

ADDITIONAL COMMENTS BY THE AUSTRALIAN LABOR PARTY

1.1 Labor Senators support the findings of the majority report and the recommendations regarding:

- ensuring ORAC has adequate funds to assist corporations with the transition to the new incorporation regime;
- monitoring the interaction between the bills and other legislation, particularly the Native Title Act; and
- amending sections 201-5 and 201-10 of the 2005 Bill to restrict the right of members to request directors call a general meeting to *voting* members.

1.2 Labor Senators remain concerned, however, about the level of regulation and the extent of the Registrar's powers contained in the 2005 Bill. The Indigenous sector – those directly affected by this legislation – shares our concerns. For example, the KLC described the 2005 Bill as 'a highly detailed and prescriptive legislative enactment'.¹ Similarly, the CLC noted that:

By trying to cover the field, from the largest commercial corporation or service provider through to the smallest community corporation or small land owning corporation, the draftsman has created a 'default setting' of intense regulation, followed by strict liability for failure to comply and subsequent penalty which may then be softened upon application to the Registrar for exemption.²

1.3 When asked if he preferred the existing framework under the ACA Act or the new model the 2005 Bill proposes, Professor Mick Dodson told the committee:

Let us stay with what we have, because the new bill is far too complex.³

1.4 Labor Senators note the Registrar's evidence regarding the flexibility and protections contained in the Bill.⁴ Labor Senators also note that the recently introduced Transitional Bill extends that flexibility in appropriate ways.

1.5 Nevertheless, there can be no certainty that these Bills reflect an appropriate level of regulation which is workable for the *specific* conditions of the Indigenous corporate sector until they come into operation and have been tested in practice. The impact of the legislation on the Indigenous corporate sector needs to be tracked closely. Labor Senators therefore recommend that for the next three years ORAC

1 *Submission 7*, p.1.

2 *Submission 9*, p.4.

3 *Committee Hansard*, p. 19.

4 *Committee Hansard*, pp 25-26.

should monitor and report on the operation of the new legislation and stakeholder satisfaction with the new regime.

1.6 The transitional period of 2 years provides some reassurance that Indigenous corporations will have time to adapt to the new regime. However, it is notable that the Indigenous corporate sector was given less than a week to raise any concerns about the Transitional Bill and the Amendment Bill. This limited timeframe explains the absence of submissions in relation to those bills.

1.7 The Parliamentary Amendments to be introduced during cognate debate resolve some of the concerns raised during the inquiry. However, the Parliamentary Amendments were initially provided to the committee in confidence and only made public when the committee was finalising its report. As a result, the Indigenous corporate sector and other interested parties were not given a genuine opportunity to examine and comment on them.

Recommendation 1

1.8 To ensure that the impact of the legislation is closely monitored and with appropriate transparency, the Labor Senators of the committee recommend that for the next three financial years ORAC include in its annual report a review of the operation of the new legislation and results of a statistical survey of stakeholder satisfaction.

Senator Patricia Crossin

Senator Joseph Ludwig

Deputy Chair

Senator Linda Kirk