

ANNEXURE

GOVERNMENT RESPONSE TO THE LAW REFORM COMMITTEE'S "CURBING THE PHOENIX COMPANY" REPORT.

Terms of reference for this report were given to the Law Reform Committee on 16 March 1993. The Committee were requested to enquire into and report to Parliament as to -

- 1.1 The adequacy of the existing disqualification procedures where company directors and persons acting in the management of companies have been involved in failed companies and in particular the adequacy of section 599 of the Corporations Law as a means of achieving creditor protection.
- 1.2 The adequacy of penalties imposed where disqualified persons act in the management of companies.
- 1.3 The adequacy of existing supervisory and enforcement arrangements in relation to disqualified persons.
- 2.1 Whether the Corporations Law provides appropriate remedies against directors and effective execution against directors' personal assets where those directors have been involved in the management of companies which have failed to meet financial obligations.
- 2.2 Whether the Corporations Law provides appropriate means of tracing, for the benefit of creditors, assets divested by company directors.
- 2.3 Whether the Supreme Court of Victoria and the Federal Court of Australia are appropriate forums for civil actions against directors (for instance under section 592 of the Corporations Law) having regard to the costs of such actions.
- 2.4 What other safeguards might be introduced to protect creditors in their dealings with companies.
- 3.1 The means by which Victoria might implement any recommendations arising out of this enquiry.

The Committee have produced their first report entitled "Curbing the Phoenix Company". The Committee has taken evidence and received submissions on the extent of the problem confronting creditors in their dealings with delinquent directors.

The Committee has made a number of recommendations involving action that could be taken unilaterally by the Government and other recommendations that would need to be discussed with the Ministerial Council for Corporations. The latter matters concern recommendations that involve changes to the Corporations Law. Victoria cannot initiate changes to its own corporation legislation without jeopardising the national corporate scheme.

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The recommendations that deal with matters that could be undertaken by this Government have been read with interest by the Minister for Fair Trading. A number of the recommendations require funding and new legislation. At this stage of the Committee's investigation the Government believes it would be premature to consider allocating further funds or enacting legislation dealing with these matters until the full range of the Committee's recommendations have been received and evaluated.

The Honourable Chairman Mr James Guest, has indicated that a second report examining the overseas experience is to be undertaken. In order to take full advantage of the Committee's findings the Government will wait until the Committee tables their final report on this reference before considering new legislation or funding arrangements. The further advantage of this course of action also allows the Committee and the Government to assess the operation of the new sections of the Corporations Law referred to by the Committee in their report.

The Government takes this opportunity to thank the Committee for their efforts in undertaking this reference and looks forward to the next report.