

**CORPORATIONS REFORM
(CONSEQUENTIAL AMENDMENTS NT) BILL
(Serial 334)**

Continued from 6 June 2001.

Mr STIRLING (Nhulunbuy): Mr Speaker, these bills reforming the corporations law result from an agreement between the Commonwealth, states and the Northern Territory on how corporations should be regulated from 1 July 2001. This whole area of corporations law has an interesting evolution, as the Attorney-General covered largely in his second reading speech, and interesting balance of power sharing and responsibility between the Commonwealth on the one hand and the states on the other. In the 1960s, legislation covering corporations existed at both the state and territory level, but during the 1980s the Commonwealth took over much of the regulation with the *Companies Act 1981* which the states applied as local state law.

Toward the end of the 1980s, the Commonwealth sought a new scheme which would give itself the power alone to regulate corporations but the High Court ruled that the Commonwealth could not solely have legislation in control of corporations. So a new scheme in 1991, following more along the 1981 model, that is Commonwealth legislation applied by the states as local state law, came into being.

Now, this scheme itself has come under doubt because state laws cannot impose functions on Commonwealth officials and there is a constitutional risk borne out by other High Court decisions that basing Commonwealth regulation on state laws is risky against the Australian Constitution. So to circumvent further possible legal doubts, the states and Commonwealth agreed for the states to refer to the Commonwealth a power to enact these corporation laws commensurate with what they had already tabled at state parliamentary level. This includes the power to amend these laws, of course with the agreement of the states.

Now, where there is an inconsistency between the Commonwealth law and a Territory law passed in the future after these bills go through, the Territory law contains an overriding clause that will cover that inconsistency. Certainly, throughout the latter disagreement which in the first place is for five years and it is not known what scheme and what legislative regime at this stage would take place at the completion of this five year agreement.

The two most important aspects of the bills, as large as they appear, are that they don't in practice change provisions of existing legislation but they do

provide the absolute necessity for certainty to the Commonwealth, the states and the territories that the Corporations Law and its operation and application is consistent with the Constitution and immune from legal challenge.

I have received notice of further amendments to the Corporations Reform (Consequential Amendments) Bill 2001 (Serial 334), and Corporations Reform (Northern Territory) Bill (Serial 333) and I understand they go to clarification of some minor points and some cross referencing amendments and minor drafting changes. I thank the staff of Attorney-General's Office, and particularly Robert Bradshaw for his time in briefing on these bills.

Mr Speaker, we support them as we do the case for urgency given the need to have this in place by 1 July.

Mr BURKE (Attorney-General): Mr Speaker, I thank the opposition for their support. There are committee stage amendments, as the member for Nhulunbuy has alluded to and we will deal with them shortly.

In terms of further explanation, the Corporations (Northern Territory Request) Bill 2001, the purpose of this bill is to set out the request by the Northern Territory Legislative Assembly that the Commonwealth parliament enact new corporations legislation. This request follows the agreement between the Commonwealth and the Australian states and the Northern Territory that the Corporations Law be repealed and replaced by Commonwealth legislation based on Section 51 of the Constitution including powers referred to the Commonwealth by the states under section 51(xxxvii) of the Constitution. The Commonwealth proposes to enact the *Corporations Act 2001*, the *Australian Securities and Investments Commission Act 2001* and associated legislation. This bill together with the Corporations Reform (Northern Territory) Bill 2001, the Corporations Reform (Consequential Amendments Northern Territory) Bill 2001 make up the legislative package needed in the Northern Territory for the new corporations arrangements to be in place following the commencement of the *Corporations Act 2001* of the Commonwealth.

The Corporations (Northern Territory) Amendment Bill 2001 amends the *Corporations (Northern Territory) Act* consequent on the *Financial Sector (Reform Amendments and Transitional Provisions) Act 1998* Commonwealth, and the *Corporate Law Economic Reform Program Act 1999*, a Commonwealth act. The purpose of the bill