

COMPANY AND SECURITIES LAW JOURNAL

Volume 22, Number 8

November 2004

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ARTICLES

ASIC's investigation and enforcement powers – current issues and suggested reforms – *Tom Middleton*

A range of reforms in relation to the Australian Securities and Investments Commission's (ASIC's) investigative and enforcement powers are discussed in this article. These reforms (including the protection regime for voluntary informants and the infringement notice power) are aimed at promoting a more timely and effective investigation or a more timely intervention by ASIC. Such reforms mean that ASIC can take more timely interlocutory or final remedial steps to protect and promote the confidence of corporations, creditors and investors.

An examination of the foreign regulators indicates that in some areas these regulators have superior regulatory powers and the foreign regulatory regimes afford superior protections to the individual in comparison to the situation in Australia. The current weaknesses in ASIC's regulatory powers impede ASIC's ability to achieve its public interest objectives, limit the investigative assistance that ASIC can give to both Australian and foreign regulators, limit the enforcement assistance that ASIC can give to the victims of the contraventions of the legislation and call into question the utility of the Corporate Law Economic Reform Program (CLERP) reforms.

It is argued in this article that the Federal Government should consider a broader harmonisation of Australia's corporate regulatory framework with the corporate regulatory frameworks of the United States and the United Kingdom and give ASIC some of the regulatory powers that are already available to ASIC's foreign counterparts. The affected persons should be given clearer protections and remedies equivalent to those available in the United States and the United Kingdom. Such reforms have the advantage of not only improving Australia's corporate regulation laws but also enhancing ASIC's ability to participate in the global regulatory environment. 503

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ISSN 0729-2775

Typeset by Lawbook Co., Pyrmont, NSW
Printed by Ligare Pty Ltd, Riverwood, NSW