

1980

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

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COMPANIES (FEES) BILL 1980

EXPLANATORY MEMORANDUM

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

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## INTRODUCTION

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

2. This explanatory memorandum:-

(a) contains an introduction to the co-operative companies and securities scheme, and the Fees Bill's relationship to the scheme (paras. 3 to 6); and

(b) deals sequentially with each clause of the Fees Bill (paras. 7 to 12).

## 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 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 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 Fees Bill. 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 passing amending Acts in those jurisdictions.
- (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.

5.

6. The fees that will be charged in connexion with the proposed new companies code will be set out in regulations to be made under the Fees Bill.

COMPANIES (FEES) BILL 1980

Cl. 1 : Short Title

7. The Act will be cited as the Companies (Fees) Act 1980.

Cl. 2 : Commencement

8. The Act will come into operation on the same day as the Companies Act 1980.

Cl. 3 : Interpretation

9. Expressions used in the Fees Bill will have the same meanings as in the Companies Act 1980.

Cl. 4 : Fees payable

10. There will be payable to the Commonwealth such fees (if any) as are prescribed (Fees Bill s-cl. 4(1)). The Fees Bill will relate to fees payable in the Australian Capital Territory in respect of documents lodged and other matters done under the Companies Act 1980. The fees payable under the proposed Companies Code in each State will be payable to that State by virtue of provisions in the State adopting legislation.

11. A document will be deemed not to have been lodged until the fee has been paid (Fees Bill s-cl. 4(2)). The Ministerial Council or the NCSC must not perform any act or thing where a fee is payable until the fee has been paid (Fees Bill s-cl. 4(3)).

Cl. 5 : Regulations

12. The Governor-General will be able to make regulations in accordance with advice that is consistent with resolutions of the Ministerial Council (Fees Bill cl. 5).