

1980

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**  
**THE HOUSE OF REPRESENTATIVES**

**COMPANIES AND SECURITIES (INTERPRETATION AND  
MISCELLANEOUS PROVISIONS) BILL 1980**

**EXPLANATORY MEMORANDUM**

**(Circulated by The Hon. R. V. Garland M.P.,  
Minister for Business & Consumer Affairs)**

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## **INTRODUCTION**

1. The purpose of this explanatory memorandum is to explain the contents of the Companies and Securities (Interpretation and Miscellaneous Provisions) Bill 1980 (hereafter referred to as the "Bill").
2. This explanatory memorandum (hereafter referred to as 'ex memo'):
  - (a) contains an introduction to, and a brief outline of, the Bill and its relationship to the co-operative companies and securities scheme (paras 3 to 9); and
  - (b) deals sequentially with each clause of the Bill (paras 10 to 61).

### **Formal Agreement**

3. On 22 December 1978 the Commonwealth and the six States executed a Formal Agreement that provided the framework for a co-operative Commonwealth/State scheme for a uniform system of law and administration in relation to company law and the regulation of the securities industry in the six States and the Australian Capital Territory. The Formal Agreement also provides a procedure to enable the Northern Territory to become a party to the Agreement (Agreement cl. 49) and to enable the Agreement to be extended to the various external Territories (Agreement cl. 50) .

### **National Companies and Securities Commission Act**

4. The National Companies and Securities Commission Act (hereafter referred to as the 'NCSC Act') is the first of a series of enactments to give effect to the legislative obligations of the Commonwealth under the

#### **Formal Agreement (a copy of which is set out in the Schedule to the NCSC Act).**

5. A brief outline of the NCSC Act and the co-operative scheme is as follows:
  - (a) The NCSC Act establishes the National Companies and Securities Commission (hereafter referred to as the 'NCSC') which will have responsibility for the companies and securities laws covered by the Formal Agreement subject to directions from the Ministerial Council for Companies and Securities which is established by the Agreement. The NCSC will have such functions and powers as are conferred on it by the various pieces of Commonwealth, State and Territory legislation that are required to give effect to the co-operative companies and securities scheme (hereafter referred to as the 'co-operative scheme legislation'). One part of this legislation will be the proposed new take-over code. The administration of the co-operative scheme legislation within each State and Territory will, so far as practicable, be carried out by the relevant registering authority in that State or Territory under delegations from the NCSC.
  - (b) The content of the substantive laws under the scheme will be set out in legislation that will apply to the Australian Capital Territory. Each other jurisdiction that is covered by the Formal Agreement will then pass legislation which will apply the relevant Commonwealth law as the law of that jurisdiction to the exclusion of its present legislation as from the date of commencement of the Commonwealth law. Subsequently, any amendments to the Commonwealth law that are approved by the Ministerial Council will have automatic effect in those jurisdictions without the necessity of further and separate legislation in each other jurisdiction.
  - (c) The aim is that as far as possible any person or company in a particular Australian jurisdiction should be able to deal on all general companies and securities matters as if that person or company were only subject to one system of law and administration throughout Australia.

6. The States will be introducing into their Parliaments National Companies and Securities Commission (State Provisions) Bills to support the NCSC Act in each State. Once these Bills are brought into operation, the NCSC will be able to start administering its first substantive legislation:

it is expected that this will be the proposed new code regulating the acquisition of company shares, and a securities industry code. These will be followed by a companies code.

### **Special interpretation provisions**

7. The object of the Bill is to set out the interpretative provisions that are essential to the operations of the scheme. These provisions need to be uniform so that the substantive laws can be adopted by each other jurisdiction that is covered by the Formal Agreement.

8. Separate State adopting legislation will be required in relation to the Bill.

9. The Bill will govern the interpretation of all Commonwealth legislation under the co-operative scheme.

# **COMPANIES AND SECURITIES (INTERPRETATION AND MISCELLANEOUS PROVISIONS) BILL 1980**

## **PART I - PRELIMINARY**

10. Part I of the Bill (cls. 1 to 5) deals with various preliminary matters.

### **Cl. 1: short title**

11. The Act will be cited as the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980 (Bill cl. 1).

### **Cl. 2: commencement**

12. The Act will come into operation on the day on which the Companies (Acquisition of Shares) Act 1980 comes into operation (Bill cl. 2).

