

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

FIRST CORPORATE LAW SIMPLIFICATION BILL 1995

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government

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



Amendments of the First Corporate Law Simplification Bill 1995

Outline

The principal amendment to be made to the Bill will specify matters that the Australian Securities Commission must take into account in deciding whether to exempt a large proprietary company from having its accounts audited. The amendments also make several minor technical changes to the Bill.

Financial impact statement

2. The amendments have no financial impact for the Government, and will reduce the cost of compliance with the Corporations Law for some large proprietary companies.

Clause-by-clause commentary

Amendment 1

3. Amendment 1 is a technical amendment removing clause 7 from the *First Corporate Law Simplification Bill 1995*.

4. Clause 7 of the Bill currently substitutes existing subsection 2(2) the *Corporations Legislation Amendment Act 1994* with a new provision providing that Schedule 6 to the *Corporations Legislation Amendment Act 1994* commences on the day on which the *First Corporate Law Simplification Act 1995* receives the Royal Assent. Schedule 6 to the *Corporations Legislation Amendment Act 1994* introduces the concept of 'penalty units' into the Corporations Law.

5. Subsection 2(2) of the *Corporations Legislation Amendment Act 1994* currently provides that Schedule 6 commences immediately after all the other provisions of the Act, and all the provisions of the *Corporate Law Reform Act 1994*, have commenced. It is anticipated that this will occur shortly.

6. Clause 7 was included in the Bill in anticipation of the First Corporate Law Simplification Bill 1995 being enacted and commencing earlier this year.

7. However, as the relevant provisions of the First Corporate Law Simplification Bill 1995 will now not commence until after all the provisions of the *Corporate Law Reform Act 1994* and the *Corporations Legislation Amendment Act 1994* (apart from Schedule 6) have commenced, Schedule 6 to the *Corporations Legislation Amendment Act 1994* should now commence in accordance with the existing subsection 2(2) of the *Corporations Legislation Amendment Act 1994*.

Amendment 2

8. This amendment is consequential to Amendment 4, which is discussed below. It will remove from the Small Business Guide a passage indicating that large proprietary companies must have their accounts audited. However, under Amendment 4 the requirement for large proprietary companies to have their accounts audited will not apply for the current financial year. The amendment is necessary to maintain the accuracy of the Small Business Guide. The omission is not significant given the Guide's emphasis on small business.

Amendment 3

9. The Corporations Law, as amended by the Bill, will require large proprietary companies to have their accounts audited. Under Corporations Law section 313, the Australian Securities Commission (ASC) may relieve a large proprietary from the requirement to have its accounts audited if having the accounts audited would impose unreasonable burdens on the company.

10. Proposed subsections 313(11A) and 313(11B), to be inserted by Amendment 3, will provide that in deciding whether the audit requirements for a large proprietary company would impose an unreasonable burden on the company the ASC is to have regard to the matters specified in the amendment.

11. In assessing the expected benefits of having a large proprietary company comply with the audit requirements the ASC is to take account of:

- the number of creditors and potential creditors; and
- the position of creditors and potential creditors (in particular, their ability to independently obtain financial information about the company or companies); and
- the nature and extent of the liabilities of the company or companies.

Amendment 4

12. Amendment 4 relates to the timing of the application of certain provisions of the Bill.

13. Amendment 4 will insert new section 1409. Section 296 of the Corporations Law, as amended by the Bill, will require a large proprietary company to have its accounts audited. Under proposed section 1409, large proprietary companies that were exempt proprietary companies immediately before the commencement of the section will be required to have their accounts audited for the first financial year for the company that starts after the commencement of the section. Notwithstanding the amendments, large proprietary companies will be required to lodge unaudited accounts for the first financial year that ends after the commencement of proposed section 1409. Non-exempt proprietary companies that will be large proprietary companies will continue to be required to have their accounts audited.

13. Amendment 4 will also add proposed section 1410. Under proposed subsection 335(1A), a proprietary company must lodge with the ASC an annual return for each calendar year before 31 January in the next calendar year. Proposed section 1410 ensures that proposed subsection 335(1A) will require companies to lodge an annual return for the calendar year in which the Bill commences or companies are registered.