

1994

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

INDUSTRY, TECHNOLOGY AND REGIONAL DEVELOPMENT
LEGISLATION AMENDMENT BILL (NO. 2) 1994

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industry,
Technology and Regional Development, Senator the Hon. Peter Cook)

INDUSTRY, TECHNOLOGY AND REGIONAL DEVELOPMENT
LEGISLATION AMENDMENT BILL (NO. 2) 1994

GENERAL OUTLINE

This Bill is an omnibus Bill for legislation administered within the Industry, Technology and Regional Development portfolio. Its purpose is to make a number of amendments to existing legislation.

The Bill makes the following amendments:

Amendment of the Australian Industry Development Corporation Act

The *Australian Industry Development Corporation Act 1970* is amended to facilitate the reduction in Australian Industry Development Corporation's equity in its major subsidiary, the AIDC Ltd, from the current level of about 80% to a minimum of 51% announced in the 1992-93 Budget. Proceeds from this will flow to the Commonwealth.

Several incidental amendments are also contained in the amending Bill to cover the exemption of the transfers of AIDC Ltd shares from stamp duty or other taxes payable under the law of a State or Territory, and the need to make this exercise neutral from the perspective of the Corporation's operations.

Amendment of the National Measurement Act

The *National Measurement Act 1960* is amended to provide for:

- (a) an increase in the number of members of the National Standards Commission from 8 to 10.
- (b) an increase in the limit on contracts which the National Standards Commission may make without Ministerial approval from \$100,000 to \$250,000.
- (c) the National Standards Commission to be vested with power to invest its money.
- (d) the National Standards Commission to be vested with power to make grants and provide other financial assistance.

Amendment of the Patents Act

The *Patents Act 1990* is amended to make minor technical amendments which are consequent to the amendments made to the *Seas and Submerged Lands Act 1973* by the *Maritime Legislation Amendment Act 1994* (No. 20 of 1994). The *Seas and Submerged Lands Act 1973* now contains an express definition of "Australian Continental Shelf" and thus reference to the Continental Shelf Convention in the *Patents Act 1990* is no longer appropriate.

Amendment of the Pooled Development Funds Act

The *Pooled Development Funds Act 1992* is amended to extend, from 12 to 18 months, the period to which the most recent audited accounts of an investee company must relate, for the purpose of determining the value of the total assets of the company before a Pooled Development Fund (PDF) invests in the company. This change reflects the fact that audited accounts for the previous financial year are generally not available for up to six months into the current financial year.

FINANCIAL IMPACT STATEMENT

The sale of AIDC Ltd shares transferred to the Commonwealth under the amendments to the *Australian Industry Development Corporation Act 1970* is expected to raise, at recent share prices, around \$100 million dollars.

The amendments to the *National Measurement Act 1960* will result in one additional ASL at a total cost of \$100,000 per year.

The amendment to the *Pooled Development Funds Act 1992* and the *Patents Act 1990* will have no impact on Commonwealth expenditure.

NOTES ON CLAUSES

PART 1 -PRELIMINARY

Clause 1 - Short title

1. This clause provides that the Act may be cited as the *Industry, Technology and Regional Development Legislation Amendment Act (No. 2) 1994*.

Clause 2 - Commencement

- 2(1). This clause provides for the majority of the provisions of the Bill to commence on Royal Assent. The exceptions to this day of commencement are:

- (2). Division 2 of Part 3 which concerns the membership of the National Standards Commission. Clause 2 provides that this Division is to commence on the 28th day after this Act receives the Royal Assent.

- (3). Division 5 of Part 3 which concerns grants, loans and scholarships which may be made by the National Standards Commission. Clause 2 provides that this Division is to commence on the day after the day on which this Act receives the Royal Assent.

PART 2 - AMENDMENT OF THE AUSTRALIAN INDUSTRY DEVELOPMENT CORPORATION ACT 1970

Clause 3 - Object of Part

3. This clause sets out that the object of Part 2 is to reduce the Corporation's shareholding in AIDC Ltd to 51%.

Clause 4 - Principal Act

4. Provides that in this Part of the *Industry, Technology and Regional Development Legislation Amendment Act (No. 2) 1994* the term "Principal Act" means the *National Measurement Act 1960*.

Clause 5 - Insertion of new Part

5. This part inserts a new Part IVB in the AIDC Act, as follows:

New clause 29ZL - Corporation to retain a shareholding in AIDC Ltd of at least 51%

29ZL. This clause provides that at all times the Australian Industry Development Corporation is to retain at least a 51% shareholding and level of total voting rights in respect of AIDC Ltd. In the event there is a contravention of this provision then the Commonwealth and Corporation must take all reasonable steps to remedy the situation within 2 months of having become aware of the contravention.

New clause 29ZM - Corporation to transfer shares in AIDC Ltd to the Commonwealth

29ZM. This clause allows the Minister to give a direction to the Corporation to transfer any number of AIDC Ltd shares to the Commonwealth, provided that the transfer did not result in a breach of clause 29ZL. It is not intended that any monetary consideration would be payable to the Corporation for the shares transferred to the Commonwealth.

New clause 29ZN - Transfer to be disregarded in working out Corporation's borrowing limit

29ZN. This clause ensures that there would be no breach as a result of any transfer of AIDC Ltd shares in respect of the Corporation's borrowing constraint provided for under subsection 7(3). The provision has been made necessary as result of technicalities in the accounting standards.

