

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

CORPORATIONS LAW AMENDMENT BILL 1994

EXPLANATORY MEMORANDUM

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



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CORPORATIONS LAW AMENDMENT BILL 1994

OUTLINE

1. The Bill will facilitate the trading of new and innovative products on Australian securities and futures exchanges. It will permit trading of new securities and futures industry products to take place on a more flexible basis than is presently provided for under the Corporations Law.

FINANCIAL IMPACT STATEMENT

2. The Bill is not expected to have any significant financial impact on Government. It may lighten the regulatory burden and hence reduce the costs of Australian exchanges complying with regulatory requirements under the Corporations Law by finetuning regulatory requirements to those appropriate for the trading of particular products.

SUMMARY OF KEY AMENDMENTS PROPOSED BY THE BILL

3. The proposed amendments to the definitions of "securities" and "futures contracts" will enable consideration to be given to the trading of new and innovative products on Australian securities and futures exchanges on a more flexible basis than is presently the case. They will allow prescription by regulation of certain agreements under either or both of the definitions of "securities" or "futures contract".
4. The need for the amendments has arisen because of the development of hybrid products which have characteristics in common with both equities and futures and the responsibility of the Government to ensure adequate regulation while not retarding innovation.
5. Currently securities and futures contracts are separately regulated. Futures contracts are regulated under the regime set out in Chapter 8 while securities are regulated under Chapter 7.
6. The proposed amendments will permit the prescription by regulation of certain kinds of agreements as securities or futures contracts. They will also enable the provisions of the Corporations Law governing securities and futures markets to be modified to ensure that investors are adequately protected and that appropriate provisions apply to the trading of particular products. The agreements that may be prescribed as "securities" or "futures contracts" are restricted to agreements that are entered into on a stock exchange or a futures exchange. The provisions will not affect other markets such as the over the counter derivatives markets.
7. This Bill was exposed for public comment by interested parties on 5 September 1994. Some minor technical amendments were made to the Bill as exposed as a result of comments received. These are noted in paragraph 20.

CLAUSE-BY-CLAUSE COMMENTARY

Clause 1 - Short title

8. Upon enactment the Bill will be known as the *Corporations Law Amendment Act 1994*.

Clause 2 - Commencement

9. The Bill will commence on the day on which it receives Royal Assent.

Clause 3 - Futures contract

10. Section 72 is to be amended to enable the definition of "futures contract" to be expanded to include a kind of agreement which is prescribed by regulation for the purposes of proposed paragraph 72(1)(ca). The need for this amendment has arisen because of the development of derivative products which have characteristics in common with both equity and futures products. The agreements that may be prescribed as "futures contracts" are restricted to Chapter 8 agreements that are entered into on a futures market of a futures exchange.

11. A Chapter 8 agreement is defined in section 9. It is essentially an agreement broadly defined. It is linked with the term "relevant agreement". A "relevant agreement" (defined in section 9) is an agreement, arrangement or understanding that is formal or informal (or partly both), written or oral (or partly both), and has (or has not) legal or equitable force and is (or is not) based on legal or equitable rights.

12. Proposed subsection 72(1A) will enable the regulations to provide that a Chapter 8 agreement prescribed for the purposes of paragraph 72(1)(ca) is not a futures contract for the purposes of specified provisions of the Corporations Law or the Corporations Regulations.

13. Proposed subsection 72(1B) will enable the regulations to modify the Corporations Law and the Corporations Regulations as they apply to prescribed agreements.

14. Subsections 72(1A) and (1B) permit the regulations to specify appropriate provisions of the Corporations Law including provisions of Chapter 7 and 8 and the regulations as being appropriate for the regulation of particular prescribed agreements.

Clause 4 - Securities

15. Section 92 is to be amended to enable the definition of "securities" to be expanded to include a kind of agreement which is prescribed by regulation for the purposes of proposed paragraph 92(1)(f). The need for this amendment has arisen because of the development of derivative products which have characteristics in common with both equity and futures products. The agreements that may be prescribed as "securities" are restricted to relevant agreements that are entered into on a stock market of a securities exchange. The meaning of the term 'relevant agreement' is noted in paragraph 10.

16. Proposed subsection 92(1A) will enable the regulations to provide that a relevant agreement prescribed for the purposes of paragraph 92(1)(f) is not a security for the purposes of specified provisions of the Corporations Law or the regulations.

17. Proposed subsection 92(1B) will enable the regulations to modify the Corporations Law and the Corporations Regulations as they apply to relevant agreements prescribed under proposed paragraph 92(1)(f).

18. Subsections 92(1A) and (1B) permit the regulations to specify appropriate provisions of Chapter 7 and 8 and the Corporations Regulations as being appropriate for the regulation of prescribed agreements.

Clause 5 - Gaming and wagering laws

19. Proposed subsection 778(2) will ensure that laws concerning gaming or wagering will not prevent the entering into, or affect the validity or enforceability of, an agreement prescribed for the purposes of paragraph 92(1)(f).

20. This Bill was exposed for public comment on 5 September 1994. As a result of comments received the following amendments to the Bill as exposed were made:

In clause 4 of the Bill "an agreement" has been replaced with "a relevant agreement" and "agreements" with "relevant agreements". It is more precise and consistent with the Law generally to use the defined term "relevant agreement" here as "agreement" is defined only for the purposes of Chapters 6, 7 and 8 and its meaning depends on which Chapter it occurs in.

In clause 5 the reference to paragraph 72(1)(ca) has been deleted. It is unnecessary to specify para 72(1)(ca) as a Chapter 8 agreement prescribed for

the purposes of para 72(1)(ca) becomes a futures contract and is protected from the operation of gaming and wagering laws by section 1141.

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