of the possibility of making a product liability claim. All these factors have resulted in an increase in premium charges, but no British insurer is prepared to say that changes in laws, especially the commencement of the Consumer Protection Act 1987, is the direct and sole identifiable cause of an increase in premiums. Indeed, their view is that, except in a few clearly identified areas (eg aviation, agrochemicals, pharmaceuticals and toys), any changes in premium caluculations resulting from changes in the law would be minimal and insignificant.

* * *

company law

> Let Wall Street have a nightmare and the whole country has to help get them back in bed again.
>
> Will Rogers, *The Autobiography of Will Rogers, 1949*

The long awaited (although not necessarily eagerly awaited) legislation for the introduction of a uniform national companies scheme was introduced into the Federal Parliament on 25 May 1988. Although the legislation has received support from some sections of the business community, it is being strenuously opposed by several groups. Despite previous signs that such legislation might be supported by all parties at the federal level, as indicated by the unanimous report of the Senate Standing Committee on Constitutional and Legal Affairs (see [1987] *Reform* 107), the Opposition has decided to oppose the legislation. The Liberal Federal Council has passed a motion opposing proposals from the Senate Standing Committee to do away with the existing co-operative companies scheme 'on the principal ground that in the hands of a left-wing Government, such legislation will open the door to socialist regulation of the entire corporate area'(*Sydney Morning Herald*, 11 April 1988). The legislation is being strongly opposed by all the States. Before the recent change of government, New South Wales had supported the federal proposals.

scope of the legislation. The Corporations Bill encompasses matters which, at present, are contained in the Companies Codes, the Securities Industry Codes, the Companies (Acquisition of Shares) Codes and the Futures Industry Codes.

specific reforms. Much of the Corporations Bill contains substantially the same provisions as the legislation on which it was based. However, several specific reforms are included in the Bill (*Australian Financial Review*, 26 May 1988).

- The practice of 'pre-vetting' various documents by the Corporate Affairs officers is to be abolished.
- The substantial shareholding disclosure threshold (that is, the percentage of a company's share capital which necessitates the giving of a formal notice by the holder of that share capital) is to be reduced from 10% to 5%.
- Section 261 notices, which are used to trace the beneficial ownership of shares, are to be abolished except for use by the proposed Australian Securities Commission.
- Companies would be able to adopt any name except those which are identical with others or on a list of prohibited names.
- The licensing of securities dealers, futures brokers and their advisers would be discontinued although such people would remain fully liable for their conduct.

- Private companies would no longer be required to lodge memoranda and articles of association.

administrative arrangements. It is proposed that the National Companies and Securities Commission be replaced by the Australian Securities Commission. However, the role of the ASC will in some ways be more limited than the role of the NCSC (*Australian Financial Review*, 26 May 1988). A Corporations and Securities Panel is to take over the task of deciding 'unacceptable conduct' declarations. The separation of roles addresses the concerns expressed in some quarters that the NCSC has been investigator, prosecutor and judge in matters involving market irregularities, for example, when the NCSC was accused of bias in the BHP takeover (see *Reform* [1986] 129, 133). After an investigation by the ASC, if grounds for suspecting unacceptable conduct are discovered, the Panel will convene a private hearing. It will be able to make unacceptable conduct declarations and issue restraining orders, including the stopping of share trading and the registration of share transfers. The new scheme will mean that the ASC does not need to seek restraining orders or injunctions from the courts. There is to be no review of decisions by the Panel on the merits, only on matters of law. The Panel is to be drawn from professional people practising in the areas of market transactions, accounting or the law.

A statutory advisory committee will be set up as an alternative source of advice for the government on corporate regulation. The Companies and Securities Advisory Committee, the membership of which will be drawn from the private sector, is to have its own budget, staff and research facilities.

*abolition of pre-vetting.*in The abolition of pre-vetting relates to prospectuses and documents connected with takeovers. The detailed rules concerning the contents of prospectuses will be replaced by a requirement for fair and accurate disclosure of relevant information and a general provision prohibiting misleading or deceptive conduct.

The abolition of pre-vetting is seen as a means of speeding up the capital raising and takeover and merger processes and reducing the costs to business, although legal and other professional fees may rise as a result of the increased risk of legal liability (*Australian Financial Review*, 31 May 1988). Professor Austin of the University of Sydney, referring to the increased liability of advisers including auditors, bankers, solicitors, stockbrokers and underwriters, has pointed out that lawyers in the United States of America, Canada and the United Kingdom, where such liability is already a possibility, have devised elaborate procedures for 'due diligence' inquiries which involve the completion of lengthy questionnaires and detailed checklists (*Australian Financial Review*, 3 June 1988).

