

1980

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

COMPANIES (TRANSITIONAL PROVISIONS) BILL 1980

EXPLANATORY MEMORANDUM

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

CONTENTS

Item	Paragraph
INTRODUCTION	1
Formal Agreement	3
National Companies and Securities Scheme	
Legislation	4
Special Transitional Provisions	6
COMPANIES (TRANSITIONAL PROVISIONS) BILL 1980	
Cl. 1 : Short title	8
Cl. 2 : Commencement	9
Cl. 3 : Object	10
Cl. 4 : Interpretation	11
Cl. 5 : This Act additional to other saving provisions	12
Cl. 6 : General provisions	13
Cl. 7 : Particular provisions	14
Cl. 8 : Saving of certain provisions	15
Cl. 9 : Proceedings by or against Registrar to be proceedings by or against Commission	16
Cl. 10 : Property vested in Registrar vests in Commission	17
Cl. 11 : Registers, funds and accounts	18
Cl. 12 : Acts of Minister under Companies Ordinance deemed to be acts of Ministerial Council or Commission	19
Cl. 13 : Names	20
Cl. 14 : Continued Application of Table A and Table B in certain circumstances	23
Cl. 15 : Existing prospectuses and section 82 statements	24
Cl. 16 : Interests in partnerships agreement	25
Cl. 17 : Registration of Charges	26
Cl. 18 : Disclosure by directors	34
Cl. 19 : Certificate that a person is an executive officer of a company	35
Cl. 20 : Application of Companies Act to financial years ending before commencement of Act	36
Cl. 21 : Annual general meeting held before commencement of Companies Act	39
Cl. 22 : Special investigations	40
Cl. 23 : Investigation by resolution of company	41
Cl. 24 : Lodging of accounts by person administering compromise or arrangement	42
Cl. 25 : Winding up	43
Cl. 26 : Registered auditors and liquidators	44

Cl. 27 : Power of Minister to consent to institution of proceeding	46
Cl. 28 : Recognized companies	47
Cl. 29 : Recognized companies under corresponding laws	49
Cl. 30 : Foreign companies	50
Cl. 31 : Certain provisions of Companies Ordinance 1931 to continue to apply	53
Cl. 32 : Application of Trade Union Act	54
Cl. 33 : Marketable Securities Ordinance	55
Cl. 34 : Court may resolve difficulties	57
Cl. 35 : Regulations	58

INTRODUCTION

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

2. This explanatory memorandum:-

(a) contains an introduction to the co-operative companies and securities scheme and the Bill's relationship to the scheme (paras 3 to 7)

(b) deals sequentially with each clause of the Bill (paras 8 to 57).

Formal Agreement

3. On 22 December 1978 the Commonwealth and the six States executed a Formal Agreement that provided that 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 and 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 and Securities (Interpretation and 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 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 further and separate legislation.

- (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.

Special transitional provisions

6. The object of the Bill is to set out the transitional provisions that are essential to the introduction of the new companies code. Each participating State will require similar transitional provisions for the purposes of the introduction of the new companies code in its jurisdiction.

7. The Bill will enact the transitional provisions consequent upon the enactment in the ACT of the Companies Act 1980 (hereafter called the 'Companies Act') under the co-operative scheme and the repeal of the Companies Ordinance 1962 (hereafter called the 'Ordinance').

COMPANIES (TRANSITIONAL PROVISIONS) BILL 1980

Cl. 1 : Short title

8. The Bill will be cited as the Companies (Transitional Provisions) Act 1980.

Cl. 2 : Commencement

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

Cl. 3 : Object

10. The object of the Bill is to enact transitional provisions consequent upon the enactment of the Companies Act, and the Bill is to be construed accordingly.

Cl. 4 : Interpretation

11. Expressions defined in s.5 of the Companies Act have the same meaning in the Bill, unless the contrary intention appears.

Cl. 5 : This Act additional to other saving provisions

12. The provisions of the Bill are in addition to and not in derogation of the provisions of sub-section 29(2) of the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980, which ensures that repeal of the Ordinance does not affect its previous operation, unless the contrary intention appears.

