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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

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COMPANIES (MISCELLANEOUS AMENDMENTS) BILL 1980

EXPLANATORY MEMORANDUM

(Circulated by the Minister for Business and  
Consumer Affairs, the Honourable R.V. Garland, M.P.)



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SCHEDULE



INTRODUCTION

1. The purpose of this explanatory memorandum is to explain the contents of the Companies (Miscellaneous Amendments) Bill 1980 (hereafter referred to as the "Bill").

2. This explanatory memorandum (hereafter referred to as 'ex memo'):-

- (a) contains an introduction to the co-operative Companies and Securities Scheme, and the Bill's relationship to the scheme (paras 3 to 9); and
- (b) deals sequentially with each clause of the Bill (paras 10 to 69).

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 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 is established by the Agreement. The NCSC has 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. One part of this legislation will be the proposed new Companies Code, including the Companies Bill 1980. 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.

Repeal of the A.C.T. Companies Ordinance 1962

6. When the Companies Bill 1980 comes into force the A.C.T. Companies Ordinance 1962 will be repealed (by virtue of clause 4 of, and Schedule 1 to, the Companies Bill 1980.) The object of the Bill is therefore to make a number of amendments to various Commonwealth Acts consequent upon the enactment of the Companies Bill 1980 and the repeal of the A.C.T. Companies Ordinance 1962.

7. The Bill does not affect the States as it only relates to Commonwealth Acts. Each State will however have to pass similar legislation in relation to any State Acts that contain references to the existing State Companies Acts.

COMPANIES AND SECURITIES (MISCELLANEOUS AMENDMENTS)

BILL

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PART I - PRELIMINARY

8. Part I of the Bill (cls. 1 and 2) deals with various preliminary matters.

Cl. 1 : Short title

9. The Act will be cited as the Companies (Miscellaneous Amendments) Act 1980.

Cl. 2 : Commencement

10. Part I of the Act will come into operation on the day on which the Act receives the Royal Assent (sub-cl. 2(1)). Division 1 of Part XI of the Act will come into operation on the day on which the Act receives the Royal Assent or if on that day the Companies (Acquisition of Shares) Act 1980 has not come into operation, on the day on which that Act comes into operation (sub-cl. 2(2)). The other provisions of the Act will come into operation on the day on which the Companies Act 1980 comes into operation (sub-cl. 2(3)).

PART II - AMENDMENTS OF ABORIGINAL COUNCILS AND  
ASSOCIATIONS ACT 1976

11. Part II of the Bill contains certain consequential amendments to the Aboriginal Councils and Associations Act 1976.

Cl. 3 : Principal Act

12. The Aboriginal Councils and Associations Act 1976 is referred to as the Principal Act in this Part.

Cl. 4 : Interpretation

13. Paragraph (b) of the existing definition of "unauthorized name" in section 3 of the Aboriginal Councils and Associations Act will be amended to a name of a kind that the Ministerial Council for Companies and Securities has for the purposes of the Companies Act 1980, directed the National Companies and Securities Commission not to accept for registration under that Act. The existing definition makes reference to a direction of the Attorney-General to the Registrar of Companies for the purposes of a law of the Australian Capital Territory relating to companies.

Cl. 5 : Application of provisions of Companies Act relating to compositions with creditors

14. Section 62 of the Aboriginal Councils and Associations Act will be repealed and a new section substituted.

15. Section 62 of the Aboriginal Councils and Associations Act applies, with certain modifications, the provisions of the companies legislation relating to compositions with creditors to Incorporated Aboriginal Associations. The proposed section 62 contains a specific reference to the Companies Act 1980 while the existing provision contains a reference to the provisions of a law in force in the Australian Capital Territory that relate to compromises or arrangements between companies and their creditors.