Views on the pre-vetting of documents vary. The Attorney-General, Mr Bowen, has contended that the system of prospectus registration has been 'justly criticised for its inefficiency, complexity for its imposition of unnecessary delays'. However, the New South Wales Minister for Business and Consumer Affairs, Mr Peacocke, has said that the criticisms have been made by just a small percentage of the thousands of promoters and advisers who have dealt with the various Corporate Affairs offices in that area (*Sydney Morning Herald*, 3 June 1988). Mr Mark Burrows, a merchant banker and adviser to the Federal Government on the development of the new corporate legislation, has said that Corporate Affairs Commission officers around Australia are not sufficiently skilled to decide whether a prospectus

is adequate to allow investors to make investment decisions (*Australian Financial Review*, 20 June 1988). However, in a letter to the *Australian Financial Review* (24 June 1988), Mr John Lightowlers contended that the Commissions employ graduates and post-graduates in business, commerce, economics and law with diverse experience not only in the public service but also in the private sector as chartered accountants, legal practitioners, stockbrokers and business advisers. He argued that there is a variety of optimistic forecasts, mining estimates and high-tech claims which have been weeded out as a result of pre-vetting by Corporate Affairs Commissions.

close corporations. As part of the general deregulatory approach exhibited by the reform proposals in the Corporations Bill, the federal government has also introduced a Close Corporations Bill which provides for a new form of business organisation. Close corporations would be subject to fewer formal requirements (for example, they would not be required to file accounts with a public corporate supervisory body). There is no separation between ownership and management of a close corporation: the members run the corporation. The number of members is restricted to 10 and the members are made jointly and severally liable for the debts of the close corporation if the number exceeds 10 and the property of the corporation is insufficient to satisfy its liabilities in full once the corporation commences to be wound up. Members may also be made liable in other situations, for example where proper accounting records are not kept and where the members have delayed in dealing with insolvency.

the reaction of the states. Since the New South Wales election, the States have been unanimously opposed to the enactment of federal legislation over company law.

The former Victorian Attorney-General, Mr Kennan criticised the possibility of a deregulatory approach being taken by the Commonwealth. He said:

> A deregulated system flies in the face of an informed market place. There must be a measure of investor protection and a level playing field in terms of information. . . . On the basis of the events of October 19 and 20, I would have thought our level of regulation was about right (*Australian*, 10 December 1987).

Mr Kennan's successor, Mr McCutcheon, made a proposal for reform of the existing co-operative scheme. The proposal involved

- retaining the Ministerial Council
- giving more control to the Commonwealth by making the federal Attorney-General permanent chairman of the Council
- enabling the Commonwealth to introduce companies and securities legislation into federal parliament with the agreement of two States and not requiring it to introduce legislation with which it disagreed
- the Senate having the ability to amend legislation
- retaining State Corporate Affairs offices to administer company law at the local level but giving responsibility for the NCSC or its successor to the Commonwealth (*Australian Financial Review*, 26 February 1988).

However, this proposal was rejected by the federal Attorney-General, Mr Bowen. The new New South Wales Government has become a trenchant critic of the federal proposals. The New South Wales Attorney-General, Mr Dowd, said that the New South Wales Government believed that the centralising of decision-making for such an important aspect of corporate life would only create more problems. The only area where the New

South Wales Government might be prepared to make any concessions was in relation to takeovers (*Australian Financial Review*, 11 April 1988). This policy has since been confirmed by the Premier, Mr Greiner (*Australian Financial Review*, 29 July 1988). The Minister for Business and Consumer Affairs, Mr Peacocke, has said that New South Wales will operate its Corporate Affairs Commission as an independent organisation regardless of the enactment of national legislation (*Sun Herald*, 19 June 1988). The Western Australian Attorney-General, Mr Joe Berinson, has said that he would take the federal government to the High Court to challenge its constitutional right to take control of companies regulation (*Canberra Times*, 30 June 1988). Mr Bowen welcomed the move as a way of establishing the legal powers of the Commonwealth.

business reaction. In view of the opposition by the States, Mr Bowen stated that he would not proceed with the proposed legislation if it could be shown that the plan did not have the support of the business community (*Sydney Morning Herald*, 1 July 1988). Mr Bowen wrote to more than 20 business groups asking them to give urgent consideration to the proposed national legislation.