Cl. 6 : General provisions

13. Appointments of persons, things created and circumstances and matters under the Ordinance continue to have the same status, operation and effect under the Companies Act, subject to this Bill and the Companies Act.

Cl. 7 : Particular provisions

14. Clause 7 is a transitional provisions which, without affecting the general coverage of cl.6, ensures that the Companies Act does not disturb the status, operation or effect of particular matters specified in the provision. These matters include, inter alia, any order, rule, deed, agreement, instrument, licence, notice, thing that was made, done, effected, acquired by or under the Ordinance before the commencement of the Companies Act.

Cl. 8 : Saving of certain provisions

15. Notwithstanding the repeal of the Ordinance the following provisions of the Ordinance remain in force as if it had not been repealed:-

- section 7;
- the Second Schedule listing fees payable pursuant to section 7;
- any regulation prescribing fees for the purposes of paragraph 7(12)(b);

- any other provisions of the Ordinance necessary for the effectual operation of the provisions of the Ordinance mentioned above; and
- appointments in force under section 7.

It is not a contravention of sub-section 7(9) of the Ordinance for information to be given to the NCSC or an authorized person. Section 7 of the Ordinance also deals with judicial notice to be accorded to the signature or seal of the Registrar and any Acting or Deputy Registrar.

Cl. 9 : Proceedings by or against Registrar to be
proceedings by or against Commission

16. A proceeding which had been commenced under the Ordinance by or against the Registrar may be continued by or against the NCSC. (sub-cl. 9(1). Where a proceeding but for the enactment of the Companies Act could have been commenced by or against the Registrar of Companies under the Ordinance, it may be commenced by or against the NCSC. (sub-cl. 9(2)).

Cl. 10 : Property vested in Registrar vests in
Commission

17. Property vested in the Registrar of Companies immediately before the commencement of the Companies Act under section 310 of the Ordinance vests in the NCSC,

and sections 462, 463 and 464 of the Companies Act apply to such property as if it had vested in the NCSC pursuant to section 461 of the Companies Act.

Cl. 11 : Registers, funds and accounts

18. A register, fund or account kept under the Ordinance immediately before the commencement of the Companies Act are deemed part of a register, fund or account kept under the corresponding provision of the Companies Act.

Cl. 12 : Acts of Minister under Companies Ordinance
deemed to be acts of Ministerial Council or
Commission, etc.

19. A number of acts of the Minister under the Ordinance are deemed to be acts of the Ministerial Council or NCSC under the Companies Act. The following Table sets these out with references to the Bill.

<u>Provision of the Ordinance</u>	<u>Provision under the</u> <u>Companies Act</u>
- consent under sub-section 22(1) to registration of a company or intended company by a specified name and the company has not been so registered.	consent deemed to be consent by the Ministerial Council under sub-section 38(2). (Sub-cl. 12(2)).

- licence in force issued under section 24, or under a previous corresponding provision. continues in force as if issued by the NCSC under section 66 (para. 12(3)(a)) and where a licence exempted a company from complying with provisions of the Ordinance, the licence applies as if exempting the company from complying with corresponding provisions of the Companies Act (para. 12(3)(b)).
- declaration in force made under paragraphs 38(7)(b) or (c). notice by the NCSC published under sub-section 97(9) or (c) as the case may be (sub-cl. 12(4)).
- notice in force published under sub-section 38(8). notice by the NCSC published under sub-section 97(9). (sub-cl. 12(5)).

- exemption of an allotment of shares or debentures from section 44(3) in force under sub-section 44(3).
exemption by the NCSC of allotment of shares or debentures from section 105 under sub-section 105(3). (sub-cl. 12(6)).
- declaration in force published in the Gazette under paragraph 69A(2)(b) or (c);
declaration by the Ministerial Council published in the Gazette under paragraph 134(2)(b) or (c) as the case may be. (sub-cl. 12(7)).
- approval in force under paragraph 74(1) (e).
approval by the NCSC under paragraph 152(1)(g). (sub-cl. 12(8)).
- order in force under sub-section 74D(2).
order by the NCSC under sub-section 156(2) (sub-cl. 12(9)).
- direction to a debenture trustee to apply for a court order under sub-section 74D(4).
direction by NCSC to apply for a court order under sub-section 156(4). (sub-cl. 12(10)).