Cl. 6 : Application of provisions of Companies Act to winding up of Incorporated Aboriginal Associations

16. Section 67 of the Aboriginal Councils and Associations Act will be repealed and a new section substituted.



17. Section 67 of the Aboriginal Councils and Associations Act applies, with certain modifications, the provisions of the companies legislation relating to winding up to Incorporated Aboriginal Associations. The proposed section 67 contains a specific reference to the Companies Act 1980 while the existing provision contains a reference to the provisions of the law in force in the Australian Capital Territory that relate to the winding up of companies, other than unregistered companies.

PART III - AMENDMENT OF ABORIGINAL LAND RIGHTS

(NORTHERN TERRITORY) ACT 1976

18. Part III of the Bill contains certain consequential amendments to the Aboriginal Land Rights (Northern Territory) Act 1976.

Clause 7 : Principal Act

19. The Aboriginal Land Rights (Northern Territory) Act 1976 is referred to as the Principal Act in this Part.

Clause 8 : Offence in connection with mining interest

20. Section 47 of the Aboriginal Land Rights (Northern Territory) Act will be amended by the omission from sub-section (3) of the reference to the A.C.T. Companies Ordinance 1962 and a reference to the Companies Act 1980 will be substituted. The purpose of sub-section 47(3) is to make it an offence for a director or officer of a body corporate to bribe or attempt to bribe a person in relation to the granting of a mining interest in Aboriginal land. 'Officer' has the same meaning as in the A.C.T. Companies Ordinance.

PART IV - AMENDMENTS OF AUSTRALIAN BICENTENNIAL  
AUTHORITY ACT 1980

21. Part IV (Cls. 9 to 14) contains amendments to the Australian Bicentennial Authority Act 1980 that will be necessary consequent upon the enactment of the Companies Bill 1980.

Clause 9 : Principal Act

22. In this Part the Australian Bicentennial Authority Act 1980 is referred to as the Principal Act.

Cl. 10: Power of Prime Minister to terminate  
appointment of Chairman in certain circumstances

23. Sub-section 7(5) of the Australian Bicentennial Authority Act is amended by deleting references to sections 120 and 121 of the ACT Companies Ordinance and substituting references to sections 225 and 226 of the Companies Act 1980.

Cl. 11: Appointment of senior officers of authority

24. The reference to sub-section 132(2) of the ACT Companies Ordinance in section 8 of the Australian Bicentennial Authority Act will be deleted and there will be substituted a reference to sub-section 236(2) of the Companies Act 1980.

Cl. 12: Authority may form, and invest in, companies  
for certain purposes

25. The reference to the ACT Companies Ordinance in sub-section 13(2) of the Australian Bicentennial Authority Act will be deleted and there will be substituted a reference to the Companies Act 1980.

Cl. 13: Exemption from taxation

26. The reference to the ACT Companies Ordinance in sub-section 19(4) of the Australian Bicentennial Authority Act will be deleted and there will be substituted a reference to the Companies Act 1980.

Cl. 14: Winding up of Authority

27. Section 21 of the Australian Bicentennial Authority Act is amended by the substitution of references to the Companies Act 1980 for references to the ACT Companies Ordinance and by the substitution of a reference to the office of the Corporate Affairs Commission for the ACT for the existing reference to the Registrar of Companies.

PART V - AMENDMENT OF AUSTRALIAN CAPITAL TERRITORY

SUPREME COURT ACT 1933

28. Part V (Cls. 15 to 16) contains an amendment to the Australian Capital Territory Supreme Court Act 1933 which will be necessary consequent upon the enactment of the Companies Bill 1980.

Cl. 15 : Principal Act

29. In this Part the Australian Capital Territory Supreme Court Act 1933 is referred to as the Principal Act.

Cl. 16 : Rules of court

30. Section 28 of the Australian Capital Territory Supreme Court Act will be amended by inserting in paragraph (b) of sub-section (1) the words "of the Commonwealth or" after the words "any law" (para. 16(a)). The purpose of this amendment is to ensure that the Companies Act 1980 will be referred to in para 28(1)(b) by virtue of the words "any law of the Commonwealth".

