

SUPPLEMENTARY REMARKS BY
SENATOR ANDREW MURRAY, AUSTRALIAN DEMOCRATS

May 2001

The provisions of:

- (a) the *Corporations (Commonwealth Powers) Act 2001* (NSW); and**
- (b) the *Corporations Bill 2001* and the *Australian Securities and Investments Commission Bill 2001*,**

The National Scheme

The Australian Democrats supported the reference of these two Bills to the Committee because we agreed that confirmation was necessary that the approach being adopted to restore the Corporations Law national scheme was going to work.

I believe that the evidence received from the small number of witnesses that appeared and the submissions that were received confirms that the approach is going to work. It will restore a reasonable level of certainty into corporate regulation in this country, but the solution is by no means perfect.

It is not perfect from the perspective of the States who were, and I expect still are, concerned about any possible misuse of the powers referred by them to the Commonwealth. It is not perfect from the perspective of the Commonwealth. It is not perfect for business because of the continued ability of any of the States to withdraw from the arrangement at any time.

In the end the Australian constitution has made this revised scheme very difficult to achieve. The national interest requires that one day, probably in the far future, that the constitution be modernised and amended.

The sun sets on this arrangement in 5 years. I concur this is an unfortunate circumstance. However I expect that if this law is successfully implemented (with all States passing their referral legislation expeditiously) and is not successfully challenged in any litigation, we are entitled to expect that its life may be extended well beyond that timeframe.

The use of corporations (to use the constitutional phrasing) as 'vehicles' for engaging in trade and commerce has grown exponentially over recent decades and I would expect that trend to continue well into the future. The importance of corporations in Australians' lives and society has grown. For that reason I think that the robustness of the legislation that regulates corporations is critical to domestic and international confidence in the conduct of business in Australia. The Commonwealth government needs to commence work on a plan to obtain complete certainty in its power over corporations.

So far there has been very little political squabbling along party lines on this issue. Indeed, as I understand it, the five Labor States have agreed with the Federal Coalition government to arrive at the arrangement presently under consideration. I cannot see why that sort of cooperation would not be provided to come up with a more permanent constitutional solution.

Officers of the Attorney-General's department were a little critical of the suggestion that a constitutional amendment would fully respond to all concerns. Those witnesses seemed to be saying that such a suggestion ignored many complications which would surround such a solution.

Notwithstanding those concerns, I think it is incumbent on the government to fully explore that option. We recommend that the government commence work on a constitutional amendment to give the Commonwealth full power and certainty over the regulation of corporations.

Based on the government's commitment that the Corporations Bill contains no new policy measures or policy changes, and based on this Inquiry, I conclude that the legislation should be supported. It is urgent for the national scheme to be restored. This is however a relatively rushed process and as legislators, rewrites always make us nervous that Bills of this size might contain changes (which even if subtle) will affect the law.

Further Corporations Law Changes Needed

Due to the need to expedite the passage of these bills, the Democrats do not intend to use the occasion of their presentation to the Senate to further pursue our agenda of amending the corporations law to address the democratisation of companies and to significantly improve corporate governance.

For some years now I have sought to amend Bills relating to the Corporations Law to at least give the option to shareholders of implementing methods of greater accountability into the corporate governance of public companies. So far those amendments have not been successful. I will continue to pursue those changes to empower shareholders and make directors more accountable and I expect an opportunity to do that with the passage of the Financial Services Reform Bill 2001.

There are other issues which require amendment, including provoking greater coverage of the remuneration disclosure clauses. Anyone who is interested in those matters we are concerned about should refer to previous minority reports of mine to this committee's reports, and to my speeches on the public record.

Senator Andrew Murray