### **Cl. 3: relevant Acts**

13. It is intended that the Bill will apply (see Bill s-cl. 4(1)) to all Commonwealth Acts under the co-operative scheme (referred to in the Bill as "relevant Acts"). Those will be:

- this Bill
- National Companies and Securities Commission Act 1979;
- Companies (Acquisition of Shares) Bill 1980;
- Companies (Acquisition of Shares - Fees) Bill 1980;
- any Act that contains a relevant application provision (Bill para. 3(1)(e) and see Bill s-cl. 3(2)); and
- any Act amending this Bill or amending an Act referred to above.

(Bill s-cl. 3(1)).

### **Cl. 4: interpretation of relevant Acts**

14. The interpretation of the Commonwealth Acts under the co-operative scheme and instruments made granted or issued under them, will be governed by the laws in force in the A.C.T. relating to the interpretation of Ordinances at the commencement of this Bill except for:

- (a) where an express provision is contained in a relevant Act.
- (b) the matters covered by the provisions in parts II and IV of this Bill (except for cl. 14 these provisions are expressed to apply only in the absence of a contrary intention); and
- (c) the provisions of the Commonwealth Acts Interpretation Act that are expressly saved (see Bill s-cl. 4(2) and ex memo para. 15).

(Bill s-cl. 4(1))

15. The following provisions of the Commonwealth Acts Interpretation Act 1901 will continue to apply to Commonwealth Acts under the co-operative scheme:

s-s.3(2): Meaning of "commencement".

s.4: Exercise of certain powers between passing and commencing of Act.

- s.5: Commencement of Acts assented to by the Governor-General.
- s.6: Evidence of date of assent or proclamation.
- s.14: Acts may be altered &c, in same session.
- s.15A: Construction of Acts to be subject to Constitution.
- s.15B: Application of Acts in coastal sea.
- s.16A: References to the Governor-General.
- s.16B: References to the Governor of a State.
- s.17A: Paper or document purporting to be printed by Government Printer.
- s.19B: Reference to Minister, Department &c where no longer any such Minister, or Department abolished, &c.
- s.19BA: Reference to Minister, Department, &c, that is not consistent with changed administrative arrangements.
- s.19BAA: Application of sections 19B and 19BA where Department abolished and Department with same name established.
- s.19BB: Revocation of orders made under sections 19B and 19BA.
- s.19BC: Orders under sections 19B, 19BA and 19BB to be published in Gazette.
- s.19C: References in agreements to a Department Minister, officer or body.
- s.30: Offences under two or more laws.
- s.34B: Presentation of papers to the Parliament.
- s.39: Numbering of Acts.
- s.47: Construction of resolutions.
- s.48: Regulations.
- s.49: Disallowed regulations not to be re-made unless resolution rescinded or House approves.
- s.49A: Prescribing matters by reference to other instruments.
- s.50: Effect of repeal of regulations.

(Bill s-cl. 4(2)).

#### **Cl. 5: Act to bind the Crown**

16. The Bill will bind the Crown in right of the Commonwealth or of a Territory (Bill cl. 5 - see also definition of "Crown" in Bill cl. 9).

#### **PART II - INTERPRETATION**

17. Part II of the Bill (cls. 6 to 33) contains a number of interpretative provisions that will apply to the Commonwealth legislation under the cooperative scheme.

## *DIVISION 1 - General*

### **Cl. 6: every section to be a substantive enactment**

18. Every section of a relevant Act (see Bill cl. 3) will have effect as a substantive enactment without introductory words (Bill cl. 6 - based on Commonwealth Acts Interpretation Act s. 12).

### **Cl. 7: headings, schedules, marginal notes and footnotes**

19. A schedule to and all the headings of the Parts, Divisions and subdivisions into which a relevant Act is divided form part of the Act. (Bill s-cl. 7(1) and (2) -Bill cl. 7 is based on s. 13 Commonwealth Acts Interpretation Act). But marginal notes, footnotes and headings to sections of a relevant Act shall not be part of the Act (Bill s-cl. 7(3)).