31. Section 28 of the Australian Capital Territory Supreme Court Act will also be amended by the omission of sub-section 28(5). Sub-section 28(5) provides that where regulations are made in relation to companies under a law of the Territory that are inconsistent with Rules of Court made under the Australian Capital Territory Supreme Court Act 1933, the regulations shall, to the extent of the inconsistency, be of no effect. The omission of sub-section 28(5) is necessary because it will be inconsistent with section 383 of the Companies Act 1980 which provides that the rules of court made under section 28 of the Australian Capital Territory Supreme Court Act 1933 must not be inconsistent with "this Act". Under Clause 3 of the Companies and Securities (Interpretation and Miscellaneous Provisions) Amendment Bill 1980, section 9 of the Companies Securities (Interpretation and Miscellaneous Provisions) Act 1980 will be amended to provide a definition of "this Act" which will include regulations under the relevant Act.

PART VI - AMENDMENT OF AUSTRALIAN CAPITAL TERRITORY  
TAXATION (ADMINISTRATION) ACT 1969

32. Part VI contains an amendment to the Australian Capital Territory Taxation (Administration) Act 1969 which is necessary consequent upon the repeal of the A.C.T. Companies Ordinance 1962.

Cl. 17 : Principal Act

33. The Australian Capital Territory Taxation (Administration) Act 1969 is referred to as the Principal Act in this Part.

Cl. 18 : Transfer of marketable securities not to be registered unless duly stamped

34. The Australian Capital Territory Taxation (Administration) Act 1969 will be amended by adding at the end of Part III of that Act a new Division 10.

35. Section 58A of the Australian Capital Territory Taxation (Administration) Act 1969 which will be contained in the new Division 10 of that Act will require an instrument of transfer relating to a transfer of a share or a debenture of a company to be duly stamped to the effect that stamp duty, if payable, has been or will be paid before the transfer can be registered in the books of the company.

36. A similar provision is presently contained in sub-section 95(2) of the A.C.T. Companies Ordinance 1962. This provision will not appear in the Companies Act 1980 because it is a local provision and the corresponding provisions in the States are contained in the State Stamp Acts.

PART VII - AMENDMENTS OF BANKS (SHAREHOLDINGS) ACT

1972

37. Part VII of the Bill (cls. 19 - 20) contains amendments to the Banks (Shareholdings) Act 1972 consequent upon the repeal of the A.C.T. Companies Ordinance 1962.

Cl. 19 : Principal Act

38. The Banks (Shareholdings) Act 1972 is referred to as the Principal Act in this Part.

Cl. 20 : Interests in shares

39. Section 8 of the Banks (Shareholdings) Act 1972 will be amended by the omission of paragraphs 8(3)(a), 8(3)(c) and 8(5)(a)(i) and the substitution of similar paragraphs which will contain appropriate references to the Companies Act 1980 in the place of the existing references to the A.C.T. Companies Ordinance 1962.

PART VIII - AMENDMENT OF FINANCIAL CORPORATIONS ACT

1974

40. Part VIII (Cls. 21 - 22) contains an amendment to the Financial Corporations Act 1974 consequential upon the repeal of the A.C.T. Companies Ordinance 1962.



Cl. 21 : Principal Act

41. The Financial Corporations Act 1974 is referred to as the Principal Act in this Part.

Cl. 22 : Related corporations

42. The reference in section 7 of the Financial Corporations Act 1974 to the A.C.T. Companies Ordinance 1962 will be omitted and a reference to the Companies Act 1980 will be substituted. The purpose of section 7 of the Financial Corporations Act 1974 is to apply the definition of related corporations in the companies legislation for the purposes of the Financial Corporations Act 1974.

PART IX - AMENDMENTS OF INDUSTRIAL RESEARCH AND  
DEVELOPMENT GRANTS ACT 1967

43. Part IX (cls. 23 - 24) contains amendments to the Industrial Research and Development Grants Act 1967 consequent upon the proposed repeal of the A.C.T. Companies Ordinance and the proposed enactment of the Companies Act 1980.

