

1980

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

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

EXPLANATORY MEMORANDUM

**(Circulated by The Hon. R. V. Garland M.P.
Minister for Business and 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) Amendment 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 co-operative companies and securities scheme (paras 3 to 7); and
 - (b) deals sequentially with each clause of the Bill (paras 8 to 18).

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 provided 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 Scheme Legislation

4. Following execution of the Formal Agreement the Commonwealth Parliament passed the following Acts:
 - (a) National Companies & Securities Commission Act 1979;
 - (b) Companies (Acquisition of Shares) Act 1980;
 - (c) Companies (Acquisition of Shares-Fees) Act 1980;
 - (d) Securities Industry Act 1980;
 - (e) Securities Industry (Fees) Act 1980; and
 - (f) Companies & Securities (Interpretation & Miscellaneous Provisions) Act 1980.

5. A brief outline of the National Companies and Securities Commission Act (hereafter referred to as the NCSC Act) and the co-operative scheme is as follows:-

- (a) The NCSC Act established the National Companies and Securities Commission (hereafter referred to as 'the NCSC') which has responsibility for the companies and securities laws covered by the Formal Agreement subject to directions from the Ministerial Council for Companies and Securities which was established by the Agreement. The NCSC has such functions and powers, conferred on it by the various pieces of Commonwealth, State and Territory legislation, that will give effect to the co-operative companies and securities scheme (hereafter referred to as the 'co-operative scheme legislation'). The administration of the co-operative scheme legislation within each State and Territory is, as far as practicable, to be carried out by the relevant corporate affairs office in that State or E i Territory under delegations from the NCSC.
- (b) The content of the substantive laws under the scheme is set out in legislation that applied to the Australian Capital Territory. Each other jurisdiction that is covered by the Formal Agreement will 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, subject to the making of any necessary 'translator' amendments, have automatic effect in those jurisdictions without the necessity of further and separate substantive 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. Each State will be introducing into its Parliament a National Companies and Securities Commission (State Provisions) Bill to support the operations of the NCSC in that State. Once these six Bills are brought into operation, the NCSC will be able to start administering its first substantive legislation: 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. The interpretation code will apply to each of these codes.

Interpretation of Scheme Legislation

7. This interpretation code is set out in the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980. The object of this Commonwealth Act 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 applied in a uniform manner by each other jurisdiction that is covered by the Formal Agreement. Separate State application legislation will be required in relation to the interpretation code set out in this Commonwealth Act. The Act will govern the interpretation of all Commonwealth legislation under the cooperative scheme.

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

CI 1: Short title, etc.

8. When enacted the Bill will be cited as the Companies and Securities (Interpretation and Miscellaneous Provisions) Amendment Act 1980 and the Companies and Securities (Interpretation & Miscellaneous Provisions) Act 1980 (referred to in para 7 of this ex memo) is referred to as the 'Principal Act'.

CI 2: Commencement

9. The Bill will come into operation on the same day on which the Principal Act comes into operation. Section 2 of the Principal Act provides that that Act will come into operation on the day on which the Companies (Acquisition of Shares) Act 1980 comes into operation.

CI 3: Definitions

10. Section 9 of the Principal Act defines a series of terms for the purposes of the Commonwealth legislation under the co-operative scheme. Clause 3 of the Bill contains a number of amendments to section 9.

11. The definition of the Formal Agreement (described in para 3 of this ex memo and referred to in the Principal Act as the 'Agreement') is amended so that it will apply to the Formal Agreement as amended or affected by another agreement even if that other agreement is executed before the Principal Act comes into operation (Bill para 3(a)). This definition will be identical to the definition given in the other legislation under the co-operative companies and securities scheme.

12. There will be an additional definition for "court of summary jurisdiction", which will mean the A.C.T. Court of Petty Sessions (Bill para 3(b)). (The application of laws legislation of each State

will provide that in that State this term means the local courts exercising summary jurisdiction). This definition will be relevant to the amendments to section 35 of the Principal Act (see Bill c1.4).

13. The definition of statutory declaration will be omitted from the Principal Act as matters under the scheme legislation will be verified by statements in writing (Bill para. 3(c)).
14. References to "this Act" in the Principal Act and in any of the scheme legislation will include regulations made under that legislation (Bill para 3(d)).

Cl. 4: Indictable offences and summary offences

15. Section 35 of the Principal Act will be replaced by a new provision, the effect of which is as follows:-

- (a) Offences that carry a monetary penalty only or a term of imprisonment not exceeding six months are punishable summarily (proposed s-sec 35(1)).
- (b) Offences that carry a penalty of imprisonment for more than six months are punishable on indictment (proposed s-sec 35(2')). However, the prosecutor may request that an offence that is punishable by imprisonment for more than six months be heard and determined summarily, (proposed s-sec 35(3)).
- (c) A court of summary jurisdiction cannot in relation to legislation under the scheme impose, in respect of one offence, a period of imprisonment that exceeds 2 years; nor, can it impose cumulative periods of imprisonment that, in the aggregate, exceed 5 years (proposed s-sec 35(4)).
- (d) A person cannot be punished more than once for the same offence (proposed s-sec 35(5)).

Cl. 5: Proceedings how and when taken

16. Sub-section 36(1) of the Principal Act specifies who may institute proceedings under the scheme legislation. This sub-section will be amended to provide that it is only any information, charge, complaint or application made or laid under the co-operative scheme legislation that can be made or laid by those persons specified in sub-section 36(1) of the Principal Act viz. the Commission; a delegate of the Commission; or, a person authorized in writing by the Ministerial Council.

17. This amendment will ensure that the present law relating to the persons in each jurisdiction who are entitled to present indictments remains unaltered.

Cl. 6: PART VI - EVIDENCE OF CORRESPONDING LAWS Evidence of laws of States and other Territories

18. A new Part VI containing new section 41 will be inserted in the Principal Act (Bill clause 6). This new section will ensure that the reprint in each jurisdiction of a particular code as in force in that jurisdiction on a particular date is *prima facie* evidence of the provisions of that code as in force in that jurisdiction on that date.