bill and to put in place arrangements to comply with the new legislative framework.

B Our approach to developing policy

15 In this section and Section C we describe how we set our policy priorities and how our policy and process-related publications fit together as part of a clear and complete framework.

How did we set our policy priorities?

16 We have been guided in our thinking by the following questions.



What are the key policy issues?

17 Using this approach, we have decided that the following topics seem to require ASIC policy and process guidelines. We will deal with these topics in separate publications, while ensuring that the publications together will make a complete package:

Audit and financial reporting

18 Key issues to be considered are:

- (a) What is the registration process for individual auditors or authorised audit companies under the new regime?
- (b) What is ASIC's approach to approving auditor qualifications or experience as equivalent to those required in the Act?
- (c) When will ASIC approve, revoke or vary a competency standard for auditors?
- (d) When will ASIC extend the period for lodgment of annual statements by an auditor?
- (e) What are adequate and appropriate professional indemnity insurance arrangements for authorised audit companies?
- (f) What will happen to ASIC's existing publications that give relief from the audit and related requirements under existing law?
- (g) When will ASIC give relief to allow an extended period before auditor rotation?
- (h) What are the ongoing registration requirements for auditors?

Product disclosure

19 Key issues to be considered are:

- (a) What will happen to ASIC's existing publications that give relief from the disclosure and related requirements under existing law?
- (b) How will the clear, concise and effective disclosure obligation apply to prospectuses and other disclosure documents?
- (c) How will ASIC administer the transaction-specific product disclosure statement (PDS) requirements?

- (d) What relief will we give from the provisions requiring disclosure for the secondary sale of securities and other financial products?

Continuous disclosure

20 Key issues to be considered are:

- (a) What guidance can we give about ASIC's processes for issuing infringement notices for breaches of the continuous disclosure requirements?

Licensee obligations

21 Key issues to be considered are:

- (a) How will ASIC administer the obligation for AFS licensees to have in place adequate arrangements to manage conflicts of interest?
- (b) What specific guidance can ASIC give to providers of research reports about managing conflicts of interest?

What are ASIC policy papers and guides?

Policy papers

22 We develop our policy in consultation with those who will be affected by it – industry participants, consumers and others.

Normally this happens in two stages.

- (a) **Proposal stage.** We issue policy proposal papers (PPPs) that set out the policies we are thinking of adopting, and contain directed questions asking for information and comment. We develop our policies to describe how we will administer the Act (as amended by the Bill and supported by regulations). PPPs have a set format that we have developed with the assistance of experts to help us communicate and consult effectively. We ask for written comments in response to the questions contained in our PPPs and use these responses in finalising our policy. We also use the PPPs to help us in any discussions (such as round tables, or focus groups) with those affected by the Bill; and
- (b) **Final policy stage.** After public comment has been considered, we issue policy statements that describe the policy we have adopted and the reasons for adopting it.

Policy statements also have a set format to ensure they communicate effectively.

23 A formal policy describes the decision making process we will follow as the regulator responsible for administering the Act and the information we will need to deal with applications asking us to adjust the way the law operates.

Guides

24 As well as formal policy papers, we may also issue guides in various forms.

25 Guides are designed to help people understand the law and ASIC's administrative processes on certain topics (for example, the process involved in issuing a continuous disclosure infringement notice).

Consultation

26 We will try to give as much time as possible for written submissions on our PPPs. It is likely that period will range between four and six weeks. Because of the short time between now and planned commencement of the Bill on 1 July 2004, we will have to apply our periods of public comment strictly. No one can expect that their comments will be considered in any detail if we receive their submission on a PPP after the end of its public comment period.

27 Based on the final shape of the Bill and its regulations and on the comments that we receive on our PPPs, we plan to develop and issue final policy statements on the topics covered by the PPPs.

C What our policy papers will contain

28 In this section, we set out the content and timetable of each ASIC CLERP 9 policy and related publications.

29 As described in Section B, ASIC's CLERP 9 publications fall under four broad headings:

- (a) Audit and financial reporting
- (b) Disclosure
- (c) Continuous disclosure
- (d) Licensee obligations

30 In this section, we describe:

- (a) the content of the policy proposal papers (PPPs) that we have released or plan to release in the coming months (PPPs have been designed specifically to make it easier to comment on our policy proposals);
- (b) possible future publications on a range of implementation subject areas; and
- (c) the content of our guides, which are designed to help people understand how to work with the changed legislative processes under the Bill.

Important note The timing and content of ASIC's policy and other publications depends on the timing of the Bill's progress through Parliament and whether changes are made during the legislative process.

The exact title, nature and scope of policy and process-related papers planned for release may change when we finalise them.

The list of ASIC policies and other guidance in this section may be amended or added to as required. As changes occur we will update this document.

Audit and financial reporting

Auditor registration

PPP	March 2004
Final PS	June 2004

31 What needs to be done to be registered as an auditor is a fundamental topic that needs to be addressed before the Bill begins.

32 In the auditor registration PPP, we will provide guidance both to help new auditors meet the requirements to initially register under the Act, and to explain to all auditors ongoing requirements to remain registered. While we propose guidance, auditors are responsible for meeting their obligations under the Act.