It is understood that more than 12 business organisations replied to Mr Bowen, with the majority backing his plans (*Australian Financial Review*, 20 July 1988). The business groups supporting the plans for federal legislation include the Australian Society of Accountants, the Business Council of Australia and the Company Directors' Association. However, the Institute of Chartered Secretaries and Administrators said that it could not support the plans since it opposed the imposition of a federal bureaucracy on an established State network and did not believe that the existing scheme should be dismantled. The Australian Merchant Bankers' Association supported the principle of Commonwealth control, but not the present set of proposals (*Australian Financial Review*, 25 July 1988). The reason given by the executive director of the AMBA, Mr John Hall, was 'the uncertainty concerning the Commonwealth's legislative power and the lack of any obvious improvement in administrative effectiveness over the existing scheme'.

Following the responses from business groups, Mr Bowen has decided to continue with his plan for federal legislation (*Australian Financial Review*, 25 July 1988). Although he acknowledged that the issue had divided the community, he said the business groups were basically still with him. However, Opposition business spokesman Mr John Moore expressed surprise at the Attorney-General's comments. He said that they did not reflect the responses to a 1000 letter survey conducted by the Opposition: about 90% of the 100 responses received to date opposed the Bowen proposals.

The Confederation of Western Australian Industry claims that Mr Bowen grossly overstated the degree of business support for his proposals. The Confederation's director of business and finance, Mr Lyndon Rowe, said:

> There is no question that the overwhelming majority of business groups around Australia are opposed to this proposal and that includes major bodies like the Confederation of Australian Industry, the Institute of Directors, the Australian Chamber of Commerce and employer organisations in many of the States (*Australian Financial Review*, 26 July 1988).

The former chairman of the Trade Practices Commission, Mr Bob McComas has strongly supported the move to a national companies and securities scheme (*Australian Financial Review*, 21 July 1988). He dismissed claims that fed-

eral legislation and policy would concentrate power in Canberra to the detriment of State business communities. He said that, during the years when he was chairman of the TPC, he had experienced no difficulties with concentration of policy in Canberra or the removal of access from the States. He described the structure of the TPC as having regional offices in each State, with common policy emanating from head office. Regular meetings of regional and head office staff were designed to ensure uniform policy and administration. He said that there was no difference in principle with the proposals outlined by Mr Bowen.

However, a prominent critic of Mr Bowen's proposals, Mr Laurie Shervington, the Convenor of the Commercial and Revenue Law Committee of the Law Society of Western Australia, criticised the comments made by Mr McComas (*Australian Financial Review*, 2 August 1988). Mr Shervington said that the TPC is totally centralised. Each regional office has sufficient staff to act as a post office and no more. Mr Shervington gave as an example the Perth office which has a staff of 10. He said that Mr McComas had failed to acknowledge that a federal takeover of companies legislation would be at the cost of practical experience and expertise at the State level and would greatly increase the costs to business, particularly in the less populous states.

inquiry. The Federal Government has the numbers to secure passage of the corporations legislation. It is supported in principle by the Australian Democrats, although they are concerned to ensure that the proposal to deregulate prospectuses maintains adequate protection for investors (Australian Financial Review, 28 July 1988). However, following a meeting between the Attorney-General and the Deputy Leader of the Australian Democrats, Senator Michael Macklin, it has been agreed to set up a parliamentary inquiry to examine the legislation. Senator Macklin said that the need for an inquiry did not alter the 'strong in-principle' support of the Democrats for Federal responsibility for companies and securities law but was directed solely at ensuring unintended legal and commercial consequences were identified and corrected (*Sydney Morning Herald*, 1 August 1988). The inquiry is expected to finish its report before the first day of Parliament next year. In view of the intense opposition to the proposals by the States and certain business groups, the inquiry may prove to be an orderly way of gauging the extent of community support for, and potential problems with, the proposed legislation.

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child support

> From each according to his abilities, to each according to his needs.
>
> Karl Marx.

shifting the burden. The new Child Support Scheme, which came into force on 1 June 1988, has brought together in one integrated system the private and public means of ensuring support for children in one parent families. The State has finally taken over responsibility for enforcing maintenance orders against the non-custodial parent, and for paying the amounts collected to the custodial parent. At the same time, the primary responsibility for supporting children has been placed on the parents and away from the social security system.

The factors leading to this change were the large proportion (70% or more) of child maintenance orders not being paid regularly, the cost to the community of