

1985-86

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

EXPLANATORY MEMORANDUM

TO AMENDMENTS OF AUSTRALIAN BILL OF RIGHTS BILL 1985

(Circulated by the authority of the Minister Representing the
Attorney-General)

AMENDMENTS OF THE AUSTRALIAN BILL OF RIGHTS BILL 1985

These amendments affect a number of clauses in the Australian Bill of Rights Bill 1985, and insert a new Schedule to that Bill. The Explanatory Memorandum relating to the Bill should be read subject to the following amendments:

Page 7 - Heading preceding paragraph 15 - Delete

- Paragraph 15 - Delete

Page 26 - Paragraph 82 - Replace all the words following "sub-clause 9(1) so that" with:

it has the operation given to it by clauses 10 to 17 of the Bill but that, except as provided by sub-clause 9(2), it has no other operation.

Page 27 - Paragraph 83 - Add at the end of the paragraph:

However, by virtue of the definition of "Commonwealth enactment" in sub-clause 4(1) and specific provision in clause 11, the law applied by the Commonwealth Places (Application of Laws) Act 1970 is not subject to the Bill. The various Acts listed in Schedule 2 of the Bill (being the Acts which comprise the Commonwealth's section of the national companies and securities scheme) are also excluded from the operation of clauses 10 and 11 of the Bill. These exclusions are in recognition of the particular jurisdictional problems which might arise if the application of the Bill of Rights to these Commonwealth Acts caused the relevant Commonwealth and State laws to move out of their current alignment.

Page 34 - Paragraph 113 - Replace with:

113. It should be noted in respect of the reference to an "offence against a Commonwealth enactment or Territory enactment" that a rule of the common law, applied as a law of the Commonwealth or of a Territory, is included in the definitions of "Commonwealth enactment" and "Territory enactment" (see sub-clause 4(1)).

- Heading preceding paragraph 114 - replace the words "Bill of Rights" with:

this Act

Page 35 - After paragraph 116 - Insert a new paragraph:

116A. Sub-clause 18(2A) ensures that where a cause is before a Full Court of a Supreme Court or a Court of Appeal of a State or Territory, it may only be removed into the Federal Court by a Full Court of the Federal Court.

Page 40 - After paragraph 146 - Insert the following paragraphs:

146A. Sub-clause 27(2A) provides that where the Minister refuses under sub-clause 27(2) to consent to the holding of an inquiry or the making of an examination, the Minister shall cause a statement to be laid before each House of the Parliament within 15 sitting days of that refusal. The statement is to state that the Minister has refused to consent and is to set out the reasons for the refusal.

146B. Sub-clause 27(2B) provides that if the Commission requests the Minister to consent to the holding of an inquiry or the making of an

examination referred to in sub-clause 27(2), and the Minister has not, within 30 days after receiving the request, consented or refused to consent to the holding of the inquiry or the making of the examination, the Minister shall be deemed to have refused to consent to the holding of the inquiry or the making of the examination.

Page 58 - Heading preceding paragraph 209 - replace with:

SCHEDULE 1

- Paragraph 209 - insert, before the word "Schedule":

first

- After paragraph 210 - add a new heading and paragraph:

SCHEDULE 2

210. The second Schedule lists the Acts in the national companies and securities scheme which are to be exempted from the operation of clauses 10 and 11 of the Bill (see paragraph 83 above).