

SUPPLEMENTARY REMARKS

SENATOR ANDREW MURRAY

At 2.7 the Main Report says:

...the chapter focuses on four specific areas in the Bill that were brought to the Committee's attention. These include the structure chosen for the Board of Guardians; the power of Ministers to direct the Board in its endeavours; the restriction preventing the Fund from direct investment; and issues raised by Telstra concerning the transfer of the Government's equity in Telstra to the Fund.

For the purpose of these Supplementary Remarks I will raise just two issues: appointments on merit and institutional voting.

The Appointments on Merit

Wherever appointments are made to institutions set up by legislation, independent statutory authorities or quasi-government agencies, the processes by which these appointments are made should be transparent, accountable, open and honest.

It is still the case that appointments to statutory authorities are left largely to the discretion of ministers with the relevant portfolio responsibility.

There is no umbrella legislation that sets out a standard procedure regulating the procedures for the making of appointments. Perhaps most importantly there is no external scrutiny by an independent body of the procedure and merits of appointments.

An independent body should be given the responsibility of scrutinising government appointments against a set of established criteria.

This system works well in the United Kingdom after the 1995 Nolan Commission. Lord Nolan managed to persuade the UK government to accept that appointments should be based on merit. Lord Nolan set out key principles to guide and inform the making of such appointments:

- a minister should not be involved in an appointment where he or she has a financial or personal interest;
- ministers must act within the law, including the safeguards against discrimination on grounds of gender or race;

- all public appointments should be governed by the overriding principle of appointment on merit, except in limited circumstances;
- political affiliation should not be a criterion for appointment;
- selections on merit should take account of the need to appoint boards that include a balance of skills and backgrounds;
- the basis on which members are appointed and how they are expected to fulfil their roles should be explicit; and the range of skills and backgrounds that are sought should be clearly specified.

In response to the Nolan Committee's recommendations, the United Kingdom government subsequently created the office of Commissioner for Public Appointments, which has a similar level of independence from the government as the Australian Auditor-General, to provide an effective avenue of external scrutiny.

The Democrats have used the Nolan Committee's recommendations in our persistent campaign for appointments on merit amendments in various items of legislation because they are tried and tested.

Meritorious appointments are the essence of accountability. We will move appointment on merit amendments to this Bill.

Institutional voting

In the OECD Principles of Corporate Governance it says the following concerning disclosure of voting:

The exercise of ownership rights by all shareholders, including institutional investors should be facilitated.

Institutional investors acting in a fiduciary capacity should disclose their overall corporate governance and voting policies with respect to their investments, including the procedures that they have in place for deciding on the use of their voting rights. The voting record of such investors should also be disclosed to the market on an annual basis.¹

The Democrats believe that the trustees and managers of superannuation funds and managed investment schemes have a fiduciary duty to act in the best interests of their members and beneficiaries. We believe that a trustee can only satisfy their fiduciary obligations by taking an active interest in material corporate governance activities of their equity investments.

Material corporate governance activities would include voting on constitutional issues and decisions on the election and remuneration of directors.

1 OECD Principles of Corporate Governance Draft Revised Text, January 2004, p. 7.

We note that Mr Easterbrook of Corporate Governance International goes further, but we believe that at least voting on these three matters should be mandatory.

We will amend the legislation to extend the requirement to vote on material corporate governance resolutions to the Future Fund managers.

There is also the question of proxy voting, which we will seek to address.

Senator Andrew Murray

