

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

5.1 The Committee accepts the main points made in the submissions by the Attorney-General's Department and the Treasury and by the Coalition for Corporate Certainty. In light of these submissions the Committee concludes that the present system of what is effectively a uniform national scheme of corporate regulation has been fundamentally compromised by the recent High Court decisions in *Wakim* and *Hughes*, resulting in uncertainty and confusion. As a consequence, business and investor confidence has been adversely affected, with the potential for considerable damage to the financial system and the economy.

5.2 In particular, the Committee accepts that this uncertainty is already causing problems for Australia's international financial and legal reputation. The Committee is deeply disturbed at the implications of these developments.

5.3 The Committee therefore concludes that urgent action is necessary to remedy the situation. In this context the Committee concludes that referral of certain State powers to the Commonwealth Parliament, as reflected in the NSW Act and the two Commonwealth Bills which are the subject of this Report, is the most practical and immediate option available. The Committee concludes that the package of arrangements of which this legislation is the core element will provide a national uniform scheme of corporate regulation which is constitutionally valid, thereby overcoming, as far as it is possible to do so, the difficulties caused by the High Court cases.

5.4 The Committee notes that the package of arrangements include a number of measures, some of which are in the legislation and others in the Corporations Agreement, intended to meet State concerns about possible ways in which the Commonwealth could exercise the referred powers. The Committee concludes that these are acceptable in the circumstances and should not be a reason to delay passage of the two Commonwealth Bills. In this context the Committee notes that the two Bills do not make any substantial policy changes to the Acts which they replace.

5.5 The Committee also notes that the package of arrangements will see an increase in the voting and consultation rights of the States, and that the referral of powers by the States is only for 5 years, unless extended by the States.

5.6 The Committee notes advice that a constitutional amendment would be the most effective and permanent way to deal with the problem. The Committee concludes, however, that while this may be theoretically the case, in practice it is not really an option in the short term when, as noted above, urgent action is needed. The

Committee therefore considers that the general package of measures to effect the referral of powers option should be implemented as soon as possible, following which the Commonwealth could, if it wished, proceed with its stated intention to consider a constitutional amendment by way of referendum.

5.7 The Committee notes that the *Corporations (Commonwealth Powers) Act 2001* (NSW) is the first State Act to refer powers to the Commonwealth under the terms of agreed arrangements between the Commonwealth and a State. The Committee believes that this was a most positive development and urges the other States to pass similar legislation as soon as practicable.

5.8 Finally, the Committee notes that the package of arrangements does not remedy all of the consequences arising from the decisions in *Re Wakim* and *The Queen v Hughes* for other national cooperative schemes. The Committee considers that the Commonwealth should examine these schemes and act to resolve the uncertainty surrounding the schemes.

Recommendations

5.9 The Committee recommends that the Corporations Bill 2001 and the Australian Securities and Investments Commission Bill 2001 be passed without amendment as early as possible, with the intention of meeting the 1 July 2001 target for commencement of the new scheme.

Senator Grant Chapman
Chairman