Cl. 23 : Principal Act

44. The Industrial Research and Development Grants Act 1967 is referred to as the Principal Act in this Part.

Cl. 24 : Interpretation

45. Paragraph 5(1)(a) will be amended by omitting certain words and substituting a reference to incorporation under a law of the Commonwealth. The purpose of this consequential amendment is to take account of the fact that the Companies Act 1980 will be a law of the Commonwealth.

46. Paragraph 5(9)(b) will be amended by omitting a reference to section 6 of the A.C.T. Companies Ordinance 1962 and substituting a reference to section 7 of the Companies Act 1980. Section 7 of the Companies Act 1980 will contain the definition of subsidiaries, holding companies and related corporations.

PART X - AMENDMENTS OF INSURANCE ACT 1973

47. Part X (cls. 25 - 34) contains amendments to the Insurance Act 1973 consequent upon the proposed repeal of the A.C.T. Companies Ordinance 1962 and the proposed enactment of the Companies Act 1980.

Cl. 25 : Principal Act

48. The Insurance Act 1973 is referred to as the Principal Act in this Part.

Cl. 26 : Intepretation

49. Sub-section 3(2) of the Insurance Act 1973 will be deleted. Sub-section 3(2) provides that a reference to the A.C.T. Companies Ordinance 1962 shall be read as a reference to that Ordinance as amended and in force for the time being. In addition to the fact that the A.C.T. Companies Ordinance will be repealed, this type of interpretation provision is no longer necessary by virtue of section 10 of the Acts Interpretation Act 1901 (see section 4 of the Acts Citation Act 1976).

Cl. 27 : References to related bodies corporate

50. Section 4 of the Insurance Act 1973 applies, with modifications, the definitions of subsidiary, holding and related company in section 6 of the A.C.T. Companies Ordinance 1962 for the purpose of the Insurance Act 1973. The reference to section 6 of the A.C.T. Companies Ordinance 1973 will be deleted and references to section 7 of the Companies Act which contains definitions of subsidiaries, holding companies and related corporations will be substituted.

Cl. 28 : Application for Authority

51. Paragraph 22(2)(e) of the Insurance Act 1973 is amended by omitting "under the law of a State or Territory" and substituting "under the law in force in a State or Territory". This amendment will be made because the Companies Act will be a Commonwealth law in force in the Australian Capital Territory and not a law of the Territory.

Cl. 29 : Valuation of assets

52. Sub-section 33(7) of the Insurance Act 1973 contains a definition of "securities" which includes interests within the meaning of Division 5 of Part IV of the A.C.T. Companies Ordinance 1962. The definition of "securities" will be amended by omitting the reference to interests under the Companies Ordinance 1962 and substituting a reference to prescribed interests as defined by sub-section 5(1) of the Companies Act 1980.

Cl. 30 : Definitions

53. The reference in section 39 of the Insurance Act 1973 to the Ninth Schedule to the A.C.T. Companies Ordinance 1962 will be omitted and a reference to Schedule 6 of the Companies Act 1980 will be substituted.

Cl. 31 : Definitions

54. Sub-section 50(1) of the Insurance Act 1973 is amended by the insertion in the definition of "affairs" of the word "prescribed" before each reference to "interests". This amendment is to take account of the fact that the expression used in the Companies Act 1980 will be "prescribed interests" instead of "interests" under the A.C.T. Companies Ordinance 1962 (para 31(a)).

55. The definition of "interest" in sub-section 50(1) of the Insurance Act 1973 will be amended to pick up the reference to "prescribed interest" as defined under sub-section 5(1) of the Companies Act 1980 (para. 31(b)).

Cl. 32 : Part IV not to affect operation of certain laws

56. Section 102 of the Insurance Act 1973 will be amended by inserting a reference to a law of the Commonwealth. The purpose of this consequential amendment is to take account of the fact that the Companies Act 1980 will be a law of the Commonwealth.

