

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COMPANIES (INSOLVENCY ASSISTANCE) AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General, the  
Honourable Michael Duffy MP)

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COMPANIES (INSOLVENCY ASSISTANCE) AMENDMENT BILL 1990

OUTLINE

The Companies (Insolvency Assistance) Amendment Bill amends the Companies Act 1981 ('the Act') to vest in the Court a capacity to facilitate a scheme of arrangement in the case of a complex corporate structure.

Under the Act, at present, schemes of arrangement require the separate meetings of classes of creditors of each of the subsidiaries. In the case of a group involving over 30 subsidiaries, this could result in the necessity for a large number of meetings (in some cases 150 or more such meetings). As a practical matter, this may make such schemes of arrangement impossible for larger groups of companies.

This Bill thus allows the court an additional flexibility in making orders under s.315 of the Act and does not remove any of the requirements which protect creditors under the present legislation, including the need to ensure classes are properly constituted. In the exercise of its discretion in calling the meetings and in subsequently approving any scheme agreed to the Court will continue to be able to take into account the interests of creditors, members and the public generally.

Financial Impact Statement

There is no financial impact on the Government.

BACKGROUND

In the context of the winding up of the Hooker Group and its subsidiaries, the Government was approached by the provisional liquidators of the Hooker Group with a view to the passage of such an amendment.

In June 1990 the Ministerial Council for Companies and Securities formally agreed to an amendment of general application to allow the Court a discretion to order meetings of creditors of a group of companies as though they were one company.

THE BILL

Cl.1: Short Title

When enacted the Bill will be cited as the Companies (Insolvency Assistance) Amendment Act 1990.

The Bill amends the Companies Act 1981 which is referred to as the Principal Act.

Cl.2: Commencement

The Bill will commence upon proclamation.

Cl.3: Power to compromise with creditors and members

The Bill amends s.315 of the Principal Act by inserting new subsections 315(1A), 315(1B) and 315(1C).

The proposed new subsection 315(1A) provides that a court may order a meeting or meetings, on a consolidated basis, of the creditors of the holding company and each of the subsidiaries, or a class or classes of such creditors, where:

- . a compromise or arrangement is proposed between 30 or more wholly owned subsidiaries of a holding company and the creditors of each of the subsidiaries and the holding company (s.315(1A)(a));
- . the proposed compromise or arrangement in relation to each subsidiary includes a term that an order will be sought under s.317, transferring the whole of the undertaking and property and liabilities of the subsidiaries to the holding company (s.315(1A)(b));  
and

- . the Court is satisfied that the number of meetings that would be required between creditors would significantly impede the timely and effective consideration by those creditors, of the terms of the compromise (s.315(1A)(c)).

An order made by the Court under the sub-section will apply to subsidiaries incorporated in other States and Territories and, by virtue of s.315(19), will have effect in those States and Territories.

The effect will be to enable the creditors of the subsidiaries to be treated as creditors of the holding company for the purposes of the meetings. Where there are real and distinct differences between creditors there will still need to be different classes of the relevant composite groups of creditors, although the creditors of various subsidiaries and the holding company with the same community of interest may now be organised into one class.

New subsection 315(1A) also empowers the Court to approve the explanatory statement required under s.316(1)(a) of the Principal Act to accompany notices of the meeting or meetings.

New subsection 315(1B) provides that where there are fewer than 30 wholly owned subsidiaries of the holding company, but in all other respects subsection 315(1A) would apply, the Court may, where it considers that the circumstances would justify doing so, make an order under subsection 315(1A).

New subsection 315(1C) provides, that where an order is made under subsection 315(1A), the succeeding provisions of the Part are read to apply appropriately.