

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

6.1 The regulatory environment within which corporate Australia operates has the potential to influence every area of the Australian economy. It is, therefore, of considerable importance to Australia that the Corporations Law provides an effective framework for corporate activity. This is reflected in the stated objectives of the Corporate Law Economic Reform Program which has led to the introduction of this Bill.

The objective of the Program, therefore, is to promote business and market activity leading to important economic outcomes including increased employment, by enhancing market efficiency and integrity and investor confidence. Corporate regulation will be revamped to provide a clear and consistent framework which reflects the contemporary business environment and encourages businesses, large and small, to create wealth, prosperity and jobs.¹

6.2 Having reviewed and considered the issues raised during its inquiry the Committee concludes that this Bill will make a significant contribution to achieving these objectives. Despite the size and complexity of the Bill the Committee received comments on only a limited number of issues. In many of those cases the concerns which were raised with the Committee involved questions of where the appropriate balance lay between the different viewpoints about what the Bill should require. After considering the evidence put before it the Committee has concluded that, with a few exceptions outlined below, the provisions contained in the Bill are appropriate.

Recommendation 1

The Committee recommends that, with the exceptions mentioned below, the Bill be passed in its current form.

Nominee for foreign holders of securities

Recommendation 2

The Committee recommends that sections 615 and 619 of the Bill be amended to require that the nominee be approved in all cases by the ASIC. (Para 3.83.)

1 Policy Framework, Corporate Law Economic Reform Program.

Compulsory Acquisitions

Recommendation 3

The Committee recommends that section 664A be amended so that a compulsory acquisition can only occur within 6 months of the proclamation of the legislation or within 6 months of person seeking to make the acquisition becoming a 90% holder. (Para 3.58.)

Recommendation 4

The Committee recommends that the compulsory acquisition notice required by section 661B be required to draw the readers' attention to their rights under sections 661E and 661D. (Para 3.67.)

Recommendation 5

The Committee recommends that a notice to the holders of convertible securities under section 665B be required to include the additional information given to recipients of compulsory acquisition notices under the compulsory acquisition powers set out in section 664C(1)(c)-(e). (Para 3.69.)

Recommendation 6

The Committee recommends that sections 663C and 665C be amended so that any court order made under those sections applies to all securities of the same class. (Para 3.71.)

Capital Gains Tax

Recommendation 7

The Committee recommends that roll over relief from Capital Gains Tax be provided where shares are compulsorily acquired and when a takeover offer for a publicly listed company is accepted on a scrip for scrip basis. An amending tax bill should be introduced urgently to accompany debate on this legislation to give effect to this recommendation. Failing this, the legislation should be amended so that a potential, unwanted capital gains tax liability provides an absolute defence against compulsory acquisition. (Para 3.79.)

Sophisticated Investors

Recommendation 8

6.3 The Committee recommends that the legislation should clarify the sanctions applicable to a licensed dealer who breaches section 708(8)(c) and such sanctions should be given further consideration under CLERP 6. (Para 4.20)

*Return of Securities***Recommendation 9**

The Committee recommends that sections 724(2)(b) and 724(2)(c) be amended to replace the term 'reasonable opportunity' with a minimum period of 10 working days. (Para 4.40.)

*Quotation of Securities***Recommendation 10**

The Committee recommends that the Bill be amended to revert to the position under the current law on the quotation of securities. An issue of securities should be void if the disclosure document states that the securities will be quoted on a securities exchange and the securities are not admitted for quotation. The Bill should also require the return of application monies to investors under those circumstances. (Para 4.40.)

Consideration offered and collateral benefits

6.4 Based on the evidence available to it the Committee accepts the recommendations of CASAC that the operation of section 621(4) be extended to all bids, including non-cash-only bids; and that sections 623(2) and 623(3) be removed from the Bill. However, the Committee has not had an opportunity to take evidence on this issue from other parties. The Government may therefore care to accept those recommendations, or proceed with the Bill as drafted and refer this matter to the Committee for further consideration.

Senator Grant Chapman

Chairman