- declaration in force under sub-section 74F(7) or notice in force under sub-section 74F(8). declaration by the NCSC under sub-section 158(10) (sub-cl. 12(11)) or Notice by the NCSC under sub-section 158((11) (sub-cl. 12(12))), as the case may be.
- direction in force under sub-section 84(3). direction by the NCSC under sub-section 172(5). (sub-cl. 12(13)).
- notice in force under section 88 exempting a company from complying with specified provisions of Division 5 of Part IV. company exempted from compliance with the corresponding provisions of Division 6 of Part IV as specified in notice (sub-cl. 12(14)).
- notice in force under sub-section 160(2). order by the NCSC under sub-section 265(2). (sub-cl. 12(15)).

- declaration in force published in the Gazette, under sub-section 334(2), or paragraph 339(b), or paragraph 348(5)(b) or (c).
declaration by the NCSC published in the Gazette under sub-section 490(3) (sub-cl. 12(16)), sub-section 495(2) (sub-cl. 12(17)), or paragraph 516(6)(b) or (c) (sub-cl. 12(18)), as the case may be.
- consent under sub-section 353(1) to the registration of a foreign company by a specified name or consent under sub-section 353(2) to a change of name, and where such registration or change of name may not be effected.
consent by the Ministerial Council under sub-section 38(2) (sub-cl. 12(19) and (20)).
- exemption in force under paragraph 374 (2)(b) of a corporation from the provisions of sub-section 374(1).
exemption by the NCSC under paragraph 552(2)(b) from the provisions of sub-section 552(1). (sub-cl. 12(21)).

It is to be noted that no transitional provisions have been made preserving declarations with respect to the size of professional partnerships or associations (see para. 14(3)(a) of the Ordinance), or as to prohibited names (see sub-cl. 22(1) of the Ordinance). It is intended that the Ministerial Council will make a declaration/direction on these matters under sub-cl. 33(4), and para. 38(1)(c) of the Companies Bill respectively, to operate from the commencement of the new companies code.

Cl. 13 : Names

20. A name under which a company was registered under the Ordinance shall for the purposes of Division 2 of Part III of the Companies Act be deemed to be registered under that Division in respect of the company until the registration of the name is cancelled or ceases to be in force (sub-cl. 13(1)).

21. A reference to a company in sub-cl. 13(1) includes a corporation that immediately before the commencement of the Companies Act was registered under the Ordinance as a foreign company (sub-cl. 13(2)).

22. Where within a period of 2 months immediately preceding the commencement of the Companies Act a name was either reserved under sub-ss 22(8) of the Ordinance or the period for which a name was reserved was entered under sub-ss 22(9) of the Ordinance, the name shall be deemed to be reserved under Division 2 of Part III of the Companies Act until the date on which the reservation of that name would have ceased under the Ordinance (sub-cl. 13(3)).

Cl. 14: Continued application of Table A and Table B in certain circumstances

23. Nothing in the Bill or Companies Act affects Table A or Table B of the Fourth Schedule to the Ordinance so far as it applies to a company existing immediately before the commencement of the Companies Act (sub-cl. 14(1)). However, this does not prevent company articles adopting, in accordance with subsection 75(1) of the Companies Act, regulations in Table A or Table B of Schedule 3 to the Companies Act. (sub-cl. 14 (2)).

Cl. 15 : Existing prospectuses and section 82 statements

24. A prospectus registered under the Ordinance within six months of the commencement of the Companies Act shall be deemed registered under the Companies Act

until the expiration of six months from the date of registration. (Sub-cl. 15(1)). A similar transitional provision applies to a statement under section 82 of the Ordinance registered as a prospectus within six months of the commencement of the Companies Act (sub-cl. 15(2)).