Cl. 33: Part V not to affect operation of certain laws

57. Section 103 of the Insurance Act 1973 will be amended by inserting a reference to a law of the Commonwealth. This consequential amendment takes account of the fact that the Companies Act 1980 will be a law of the Commonwealth.

Cl. 34: Offences

58. Section 128 of the Insurance Act will be amended by the repeal of sub-section 3 and a new sub-section 3 will be inserted. This latter sub-section defines 'officer', in relation to a body corporate, by reference to the definition of 'officer' in sub-section 5(1) of the Companies Act 1980.

PART XI - AMENDMENTS OF LIFE INSURANCE ACT 1945

Cl. 35 : Documents lodged or furnished under laws relating to Acquisition of Shares

59. Sub-section 139A(1) of the Life Insurance Act 1945 is omitted as it contains a reference to the A.C.T. Companies Ordinance 1962. The replacement sub-section contains a reference to the Companies (Acquisition of Shares) Act 1980 or the corresponding law of a State or Territory other than the Australian Capital Territory.

Cl. 36 : Principal Act

60. The Life Insurance Act 1945 is referred to as the Principal Act in Division 2 of this Part.

Cl. 37 : Interpretation

61. Sub-section 4(9) of the Life Insurance Act will be deleted. Sub-section 4(9) provides that a reference to the A.C.T. Companies Ordinance 1962 shall be read as a reference to that Ordinance as amended and in force for the time being. In addition to the fact



that the A.C.T. Companies Ordinance will be repealed, this type of interpretation provision is no longer necessary by virtue of section 10 of the Acts Interpretation Act 1901 (see section 4 of the Acts Citation Act 1976).

Cl. 38 : Terms and conditions of appointment

62. Sub-section 9A(4) is amended by the omission from it of a reference to the A.C.T. Companies Ordinance 1962. The sub-section states that a person shall not be appointed as Insurance Commissioner if the person is a director or employee of a body corporate carrying on life insurance business or a body corporate which is related to a body corporate carrying on life insurance business. The provisions of the A.C.T. Companies Ordinance are to be used to determine the relationship of body corporates.

Cl. 39 : Interpretation

63. Sub-sections 40B(6), (7), (8) and (9) of the Life Insurance Act will be omitted and replaced by a new sub-section 40B(6) which contains appropriate references to the Companies Act 1980.

Cl. 40 : Documents lodged or furnished under laws  
relating to acquisition of shares

64. The references to the A.C.T. Companies Ordinance 1962 in sub-section 139A(2) of the Life Insurance Act are deleted and replaced by references to the Companies Act 1980.

PART XII - AMENDMENT OF PETROLEUM (SUBMERGED LANDS)  
(REGISTRATION FEES) ACT 1967

Cl. 41 : Principal Act

65. The Petroleum (Submerged Lands)(Registration Fees) Act 1967 is referred to as the Principal Act in this Part.

Cl. 42 : Imposition of registration fees

66. Paragraph 4(5)(a) of the Petroleum (Submerged Lands) (Registration Fees) Act is amended by having a reference to the A.C.T. Companies Ordinance deleted and having a reference to the Companies Act 1980 inserted.

PART XIII - AMENDMENT OF STRUCTURAL ADJUSTMENT (LOAN  
GUARANTEES) ACT 1974

Cl. 43 : Principal Act

67. The Structural Adjustment (Loan Guarantees) Act 1974 is referred to as the Principal Act in this Part.

Cl. 44 : Further Conditions Relating to Guarantees

68. Paragraph 8(5)(a) is deleted. It is replaced by a paragraph that states that companies will be considered related to each other if they fall within the provisions of the Companies Act 1980.

PART XIV - OTHER AMENDMENTS

CL. 45 : Other Amendments

69. The Acts specified in this Schedule are amended as set out.

SCHEDULE

70. The Schedule contains a number of miscellaneous amendments to specified Commonwealth Acts to take account of the fact that the Companies Act 1980 will be a "law of the Commonwealth", that it is not a "law of the Territory" but will be "a law in force in the Territory".