33 This paper will also discuss ASIC's power to approve, vary and revoke an auditor competency standard.

34 The paper will not discuss what are adequate and appropriate professional indemnity insurance arrangements for authorised audit companies. That will be covered in a separate paper.

Authorised audit companies: insurance requirements

PPP	May 2004
Final PS	September 2004

35 This PPP will be issued later than some of our other papers to allow a report on this topic to be prepared by external consultants. We anticipate informal discussions with key stakeholders on this topic before May 2004. We will apply our PPP as an interim policy while we finalise our policy statement.

36 The paper will propose guidance on the minimum professional indemnity insurance standards ASIC expects authorised audit companies to have in order to be registered under the Act. It will address both the amount of insurance required and the nature of appropriate insurance.

Audit and financial reporting: discretionary powers

PPP	March 2004
Final PS	June 2004

37 Under the Bill, ASIC's powers to exempt from or modify the financial reporting requirements will apply to a number of new provisions, including those dealing with audit-related matters. This paper will set out how ASIC will exercise those powers. In addition, it discusses how ASIC will exercise some new powers under the Bill relating to audit and financial reporting.

38 The paper will also set out our view of existing ASIC publications on audit and related topics. These publications will be superseded, continued with revision, or reviewed separately.

Auditor rotation

39 We expect policy work on this topic to commence in 2005. Under the Bill auditors will be required to rotate after five years (and after up to seven years where relief has been granted by ASIC). The auditor rotation paper will discuss when ASIC will use its discretionary powers to extend the period before auditor rotation is required.

40 As this new obligation applies to financial years commencing on or after 1 July 2006, we do not plan to issue any guidance on it prior to the commencement of the Bill.

Disclosure

Product Disclosure: Discretionary powers

PPP	March 2004
Final PS	June 2004

41 Under the Bill, ASIC will continue to have powers to grant exemption from, or allow modification of, product disclosure and related requirements.

42 The disclosure – discretionary powers paper will give guidance on how ASIC will use those powers. For example, the paper will discuss any continuing relief for the secondary sale of financial products.

43 This paper will also set out our view of existing ASIC publications on product disclosure and related subjects. These publications will be superseded, continued with revision or reviewed separately.

44 Finally, this paper will also indicate how we will administer the clear, concise and effective disclosure obligation for prospectuses and other disclosure documents and provide guidance on the new transaction-specific PDS regime.

Continuous disclosure

Guide: How will ASIC apply the infringement notice regime?

Guide (First release)	April/May 2004
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45 This guide will explain ASIC's processes for administering the infringement notice regime, including how hearings will be conducted and infringement notices issued.

Licensee obligations

Licensing: Managing conflicts of interest

PPP	October 2003
Final PS	May/June 2004

46 This policy is based on the proposed conflicts management obligation (s912A(1)(aa)) contained in the Bill. The paper explains how ASIC expects licensees to meet the proposed obligation, once it starts. The new obligation proposed by the Bill will start on 1 January 2005.

47 Our PPP (issued in October 2003) explains that to meet the conflicts management obligation, ASIC expects licensees to:

- (a) control, disclose and avoid conflicts of interest; and
- (b) have measures, processes and procedures to:
 - (i) identify conflicts of interest;
 - (ii) assess and evaluate those conflicts;
 - (iii) appropriately respond to those conflicts; and
 - (iv) ensure that, regardless of any conflicts, the quality of the financial services they provide is not significantly compromised.

48 It also gives more detailed guidance for providers of research reports.

Questions

Are there any practical reasons why ASIC should reconsider or re-order its planned timetable for the issue of policy and related publications?

If so, why would such a change be important for administrative implementation of the Bill and why should ASIC consider the suggested alteration, given that it will have direct consequences for the planned publication of other policy and related publications?

Important note: The timing, title and content of ASIC's policy and other publications depends on the timing of the Bill's progress through Parliament and whether changes are made during the legislative process.

D Keeping up to date

49 This section describes how to contact ASIC about this document or other planned CLERP 9 policy and related publications.

50 With so many people affected by the Bill, we must try to manage the demands on our staff working to prepare for the commencement of the new laws. We therefore ask people who have questions or comments to follow the steps set out here.

Keep up to date through our web-site

51 As the first point of call, you are asked to keep up to date with developments and get more information at our CLERP 9 web page:

- www.asic.gov.au/clerp9; or
- click on “CLERP” on the top right of our homepage at www.asic.gov.au.

General inquiries – use e-mail

52 We ask you to make your general inquiries about our plans to implement the Bill by email to our inquiry email address at CLERP9@asic.gov.au. These inquiries are allocated to people best placed to answer them. We will aim to respond to your inquiries as soon as we can.

Use professional bodies, industry associations and consumer groups

53 We also ask you to channel inquiries and comments through your professional body, industry association or a relevant consumer group. We are working closely with a number of these bodies in preparing to administer the new regime. These bodies act as a central point for collecting information and questions on how the Bill will affect members of each group. It makes sense for us to use them as the way of getting most of our messages out to you.