Cl. 16 : Interests in partnership agreements

25. The definition of "prescribed interest" in sub-clause 5(1) of the Companies Act covers interests in certain types of partnership agreements. Under paragraph 76(1)(f) of the Ordinance interest in a partnership agreement was excluded from the meaning of "interest". Clause 16 of the Bill thus ensures that section 169 of the Companies Act does not apply to any interest in a partnership agreement that was subscribed for or first purchased before the date of commencement of the Companies Act.

Cl. 17 : Registration of charges

26. Clause 17 contains transitional provisions in relation to charges created by a company prior to the commencement of the Companies Act and to property subject to a charge that was acquired by a company prior to the commencement of the Companies Act. For the purposes of clause 17 a reference to a "company" includes a foreign company registered as a foreign company under the Companies Act (sub-cl. 17(1)).

27. A charge registered under Division 7 of Part IV of the Ordinance immediately before the commencement of the Companies Act is deemed registered under Division 9 of Part IV of the Companies Act if it would have had to be registered if created after the commencement of the Companies Act (Bill para 17(2)(a)(i)). The Commission is required to cause certain particulars to be entered in the Register of Company Charges in relation to the charge (para 17(2)(a)(ii)). Similar transitional provisions apply in relation to a charge registered under the provisions of a law of a State or Territory corresponding to Division 7 of Part IV of the Ordinance and the NCSC shall enter certain particulars in the Register of Company Charges in accordance with section 205 of the Companies Act (para 17(2)(b)). Sub-clause 17(4) is an interpretative provision for the purposes of sub-cl. 17(2) and sets out the meaning of a "relevant charge".

28. A charge lodged for registration up to 30 days before the commencement of the Companies Act which was not registered, and has been not refused registration, is deemed registered under the Companies Act from its commencement, and the NCSC shall enter its particulars in the Register of Company Charges in accordance with section 205 of the Companies Act (sub-cl. 17(3)). Sub-clause 17(4) is an interpretative provision for the purposes of sub-cl. 17(3) and sets out the meaning of a "relevant charge".

29. Where 2 or more charges on the same property of a company are deemed by sub-cl. 17(2) and (3) to be duly registered under Division 9 of Part IV of the Companies Act from the commencement of the Companies Act, those charges shall as between themselves have the respective priorities they would have had if the Bill had not been enacted (sub-cl. 17(5)).

30. The time and date to be entered in the Register of Company Charges in relation to a charge under sub-cl. 17(2) and (3) is 9 a.m. on the date of commencement of the Companies Act (sub-cl. 17(6)).

31. Where a charge was able to be registered under Division 7 of Part IV of the Ordinance but was not lodged for registration, then provided it had not become void under sub-ss 100(1) of the Ordinance, Division 9 of Part IV of, and Schedule 5 to, the Companies Act applies as if the company had created the charge, or had acquired the property at the commencement of the Companies Act (sub-cl. 17(7)).

32. Sub-clause 17(8) applies to a charge that was required to be registered under the Ordinance but which had not been so registered. Where such a charge would not have been required to be registered under the Companies Act, provided it had not become void under sub-ss 100(1) of the Ordinance, the charge is deemed not to have been required to be registered under the

not to have been required to be registered under the Ordinance.

33. Where a charge referred to in para 17(7)(a) had become void before the commencement of the Companies Act, the NCSC being satisfied that it is just and equitable to do so, may make an order that sub-cl. 17(7) is to apply in relation to that charge and sub-cl. 17(7) has effect as if the charge had not become void (sub-cl. 17(9)).

Cl. 18 : Disclosure by directors

34. A company director does not have to give notice to the company under section 232 of the Companies Act of any matter that he has previously given notice to the company under a previous corresponding provision of the Ordinance.

Cl. 19 : Certificate that person is an executive officer
of a company

35. The Commission may certify under sub-section 238(10) of the Companies Act that a person was at a particular time an executive officer of a company where it appears from a return lodged with the Registrar of Companies under the Ordinance that such person was at that time a manager of a company.

Cl. 20 : Application of Companies Act to financial
years ending before commencement of Act

36. Sub-clause 5(1) of the Companies Act contains a new definition of "financial year" which enables each financial year of a company to be independently determined. This takes account of the Victorian Supreme Court decision in Jensen v. Viney which identified serious defects in the existing provisions relating to the preparation and laying of accounts, caused by the interdependence of these provisions.

