



Speech by

PETER WELLINGTON

MEMBER FOR NICKLIN

Hansard 9 November 2000

CORPORATIONS LAW

Mr WELLINGTON (Nicklin—IND) (8.30 p.m.): I move—

"That the Queensland Parliament calls on the Commonwealth Government to amend the Corporations Law and related legislation to require that large companies undertake a social and cultural impact assessment before making significant corporate decisions which may change the operation of the company or substantially increase its market share, and that a discussion paper be prepared on how corporate governance laws should take account of the social responsibility of corporations."

I move this motion out of a sense of frustration that ordinary people, especially in the country, and even honourable members appear to be powerless against the juggernaut of competition reform and the lack of concern for community values shown—maybe shown under compulsion of the Corporations Law—by company directors when they make some of their decisions. Only last month we heard about the National Bank's record profits, and at the same time we heard of the bank's latest plans to close a further 100 bank branches over the next 12 months.

Also last month I organised a nationwide telephone link-up involving Woolworths senior management and Australian Milk Producers Association's dairy industry representatives from all States in Australia. During that nationwide telephone link-up, Woolworths senior management acknowledged that they had concerns with the price that some processors tendered for the supply of milk. They had concerns that the price tendered may have been unsustainable. That concern was supported by the dairy industry representatives on that telephone link-up, who echoed the concerns that the price tendered for the supply of milk by the milk processor Dairy Farmers was unsustainable.

When I put this concern to Woolworths senior management, they said words to the effect that it was not their problem; it was the processors who submitted the price to supply the milk. The problem is that, even if the directors and managers who make these decisions want to make a more humane decision that preserves services for country people or that preserves a reasonable farm gate price and a chance of economic survival for milk producers, they may feel that the Corporations Law compels them to ignore these factors. Even if the Prime Minister lectures the banks on the fact that they, like Telstra, have a community service obligation, the directors and managers find contradictory obligations in the Corporations Law. Sections 180, 181 and 184 of the law provide that decisions have to be made in the best interests of the corporation, and section 232 gives shareholders a right to sue the directors if their conduct of the corporation's affairs is contrary to the interests of the corporation as a whole.

I am a conservative. I believe in competition. I believe in the right to have a go. But the absolute maximisation of profits and dividends to shareholders cannot be pursued to the exclusion of all other obligations. I believe the Corporations Law should be amended not so that community obligations totally override the pursuit of profits—that would be silly—and not even so that they are prohibited from making more than a reasonable profit; but so that when directors or managers have a choice between two paths which would both produce a reasonable profit they are free, or even encouraged, to choose the path which would also promote wider community interests.

I am sure that banks could still have made pretty good profits without closing as many branches as they have over the past few years, and I am sure that Woolworths can continue to make a

handsome profit without screwing the price it pays for wholesale milk down so low that even their own senior management share concerns and wonder whether the successful tenderer will be there for the next round of tendering. It is true that this might make life more complex for company directors and managers. They will have to strike a balance between their corporation's interest and the community's interest instead of obsessively promoting just one interest.

I am also a solicitor. One of the first things I remember learning in law school is that we lawyers have a mixture of duties. The duty to the client sometimes has to come second to the duty to the court and to the public interest. Lawyers manage to make those choices when there is some tension between the client's interest and the public interest, and I am sure that company directors will be able to as well. They might even feel happier in their heart of hearts about the decisions that they may end up making.

I have referred in this motion to the extra obligations to be imposed on the corporations that have substantial powers in the market. Corporations such as Woolworths that have substantial power in a market already have special restrictions on what they can do, and which are imposed by section 46 of the Trade Practices Act. They cannot deliberately take action where their market power could be used to damage competitors and thus make the distribution of market power even more uneven. I am suggesting that they should also be encouraged to stop the less powerful players in the market from committing suicide by offering absurd prices just to keep the custom of the powerful corporation. This is the only country in the world where 80% of the food market is controlled by three corporations. Some special responsibilities already come with that degree of market dominance, and I am suggesting that another responsibility should be added.

This motion is very indirect. I ask this House and the Premier to ask the Prime Minister to take some action. This is because this House has no real power over the duty of company directors and managers. This is ironic because when we look at the statute books, we see that the Corporations Law is law in Queensland because of the Queensland Act, the Corporations (Queensland) Act of 1990, but all that this Act says is that the Corporations Law which is stated in the Commonwealth Act is law in Queensland and the details are found in the Commonwealth Act. We still have a theoretical power to make laws about corporations, but we have pretty well given it away by Commonwealth/State agreements. Our Act also states that, if the Commonwealth amends the Corporations Law, the amended version automatically becomes law here. So in practice all we can do is ask the Commonwealth to take action. I seek support from this House for this motion tonight.
