

The Hon Joe Hockey, MP
Australian Minister for Financial Services & Regulation
Address to the
Corporate Law Teachers Association Conference
“The Future of Corporate Regulation: Hughes and Wakim and the Referral of Powers”
3 November 2000

Ladies and gentlemen, thank you for inviting me here to open the Corporate Law Teacher Association Conference.

It is a pleasure to be speaking to the leaders of an industry that produces talent that strides the world stage.

It is a tribute to the people in this room that in the leading financial centres students taught by you, can hold their own with the best corporate lawyers in the world.

Ladies and gentlemen, I have just returned from a trip to Europe where I was promoting the merits of Australia as a global financial centre.

On this trip, my message was simple: that the Olympics have clearly demonstrated the exciting story Australia has to tell. A story of a young, sophisticated and intelligent community capable of resolving problems of global scale.

The Olympics was not just a showcase of our land. It was a showcase of our people. As you know, Australia has a regulatory system that is the envy of many nations. There are very few places where a single system of corporate regulation operates across three time zones and consistently regulates more than one million companies.

It is a system of corporate regulation that gives Australia an enormous amount to offer international financial institutions.

It is one reason we can provide a platform from which some of the globe's biggest organisations can access Asia without the risks of Asia.

In fact, one projection suggests revenue from Asia's financial service industries will reach US\$450 billion by 2010, up from US\$210 billion in 1998. In non-Japan Asia real financial market revenues are expected to grow 10% per year.

I want to help Australian-based businesses replicate the success of Australia educators in penetrating this key market.

I must say I was impressed to read in the July edition of *Forbes* how Australians are the number one recruiters of students in Malaysia, Singapore and Indonesia. How, foreign students contributed US\$11 billion to the U.S. economy, while Australia with less than a tenth of America's population, last year earned \$2 billion from foreign education.

In an increasingly global environment I am acutely aware of the need to preserve our scheme of corporate regulation.

It is in this context that I have been striving to find a workable solution to the problems with our Corporations Law identified by the High Court in the *Hughes* decision.

The recent High Court decisions concerning the operation of the Corporations Law, notably *Wakim* and *Hughes*, have generated a flood of comments, criticisms and proposals.

And rightly so – our system of corporate regulation and the ongoing work Australian governments have been doing are the reason why we have corporate regulation that is emulated by others.

Casting my eye over today's program, I can see that you will be treated to a wide range of perspectives on the issues raised.

However, what should not be forgotten is the urgency with which the problems implied by the High Court's decisions need to be addressed.

The uncertainty facing Australian corporations is very real.

It is easy to forget, in the frenzy of analysis and propositions following the decisions, how well the Corporations Law scheme has served the Australian business community.

It is for that reason, that I am trying to restore the practical operation of the scheme, with as little disturbance as possible to stakeholders.

Without such action, the existing laws are likely to be subjected to repeated legal challenges, which will continue the current climate of damaging uncertainty and severely compromise the orderly and efficient administration of the Corporations Law.

The alternative would be to have questions about the validity of fundamental aspects of Australia's system of corporate regulation dealt with incrementally by the courts, possibly over a period of several years.

I find it refreshing that today, ten years after the Alice Springs Agreement, no sector of the business community is calling for a return to the days when we operated with a patchwork of poorly integrated laws and corporate enforcement.

Today, companies see the value of a single national regulatory agency, which has been able to ensure consistency of application of the law across Australia.

A system without the need to comply with additional and varied regulatory burdens at each border. A goal, I believe, Europe and Asia will take many years, if ever, to achieve.

It is unthinkable that we could return to a fragmented, inefficient and uncoordinated scheme. As you are all no doubt aware, the path chosen by the Commonwealth and supported (finally) by the State and Territory governments to restore validity to the regulatory system is through referrals of power.

Arguably, they will be the most significant referrals of power since Federation. And understandably, it is not a step that the States have taken lightly.

However, the fact that they have taken that step highlights their recognition of the importance of restoring a uniform regime.

All States have agreed to provide the referrals, enabling the Commonwealth to pass a Corporations Act that will be valid throughout Australia.

The result is that, hopefully, very soon Australia will have a single piece of corporate legislation – the result of a series of evolutionary, rather than revolutionary, steps over the past 2 decades.

It is a remarkable achievement.

The achievement of this uniformity comes at a critical time in history.

Increasingly, business and governments are recognising the importance of the global marketplace.

This recognition, coupled with advances in technology that make near-instantaneous world trade a reality, opens incredible opportunities for economies that are equipped to take advantage of it.

If Australia is to retain and compete for business worldwide, it is imperative that we present a leading-edge regulatory framework that can deliver low-cost high-quality corporate regulation.

A multiplicity of state-based regimes in a country that represents 1.2% of the world's financial markets is only going to provide your average international investor, creditor or shareholder with another reason to ignore investment in Australia.

Globally, there is also a move towards increasing harmonisation with the regulatory frameworks of other markets, to facilitate trade.

A uniform domestic regime is essential if I'm to bring to fruition moves towards mutual recognition and, perhaps one day, harmonisation of our corporate regulation with key financial centres.

Work on legislation that will encapsulate our new corporations law, at both Commonwealth and State levels, is well advanced.

I hope that very soon my colleagues from the States and Territories will be able to sign-off on legislation that recognises the importance a successful uniform scheme of corporate regulation - irrespective of State or party politics.

Once it is ready, we will be looking to the Opposition and minor parties to support that legislation on introduction.

Australian businesses have endured too much uncertainty already for it to be held up or further debate to be unnecessarily prolonged.

The Government is aiming for a seamless transition, to minimise the cost to business and the wider community.

There are still details to be worked out with the States and the Territories, and the Commonwealth is endeavouring to address any concerns.

The Commonwealth has been, and continues to be, sensitive and accommodating to legitimate concerns of the States and the Territories. The Commonwealth has made a number of concessions from our starting position.

However, I will be resisting proposals that are, in our view, unreasonable and would result in the scheme taking a large step backwards.

From the beginning of this process in April this year I have insisted that the broad thrust of the Corporations Law is right and that we should be striving for a functionally equivalent scheme that repairs the problems with the existing scheme.

The Western Australian Attorney-General, Mr Foss, has been reported as citing stamp duty as a being a hurdle. The Commonwealth recognises that this is an issue, and has been doing everything in its power to find a solution. But, ultimately, how States impose stamp duty is a matter for the States.

It would be a tragedy for Australia if the federalisation of the scheme was derailed due to failure to come to an agreement on matters like that.

It would also be tragic if the new scheme were seriously delayed because WA failed to pass its referral legislation this year ahead of the state election.

I am hoping that, even if it takes a special sitting of state parliaments, the states will be able to commence their legislation early in the new year.

We will then be in a position to push ahead with our other important reforms, including the proposed Financial Services Reform Bill. A Bill that I believe will further enhance Australia's reputation as a world leader in the arena of corporate and securities regulation.

A solid foundation for our Corporations Law is essential for business and investor certainty and for Australia's credibility.

I assure you that I am doing everything I can to deliver a system of corporate regulation with a firm constitutional foundation free from the uncertainties that have plagued the Corporations Law over its recent history.