37. The accounts provisions of Division 2 of Part VI of the Companies Act (other than sections 267, 268 and 275) apply to a company incorporated under the Ordinance and to its directors, in relation to a financial year or financial years ending before the commencement of the Companies Act (sub-cl. 20(1)). A "financial year" has the same meaning as it has in paragraph (a) of the definition in sub-section 5(1) of the Companies Act (sub-cl. 20(4)).

38. Sub-clause 20(2) of the Bill is of particular relevance to directors who have consistently failed to fulfil their obligations to lay annual accounts before the company in general meeting. Directors are now obliged to prepare accounts for each "financial year" of the company within 5 months (or within 6 months for exempt proprietary companies) of the commencement of

the Companies Act and lay them before the company at its next annual general meeting thereafter. These accounts will also have to be distributed to shareholders and lodged with the NCSC in the same manner as accounts prepared for financial years ending after the commencement of the Companies Act.

Cl. 21 : Annual general meeting held before commencement
of Companies Act

39. Where a company has failed to comply with section 158 or section 159 of the Ordinance with respect to an annual return in relation to an annual general meetings held before the commencement of the Companies Act, section 158 or section 159 of the Ordinance, as the case may be, continues to apply in relation to that company as if the Companies Act had not been enacted.

Cl. 22 : Special investigations

40. The provisions of Part VII of the Companies Act apply to an investigation to which Part VIA of the Ordinance applied immediately before the commencement of the Companies Act, other than for an investigation under section 170 of the Ordinance (sub-cl. 22(1)). All matters and things in the cause of an investigation under Part VIA of the Ordinance have the same effect and operation as if done under the Companies Act (sub-cl.22(2)), and in particular this is so for any order, application, examination, deposition, writ,

summons, proceeding, record, note or report made, effected, issued or given in relation to an investigation (sub-cl. 22(3)).

Cl. 23 : Investigation by resolution of company

41. An investigation to which section 170 of the Ordinance applied immediately before the commencement of the Companies Act may be continued as if the Ordinance is not repealed.

Cl. 24 : Lodging of accounts by person administering
compromise or arrangement

42. Sub-clause 315(10) of the Companies Act imposes certain requirements on a person appointed to administer a compromise or arrangement that are imposed on a receiver, including the obligations under clause 330 of the Companies Act to lodge accounts. This clause provides that references in cl. 330 of the Companies Act to the date of appointment of that person are deemed to be references to the date of commencement of the Companies Act.

Cl. 25 : Winding up

43. The provisions of the Companies Act with respect to winding up, other than Sub-division F of Division 4 of Part XII, do not apply to a winding up which was commenced prior to the commencement of the Companies Act. Such a winding up shall continue as

if the Ordinance remained in force (sub-cl. 25(1)) and this applies to an unregistered company within Division 5 of Part IX of the Ordinance (sub-cl. 25(2)).

Cl. 26 : Registered auditors and liquidators

44. A person registered as an auditor or liquidator, or appointed as an official liquidator under the Ordinance shall be deemed registered under the Companies Act for a period of 6 months after its commencement (sub-cl. 26(1)) subject to the cancellation or suspension provisions in section 27 of the Companies Act. Where such a person has then applied for registration under Division 2 of Part II of the Companies Act within that 6 months and has not been notified of the results of his application at the end of that period, his registration is deemed extended, in the case of an auditor, until the day on which the application is granted or refused, and in the case of a liquidator, until the day on which the person is notified of the results of his application (sub-cl. 26(2))). A successful applicant for registration as a liquidator is deemed to have been registered as a liquidator under Division 2 of Part II of the Companies Act from the day on which the person is notified of the results of his application until when the registration comes into force (sub-cl. 26(3)).

45. Where a person is deemed registered as an auditor or liquidator or official liquidator under a provision of a State or Territory law that corresponds to sub-cl. 26(1), there is a reciprocal provision so that he is deemed registered under the Companies Act (sub-cl. 26(4)).