### **Cl. 8: citation**

20. The citation of other legislation in a relevant Act is covered by Bill cl. 8 (based on Commonwealth Acts Interpretation Act s. 40).

## *DIVISION 2 - Words and References*

### **Cl. 9: definitions**

21. The Bill defines a series of terms for the purposes of the Commonwealth legislation under the co-operative scheme.

For example:

- "Act" will mean an Act passed by the Commonwealth Parliament (cf NCSC Act Para 3(3)(a));
- "Australia" or "the Commonwealth" means the Commonwealth of Australia and, when used in a geographical sense, does not include an external Territory (same definition as in s-cl. 17 (a) of the Commonwealth Acts Interpretation Act).

### **Cl. 10: parts of speech and grammatical forms**

22. Where a particular word or phrase is given particular meaning, other forms of that word or phrase will have corresponding meanings (Bill cl. 10 - based on Commonwealth Acts Interpretation Act s. 18A).

### **Cl. 11: reference to corresponding laws**

23. A reference in any relevant Act to a corresponding law of a particular State or Territory, shall be construed as a reference to the provisions of the relevant Act as applied as part of the law of that State or Territory in accordance with the Formal Agreement. (Bill cl. 11) .

### **Cl. 12: references to a Minister**

24. A reference to a Minister shall be deemed to include a reference to any minister, or member of the Executive Council acting on the Minister's behalf. (Bill cl. 12 - based on Commonwealth Acts Interpretation Act s.19).

### **Cl. 13: references to writing, printing and documents**

25. References to writing will include any method of representing or reproducing words in a visible form (Bill s-cl. 13(a)).

26. References to "printed" will include type-written, lithographed or any mechanical reproduction. (Bill s-cl. 13(b)).



27. References to a "document" will include any paper or other material that bears writing, printing, or marks, symbols or perforations that may be interpreted by suitably qualified persons; and a disc tape, or other article which can reproduce sounds, images or messages. A document also includes any summons, order, notice and other legal process (Bill s-cl. 13(c)) (Bill cl. 13 is based on Commonwealth Acts Interpretation Act, s. 25 -compare also A.C.T. Interpretation Ordinance s. 17: both of which only refer to words and not to "figures or symbols" as well).

#### **Cl. 14: lodging of documents and references to office of Commission**

28. A document required by a relevant Act to be lodged with the NCSC must be lodged with the A.C.T. Corporate Affairs Office and any document so lodged or submitted for lodgement shall be deemed to have been lodged or submitted for lodgement with the NCSC (Bill s-cl. 14(1)).

29. Any application to the NCSC for the issuing of a document, or the doing of any other act or thing by the NCSC under a relevant Act, must be in writing and delivered to the A.C.T. Corporate Affairs office and such an application, will be deemed to have been made to the NCSC (Bill s-cl. 14(2)).

30. The application legislation of each other jurisdiction for this Bill will require documents and applications relating to the administration of the scheme in a particular jurisdiction to be handed to the local registering authority in that jurisdiction.

#### **Cl. 15: service by post**

31. Where a relevant Act authorizes or requires a document to be served by post, service will be deemed to have been effected if the document is properly addressed and posted to the last-known address of the person to be served. Service will be effected at the time when the document would have been delivered in the ordinary course of post. (Bill cl. 15 - based on Commonwealth Acts Interpretation Act s. 29).

#### **Cl. 16: gender and number**

32. References to words importing the masculine gender will include females and the converse applies. Words in the singular include the plural and vice versa. (Bill cl. 16 - based on Commonwealth Acts Interpretation Act s. 23) .

#### **Cl. 17: references to the Sovereign**

33. A reference to the Sovereign reigning at the time the Act is passed, or to the Crown, shall refer to the Sovereign for the time being. (Bill Cl. 17 - based on Commonwealth Acts Interpretation Act s.16).

#### **Cl 18• corporations liable to and may sue for penalties**

34. References in any of the offence provisions shall refer to body corporates as well as natural persons. (Bill cl. 18 - based on Commonwealth Acts Interpretation Act s. 24).

#### **Cl. 19: references to officers, localities, etc.**

35. References to an officer or office shall be construed as a reference to an officer or office in the A.C.T. or, if there is non in the A.C.T., to an officer or office in t he Commonwealth (Bill s-cl. 19(1)).

