

CHAPTER 4

VIEWS PUT TO THE COMMITTEE

Submissions received

4.1 The Committee received four submissions, the most detailed of which was a joint submission from the Attorney-General's Department and the Treasury. That submission naturally reflects the information in the second reading speech and the Explanatory Memorandum for each Bill, but gives more details of some significant aspects of the problem. The main points made by the submission are included in Chapters 2 and 3 of this Report.

The Coalition for Corporate Certainty

4.2 The Coalition for Corporate Certainty, which includes the organisations listed below, urged the Committee to support the earliest passage of the legislation:

- Australian Institute of Company Directors
- Business Council of Australia
- Institute of Chartered Accountants in Australia
- Investment & Financial Services Association
- Law Council of Australia
- Securities Institute of Australia

4.3 The Coalition advised that it was established by these business, financial and legal groups as a matter of urgency because they recognised that it was vital for all Australian governments to take immediate action to remedy the uncertain and confused status of the Corporations Law following recent decisions of the High Court. The Coalition believes strongly that a referral of powers as presently proposed is the best way of resolving these problems in the short term. The Coalition advised that the proposed arrangements reflected compromises between the States and the Commonwealth. In particular, the Coalition would have preferred that there was not a 5-year sunset clause in the State legislation.

4.4 Nevertheless, the Coalition believes that the legislation, supported by a revised Corporations Agreement between governments, sensibly balances State concerns over use of the referred power with certain and consistent national corporate regulation. The Coalition commends the passage of the *Corporations (Commonwealth Powers) Act 2001* (NSW). The Coalition considers that all the legislation at present

before the Committee is constitutionally valid and will withstand the inevitable legal challenges.

4.5 The Coalition further advised that, once the referral legislation is in operation and stability returned to corporate law, it may be appropriate for a more permanent and simpler legal and constitutional solution to be considered.

4.6 The Coalition analysed the present uncertainties in relation to the Corporations Law. It advised that since 1991 Australia has had an efficient and effective national scheme of corporate regulation, with substantial benefits for business activity and employment. Recent High Court decisions, however, have resulted not only in uncertainty and confusion, but also in the Federal Court, with all its expertise in the interpretation of the Corporations Law, not having the power to consider these matters. The Coalition suggests that unless Commonwealth and State governments act quickly, business will be adversely affected and Australia's international reputation irretrievably damaged. The High Court decisions raise doubts about such fundamental matters as the formation and operations of companies. These doubts are not merely theoretical, with major transactions being qualified due to the uncertainty.

4.7 The Coalition advises that there are particular concerns and dangers at the international level with, for instance, the status of a significant Australian listed entity involved in a major international transaction being qualified. This qualification caused surprise because an unqualified legal status is routine when dealing with companies incorporated in 'first world' economies. This has serious implications for Australia's international financial and legal reputation, with any damage being very difficult to repair.

4.8 The Coalition acknowledges the concerns of some States that the Commonwealth could misuse the referred powers to legislate in relation to, for instance, industrial relations or the environment. These concerns, however, should be addressed by the Corporations Agreement and not by exclusionary provisions in the referral legislation, which could result in legal uncertainty.

4.9 In response to questions the Coalition also advised that this legislation does not pick up the problems that still face the Commonwealth and the States in relation to other cooperative schemes, and in particular, the national competition policy.

4.10 The Coalition concluded by advising that, while it recognised that this was a complex matter, a considerable time had elapsed since the present difficulties with the national scheme of corporate regulation became apparent. The present Bills have resulted from a long negotiation process and are widely supported. The Bills should therefore be passed in time for the new regime to commence as scheduled on 1 July 2001.

Mr Dominic Villa

4.11 Mr Dominic Villa submitted that the solution to the problems resulting from the High Court cases was amendment of the Constitution by referendum, rather than the proposed referral of powers. The present Bills address the uncertainties in the Corporations Law, but not in other areas of cooperative schemes.

4.12 Mr Villa suggested that constitutional amendment could provide a valid legal basis not only for the Corporations Law, but also for other national schemes across diverse areas. These other schemes could then be implemented as necessary, without the legal and political uncertainties of a case by case referral of powers.

4.13 Mr Villa advised that two very minor amendments to the Constitution, expressly to deal with the problems in *Wakim* and *Hughes*, would validate current national schemes, not risk the further centralisation of power in Canberra, and allow the States to retain their present control over national schemes. An appropriate referendum should be held at the same time as the next Federal election.

**The Australian Society of Certified Practising Accountants
The Institute of Chartered Accountants in Australia**

4.14 The CPA and the ICA submitted that they supported the referral scheme of the Act and the Bills and had no major issues to raise. However, they also advised that there had been only a limited time in which to consider the legislation.

