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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**FIRST CORPORATE LAW SIMPLIFICATION BILL 1994**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and New Clauses to be Moved on Behalf of  
the Government

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



# First Corporate Law Simplification Bill 1995

## Outline

The amendments and new clause to be added to the Bill:

- bring forward the introduction of the concept of penalty units into the Corporations Law
- correct a cross-reference which has been overtaken by recent legislation
- give the ASC a power to restrict access to debenture registers.

## Financial impact statement

2. The amendments and new clause will not have any significant financial impact.

# Clause-by-clause commentary

## Amendments 1 & 2

3. These amendments are technical amendments concerning the commencement of Schedule 6 of the *Corporations Legislation Amendment Act 1994*. This Schedule introduces the concept of 'penalty units' into the Corporations Law.

4. Under subsection 2(2) of the *Corporations Legislation Amendment Act 1994*, Schedule 6 to that Act is scheduled to commence after all of the other provisions of that Act have commenced. However, Schedule 1 of that Act is yet to commence, as its commencement depends on certain State legislation being in place prior to commencement. Schedules 1 and 6 deal with unrelated topics, and Schedule 1 would not be affected by the early commencement of Schedule 6.

5. Amendments 1 and 2 will enable Schedule 6 of the *Corporations Legislation Amendment Act 1994* to commence on the day on which the *First Corporate Law Simplification Act 1995* receives Royal Assent. This will ensure that the concept of 'penalty units' exists in the Law when the *First Corporate Law Simplification Act 1995* commences. This will enable the effective operation of those provisions in Schedules 4 and 6 of the *First Corporate Law Simplification Bill 1994* which are expressed in terms of 'penalty units'.

## Amendment 3

6. Amendment 3 arises because of a changed section reference in the Law. The *Corporations Legislation Amendment Act 1994* omitted a reference to section 126 of the Corporations Law in Schedule 3 of the Law.

7. The *First Corporate Law Simplification Bill 1994* amends Schedule 3 of the Law, and refers to section 126 as part of the amendment to the Schedule. Amendment 3 will correct this.

## Amendment 4

8. This amendment will amend the provisions in the Bill dealing with access to the register of debenture holders. Proposed section 216F of the Bill provides that any person may have access to the register of the debenture holders of a company and may require the company to supply a copy of the register to them.

9. The Parliamentary Joint Committee on Corporations and Securities has recommended that this provision be amended, insofar as it allows access to the details of investors whose debentures are not convertible into shares. The

Parliamentary Joint Committee considers that the ASC should have a power to exempt a company from the requirement to supply these details.

10. Amendment 4 will add proposed subsections (6) – (10) to proposed section 216F of the Bill. Proposed subsection 216F(6) will allow the ASC to exempt a company from the requirements in proposed subsections 216F(1) – (3) to allow access to its register of debenture holders and to provide copies of that register. The ASC's power will only extend to the details of debenture holders whose debentures are not convertible into shares or options over unissued shares. The limitation of the ASC's power in this way will mean that where the debenture is of a kind that could be used to affect the control of the company, the details of the debenture holder will not be able to be withheld from the public register.

11. Proposed subsections (7) and (8) set out the practical details of how the exemption power will operate and give the ASC a specific power to impose conditions on any exemption it grants. Proposed subsections (9) and (10) deal with contraventions of any conditions imposed on the exemption by the ASC.