36. References to localities etc will be construed as references to localities etc in the A.C.T. (Bill s-cl. 19(2)). (Bill cl. 19 - based on Commonwealth Acts Interpretation Act s.21).

#### **Cl. 20: mention of officer in general terms**

37. A reference to a person holding a particular office or position, shall include a reference to all persons who at any time occupy that office or position for the time being. (Bill cl.20 – based on s.20 of the Commonwealth Acts Interpretation Act).

#### *DIVISION 3 – Powers and Duties*

#### **Cl. 21: exercise of powers and duties**

38. Where a power or a duty is conferred or imposed it may, be exercised or performed from time to time. If it is conferred or imposed on the holder of an office, then the power or duty may be exercised or performed by the holder for the time being of that office (Bill cl.21 – based on s.33 of the Commonwealth Acts Interpretation Act).

#### **Cl 22: power to make, grant or issue an instrument includes power to repeal or amend the instrument**

39. The power in the substantive legislation to make, grant or issue an instrument will include the power to repeal, rescind etc that instrument (Bill cl.21 – based on Commonwealth Acts interpretation Act s.33(3) and A.C.T. Interpretation Ordinance s.37).

#### **Cl. 23: power to appoint includes power to remove or suspend**

40. A person who has power or authority to appoint another person to an office or position shall, unless the contrary intention appears, have power to remove or suspend the person so appointed. Where that power can only be exercised upon the recommendation of another person, the power to remove or suspend a person so appointed is subject to that other person's recommendation (Bill cl.23 based on cl.23 based on s-sec 33(4) of the Commonwealth Acts Interpretation Act).

#### **Cl. 24: exercise of powers etc by delegate**

41. Where the exercise of a power etc is dependent upon the opinion, belief, or state of mind of a person and that person had delegated the power or authorised another person to exercise it, the power may be exercised by the delegate or authorised person acting upon his opinion, belief or state of mind (Bill cl.24 – based on Commonwealth Acts Interpretation Act s.34A).

#### *DIVISION 4 – Distance and time*

#### **Cl. 25: measurement of distance**

42. For the purposes of any relevant Act, distance shall be measured in a straight line on a horizontal plane (Bill cl.25 – based on Commonwealth Acts Interpretation Act s.35).

#### **Cl. 26: reckoning of time**

43. A prescribed or allowed period of time, shall be reckoned exclusive of the specified day or date of that act, or event, and where the last day of a prescribed or allowed period falls on a weekend, public holiday, or bank holiday, the thing may be done on the first day following which is not a weekend, public holiday or bank holiday (Bill cl.26 - based on Commonwealth Acts Interpretation Act s.36).

#### **Cl. 27: expressions of time**

44. A reference to time in relation to the doing of an act or thing in a particular State or Territory will be deemed to be a reference to the legal time in that State or Territory (Bill cl.27 - based on Commonwealth Acts Interpretation Act s.37).

### **Cl. 28: effect of repeal**

45. The repeal of all or part of a relevant Act that effectively repealed all or part of a previous Act or Ordinance will not revive the previous Act or Ordinance without express words. (Bill s-cl.28(1)).

46. Also the repeal by a relevant Act of all, or part of, an Ordinance by which all or part of a previous Ordinance was repealed, will not revive all or part of the previous Ordinance without express words (Bill s-cl.28(2)). (Bill cl.28 is similar to Vic Act Interpretation Act s-s.6(3)0.

### **Cl. 29: saving**

47. A repeal by a relevant Act of all or part of a former relevant Act or Ordinance does not:

- (a) revive anything not in force or existing when the repeal takes effect;
- (b) affect previous operation of, or anything done or suffered under, that relevant Act, or Ordinance;
- (c) affect a right, privilege, obligation or liability acquired, accrued or incurred under all or part of that relevant Act, or Ordinance, or an investigation, legal proceeding, or remedy in respect of that right, privilege, obligation or liability; or
- (d) affect a penalty, forfeiture or punishment incurred in respect of an offence committed against all or part of that relevant Act, or Ordinance, or an investigation, legal proceeding or remedy in respect of that penalty, forfeiture or punishment;

and the investigation, legal proceeding or remedy may be instituted, continued or enforced, and a penalty, forfeiture or punishment may be imposed, as if the repealing relevant Act had not been passed. (Bill s-cl.29(1) and 29(2) – based on Commonwealth Acts Interpretation Act s.8).