New clause 29ZP - Transfer to be disregarded in working out Corporation's capacity to pay dividends

29ZP. Clause 29ZP will ensure that the transfer of AIDC Ltd shares from the Corporation to the Commonwealth will be disregarded in relation to the Corporation's dividend payments under subsection 24A(4). This provision recognises that while the transfer of the shares by the Corporation without any monetary compensation will have an impact on its profits, it is not intended, however, that this should impact on the Corporation's capacity for dividend payments arising from dividends it may receive from AIDC Ltd.

New clause 29ZQ - Exemption from stamp duty etc - transfers of shares by Corporation to the Commonwealth

29ZQ. Clause 29ZQ exempts for the purposes of the transfer of AIDC Ltd shares from the Corporation to the Commonwealth, the payment of stamp duty or other taxes under the law of a State or Territory in respect of that transfer by the Corporation.

New clause 29ZR - Exemption from stamp duty etc. - transfers of shares by the Commonwealth

29ZR. Clause 29ZR exempts for the purposes of the sale of AIDC Ltd shares by the Commonwealth, the payment of stamp duty or other taxes under the law of a State or Territory in respect of the transfer of the shares stemming from the sale or anything related to the sale.

PART 3- AMENDMENTS OF THE NATIONAL MEASUREMENT ACT 1960

Clause 6 - Principal Act

6. Provides that in this Part of the *Industry, Technology and Regional Development Legislation Amendment Act (No. 2) 1994* the term "Principal Act" means the *National Measurement Act 1960*.

Clause 7 - Object of Division

7. This clause sets out that the object of the Division is to increase the membership of the National Standards Commission from 8 to 10.

Clause 8 - Membership of Commission

8. Amends section 17 to increase the number of Commissioners of the National Standards Commission, in addition to the Chairperson and the Executive Director, from 6 to 8.

Clause 9 - Meetings

9. Amends section 18AE to increase the number of members necessary to constitute a quorum at a meeting of the National Standards Commission from 5 to 6.

Clause 10 - Object of the Division

10. This clause sets out that the object of the Division is to increase the limit on contracts which the National Standard Commission may make without Ministerial approval.

Clause 11 - Contracts

11. Amends section 18F by increasing the limit on contracts which the National Standards Commission may enter without Ministerial approval from \$100,000 to \$250,000.

Clause 12 - Object of Division

12. This clause sets out that the object of the Division is to provide the National Standards Commission with the power to invest its money.

Clause 13 - Application of money

13. Amends section 18D by inserting an additional paragraph which empowers the National Standards Commission to invest its money under a new section 18DA which is inserted by Clause 14.

Clause 14 - Investment of money

14. Inserts new section 18DA which specifies how the National Standards Commission may invest its money.

Clause 15 - Contracts

15. Amends section 18F of the Principal Act by inserting an additional paragraph which exempts money invested under section 18DA from the limitations imposed on entering contracts involving amounts greater than \$250,000.

Clause 16 - Object of Division

16. This clause sets out that the object of the Division is to provide the National Standards Commission with the power and authority to make financial grants, provide and guarantee loans and to award fellowships and scholarships.

Clause 17 - Functions of the Commission

17. Amends section 18 of the Principal Act by inserting an additional paragraph which authorises the National Standards Commission to provide grants and other forms of financial assistance for purposes relating to metrology.

Clause 18 - Application of money

18. Amends section 18D of the Principal Act by inserting an additional paragraph which allows the Commission to apply its money to the making of grants and other forms of financial assistance.

PART 4 - AMENDMENT OF THE PATENTS ACT 1990

Clause 19 - Object of Part

19. This clause sets out that the object of the Part is to make a minor technical amendment which aligns the definition of "Australian Continental Shelf " with the definition now provided in the *Seas and Submerged Lands Act 1973*.

Clause 20 - Principal Act

20. Provides that in this Part of the *Industry, Technology and Regional Development Legislation Amendment Act (No. 2) 1994* the term "Principal Act" means the *Patents Act 1990*.

Clause 21 - Definitions and Clause 22 - Schedule 1

21 and 22 These clauses amend the Principal Act by omitting the references to the "Continental Shelf Convention". In Schedule 1, "Continental Shelf Convention" is replaced by " *Seas and Submerged Lands Act 1973*".

PART 5 - AMENDMENT OF THE POOLED DEVELOPMENT FUNDS ACT 1992

23 - Object of Part

23. This clause sets out that the object off this Part is to make a minor technical amendment which extends the period in which companys' audited accounts may be assessed for the purposes of section 24 of the *Pooled Development Funds Act 1992*.

24 - Principal Act

24. Provides that in this Part of the *Industry, Technology and Regional Development Legislation Amendment Act (No. 2) 1994* the term "Principal Act" means the *Pooled Development Funds Act 1992*.

25 - Limit on size of investee company

25. Currently section 24 of the *Pooled Development Funds Act 1992* specifies that the size of the investee company at the time of the initial investment by a Pooled Development Fund must not exceed \$30 million total assets. Paragraph 24(5)(b) requires that the audited accounts, used to determine the value of the total assets of the investee business, must relate to a period that ended not more than 12 months before the investment is made. This clause 29 amends paragraph 24(5)(b) of the Principal Act by extending that period to 18 months. This amendment permits, where necessary, the use of the investee's most recent audited accounts to determine the value of the total assets. At present Pooled Development Funds are prevented from investing in investee companies typically for up to the first 6 months of any current financial year, unless an interim audit is done, because audited accounts for the previous year are not available.

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