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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

CROWN DEBTS (PRIORITY) BILL 1980

EXPLANATORY MEMORANDUM

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

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CROWN DEBTS (PRIORITY) BILL 1980

Introduction

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

2. The Bill is designed to abrogate the prerogative of the Crown in right of the Commonwealth to be paid debts in priority to debts owing to other creditors. It is also aimed at ensuring that in a corporate insolvency the Commonwealth is under an obligation to repay preferential payments in circumstances where other creditors would be obliged to do so. Clause 3 of the Bill is addressed to each of these aims.

Cl.1: Short title

3. The short title of the Act will be the Crown Debts (Priority) Act 1980.

Cl.2 : Commencement

4. The Act will come into operation on the day on which the Companies Act 1980 comes into operation.

5. The Companies Bill 1980 is part of the co-operative companies and securities scheme arising out of the Formal Agreement executed by the Commonwealth and the six States on 22 December 1978. The Companies Bill 1980, along with the Companies (Transitional Provisions) Bill 1980, contains the substantive company law that will apply in the Australian Capital Territory. Each other jurisdiction that is covered by the Formal Agreement will then pass legislation which will apply the Commonwealth Acts as the law of that jurisdiction to the exclusion of its present Companies Act or Ordinance as from the date of commencement of the Commonwealth Acts.

Cl.3 : Crown subject to State and Territory Laws with respect to priority

6. The abrogation of the Commonwealth's prerogative priorities is achieved in the Priority Bill principally by making the Commonwealth subject to any provision of the law of a State or Territory relating to the order in which debts or liabilities of a body (whether corporate or unincorporate) are to be paid or discharged (sub-cl. 3(a)). There are three possible categories of laws of this type:

- (a) the Companies (Application of Laws) Acts or Ordinances of the other parties to the Formal Agreement;
- (b) the Companies Act or Ordinance or similar legislation of any State or Territory which is not a party to the Formal Agreement; and
- (c) laws providing for the winding-up of credit unions, building societies, co-operative societies and unincorporated associations (to the extent that the Commonwealth would not already be bound under (a) or (b) above in respect of such bodies which are wound up under the same legislation as that relating to companies.)

7. In addition to abrogating the Commonwealth's right to be paid certain taxes and trading debts in priority to other unsecured creditors, the Priority Bill (in sub-cl. 3(b)) will give a wider operation to those provisions of the company law of the States and Territories which enable a liquidator to recover as a preference certain payments made to a creditor prior to winding-up. The Priority Bill will ensure that these avoidance of preference provisions also apply to payments made to the Commonwealth. In the absence of the Priority Bill, such payments could not be recovered from the Commonwealth because a State Act cannot bind the Crown in right of the Commonwealth.

8. The Priority Bill also ensures (in sub-cl. 3(c)) that the Crown in right of the Commonwealth is bound by any compromise or scheme of arrangement effected under the laws of a State or Territory.

9. The Priority Bill will not operate in respect of debts owed by individuals, as the Commonwealth's prerogative priorities in this regard were abrogated by the Bankruptcy Act 1966 which is expressed to bind the Crown in right of the Commonwealth.

10. In respect of companies wound up in the A.C.T. under the Companies Bill 1980, provisions in that Bill binding the Crown by the Parts relating to schemes of arrangement, receivership, official management and winding up, will have the same effect as the Priority Bill will have in binding the Crown in right of the Commonwealth by similar Parts in the laws of the other States and Territories.

Cl.4 : Certain rights of the Crown not affected

11. Notwithstanding the provisions of the law of a State or Territory relating to the order in which debts of a body are to be paid, the Commonwealth will retain its overriding priority accorded by sections 221P and 221YU of the Income Tax Assessment Act 1936 in relation to tax instalment deductions and withholding tax on dividends and interest remitted overseas.

12. Abrogating the Commonwealth's prerogative priorities will not deny to the Crown the priority accorded to secured debts over unsecured debts under the general law.