### **Cl. 30: repealed provisions continue in force until substituted provisions operate**

48. Repealed provisions will continue in force until the substituted provisions come into operation (Bill cl. 30 - based on Commonwealth Acts Interpretation Act s. 9).

### **Cl. 31: amending Act to be construed with amended Act**

49. An amending Act shall be construed with and form part of the relevant Act being amended (Bill cl. 31 -based on Commonwealth Acts Interpretation Act s. 15)

### **Cl. 32: expiration of Acts**

50. Civil proceedings commenced under a relevant Act that has expired may continue (Bill cl. 32 - based on Commonwealth Acts Interpretation Act s. 11)

### **Cl. 33: references to amended or re-enacted laws**

51. A reference in a relevant Act to a short title used for the citation of an original Act or Ordinance, that has been repealed or amended, continues to be a proper reference to that Act or Ordinance (Bill cl. 33 -based on Commonwealth Acts Interpretation Act s. 10)

## **PART III - OFFENCES AND PENALTIES**

52. Part III of the Bill (C is. 34 to 38) contains a series of general provisions relating to offences and penalties under the cooperative scheme.

#### **Cl. 34: time for instituting criminal proceedings**

53. Proceedings for an offence against a relevant Act may be instituted within 5 years after the date of the offence or, with the consent of the Ministerial Council, at any later time. (Bill cl. 34 based on Companies Bill s-cl. 381(3)).

#### **Cl. 35: indictable offences and summary offences**

54. Offences that are punishable by imprisonment for a period not exceeding 6 months may be punished either summarily or on indictment, but an offender cannot be punished more than once for the same offence. Offences that are punishable by imprisonment for a period not exceeding 6 months are punishable summarily (Bill cl. 35 -based on Companies Bill s-cl. 381(4) and (5)).

#### **Cl. 36: proceedings how and when taken**

55. Unless the contrary intention appears, proceedings for an offence against a relevant Act may only be instituted by:

- (a) the NCSC;
- (b) a delegate of the NCSC;
- (c) a person authorized by a delegate of the NCSC;
- (d) a person authorized by the Ministerial Council. (Bill s-cl. 36(1)) - replaces s-cl. 145(1) of the Securities Industry Bill exposure draft).

56. A delegation or an authorization under paras (b) (c) or (d), may relate to all offences, or a particular offence or group of offences (Bill s-cl. 36(2)) (Bill cl. 36 - based on Companies Bill s-cl. 381(1) and (2)).

#### **Cl. 37: double jeopardy**

57. A person is not liable to be punished twice for the same offence (Bill cl. 37 - based on Companies Bill cl. 378C).

#### **Cl. 38: aiding and abetting, attempts, etc**

58. A person who aids, abets, counsels, procures, etc., a party in the commission of an offence shall be deemed to have committed that offence and may be punished accordingly. (Bill s-cl. 38(1)) Attempts to commit an offence are treated in the same manner as if the attempt were successful (Bill s-cl. 38(2)). Except for sections 5 and 7 of the Crimes Act (involving aiders, abettors and attempts) cl. 38 does not affect the application of the Crimes Act in relation to any relevant Act (Bill s-cl. 38(3))(Bill cl. 38 based on Companies Bill cl. 378AA).

### **PART IV - OFFENCES UNDER NATIONAL COMPANIES AND SECURITIES COMMISSION A.C.T.**

#### **Cl 39: penalties at foot of sections or sub-sections**

59. A penalty, pecuniary or otherwise, set out at the foot of a section or sub-section of the NCSC Act, indicates that a contravention of the section or sub-section is an offence against that Act, punishable upon conviction by a penalty not exceeding the penalty so set out (Bill s-cl. 39(1)).

60. A penalty that is set out at the foot of a section or sub-section of the NCSC Act may be expressed to apply to a part only of the section or sub-section (Bill s-cl. 39(2)).

## **PART V - INSTRUMENTS UNDER RELEVANT ACTS**

### **Cl. 40: application of Act to instruments under relevant Acts**

61. The Bill will also apply to all instruments provided for in a relevant Act (Bill cl. 40).