

1989

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

FOREIGN CORPORATIONS (APPLICATIONS OF LAWS) BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Industry, Technology and Commerce,
the Honourable John Button MP)

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FOREIGN CORPORATIONS (APPLICATION OF LAWS) BILL 1989

OUTLINE

This Bill proposes new legislation to ensure that certain questions arising under Australian law in relation to foreign corporations will be determined in accordance with the law applied in the place of incorporation. This is designed to protect the status and rights of foreign corporations and in particular, those incorporated in states and governments not recognized by Australia.

Financial Impact Statement

There is no financial cost to the Commonwealth. The legislation is likely to attract additional foreign investment into Australia.

FOREIGN CORPORATIONS (APPLICATION OF LAWS) BILL 1989

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Short Title

Clause 1 provides for the Act to be cited as the Foreign Corporations (Application of Laws) Act 1989

Commencement

Clause 2 provides for the Act to commence on the day on which it receives Royal Assent.

Interpretation

Clause 3 defines a number of words and expressions for the purposes of the legislation.

Extra territorial Operation

Clause 4 states that the legislation will apply both within and outside Australia.

External Territories

Clause 5 states that the legislation will extend to all Australia's external Territories.

Act to bind Crown

Clause 6 provides that the legislation is binding on the Commonwealth, States and Territories

Law applied in place of incorporation applicable law in determining questions relating to status of foreign corporation etc

Clause 7

sub-clause (1) states that the following sub-clauses cover the determination of questions of foreign law arising under Australian law

sub-clause (2) provides that questions on incorporation outside Australia will be determined by reference to the law of the place of incorporation.

sub-clause (3) provides that questions relating to the following aspects of foreign corporations

- (a) status
- (b) membership
- (c) shareholders
- (d) officers
- (e) rights and liabilities of members, shareholders and officers

- (f) existence nature and extent of other interests
- (g) internal management and proceedings
- (h) validity of dealings otherwise than with outsiders

will be determined by reference to the law of the place of incorporation

sub-clause 4 provides that nothing in sub-clauses (2) and (3) is intended to limit other matters in those sub-sections.

Certain acts not to be Recognised

Clause 8 provides that the act of a foreign state or its entities which

- (a) affects a foreign corporation, its assets or dealings, and
- (b) is based on the assertion of sovereignty over the place of incorporation

will not be recognised in Australian law unless it would be given effect under the law to the place of incorporation.

Recognition or non-recognition irrelevant consideration in application of act

Clause 9

sub-clause (1) provides that it is Parliament's intention that this legislation not be effected by the recognition or non recognition of

- (a) a foreign state or place, or
- (b) the government of a foreign state or place, or
- (c) that a place forms part of a foreign state, or
- (d) of the entities under the law of a foreign state or place

sub-clause (2) provides that it is also the intention of Parliament that the legislation not be affected by the presence or absence of diplomatic relations between Australia and any foreign state or place.