Cl. 27 : Power of Minister to consent to institution of proceedings

46. Clause 27 provides for the situation where proceedings under the Ordinance could not be brought without the consent of the Minister under sub-sections 381(3) or (4) of the Ordinance and such consent had not been obtained before the Ordinance was repealed. Clause 27 operates to preserve the power of the Minister to give consent in relation to such proceedings which could then be instituted by virtue of sub-section 29(2) of the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980.

Cl. 28 : Recognized companies

47. Sub-clause 28(1) is a transitional provision that applies to a recognized company that immediately before the commencement of the Companies Act was registered as a foreign company under the Ordinance and deems the registered office of the corporation in the Territory to be the principal office within the Territory for the purposes of section 507 of the Companies Act.

48. Any act, matter or thing done or commenced under the Ordinance in relation to a foreign company that is a recognised company under the Companies Act, shall be deemed to have been done or commenced under the Companies Act in relation to the recognised company provided such things or matters could be done or commenced under the Companies Act in relation to a recognised company (sub-cl. 28(2)).

Cl. 29 : Recognized companies under corresponding laws

49. This provision applies to a company incorporated under the Ordinance and which after the commencement of the Companies Act will become a recognized company under the corresponding laws of a participating State or Territory. The purpose of cl. 29 is to apply certain provisions of the Companies Act that relate to notices and matters that such a company must lodge or do in its jurisdiction of incorporation in relation to its activities in another participating State or Territory.

Cl. 30 : Foreign companies

50. A foreign company registered under the Ordinance shall be deemed to be registered as a foreign company under the Companies Act unless it is a recognised company (sub-cl. 30(1)).

51. A corporation formed outside Australia and the external Territories and registered under the Ordinance may within one month after the commencement of the Companies Act lodge a notice with the NCSC stating whether it wishes to continue to be registered as a foreign company in the Territory, and if not, specifying another participating State or Territory that it was registered in before the commencement of the Companies Act, as the jurisdiction in which it wishes to be registered as a foreign company (sub-cl. 30(2)). A corporation is not entitled to specify different jurisdictions under a corresponding law of a participating State or Territory (sub-cl. 30(3)).

52. Sub-clause 30(4) sets out certain matters that are consequential upon a corporation lodging a notice under sub-cl. 30(2) to the effect that it no longer wishes to remain registered as a foreign company in the A.C.T.

Cl. 31 : Certain provisions of Companies Ordinance 1931
to continue to apply

53. The provisions of sub-section 15(2) and (4) of the companies Ordinance 1931 continue to apply in relation to the validity and interpretation of company documents that were handed over by the N.S.W. authorities to A.C.T. authorities.

Cl. 32 : Application of Trade Union Act

54. The reference in section 5 of the Trade Union Act 1881 of NSW to "The Companies Act, 1936" shall be construed as a reference to the Companies Act, and thus maintaining the prohibition against trade unions incorporating under the Companies legislation. This clause in the Bill is based on sub-section 4 (17) of the Ordinance.

Cl. 33 : Marketable Securities Ordinance

55. Clause 33 contains transitional provisions consequent upon the repeal of the A.C.T. Marketable Securities Ordinance 1971. Division 8 of Part IV of the Companies Act now contains provisions relating to the transfer of marketable securities.

56. A transfer instrument under the Marketable Securities Ordinance 1971 that was completed before the commencement of the Companies Act has the same effect and may be dealt with as if the Marketable Securities Ordinance 1971 had not been repealed (sub-cl. 33(1)). Similarly an agreement, application, acceptance, warranty or indemnity deemed to have been given has the same force and effect as if the Marketable Securities Ordinance had not been repealed (sub-cl. 33(2)).

Cl. 34 : Court may resolve difficulties

57. The Court is given power to resolve any difficulty that may arise in the application to a particular matter of any of the provisions of the Companies Act, the Ordinance, the Marketable Securities Ordinance 1971 or the Bill (sub-cl. 34(1)), and orders made under this provision have effect notwithstanding anything in the foregoing legislation (sub-cl. 34(2)).

Cl. 35 : Regulations

58. The Governor-General is given power to make regulations in accordance with advice that is consistent with resolutions of the Ministerial Council.