

1980

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

NATIONAL COMPANIES AND SECURITIES COMMISSION
AMENDMENT BILL 1980

EXPLANATORY MEMORANDUM

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

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INTRODUCTION

1. The purpose of this explanatory memorandum is to explain the contents of the National Companies and Securities Commission Amendment Bill 1980 (hereafter referred to as "the Bill").

2. This explanatory memorandum (hereafter referred to as 'ex memo'):-

(a) contains an introduction to, and a brief outline of the co-operative companies and securities scheme (paras 3 to 6); and

(b) deals sequentially with each clause of the Bill (paras 7 to 19).

Formal Agreement

3. On 22 December 1978 the Commonwealth and the six States executed a Formal Agreement that provided the 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 & 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 & Securities (Interpretation & Miscellaneous Provisions) Act 1980.

5. A brief outline of 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 was established by the Agreement. The NCSC has such functions and powers, conferred on it by the various pieces of Commonwealth, State and Territory legislation, that will give effect to the co-operative companies and securities scheme (hereafter referred to as the 'co-operative scheme legislation'). The administration of the co-operative scheme legislation within each State and Territory is, as far as practicable, to be carried out by the relevant corporate affairs office in that State or Territory under delegations from the NCSC.

- (b) The content of the substantive laws under the scheme is set out in legislation that will apply to the Australian Capital Territory. Each other jurisdiction that is covered by the Formal Agreement will 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, subject to the making of any necessary 'translator' amendments, have automatic effect in those jurisdictions without the necessity of further and separate substantive legislation in each other jurisdiction.

- (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.

6. Each State will be introducing into its Parliament a National Companies and Securities Commission (State Provisions) Bill to support the operations of the NCSC in that State. Once these six Bills are brought into operation, the NCSC will be able to start administering its first substantive legislation: this will be the proposed new code regulating the acquisition of company shares and a securities industry code. These will be followed by a companies code.

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Cl. 1: Short title, etc.

7. When enacted the Bill will be cited as the National Companies and Securities Commission Amendment Act 1980 and the National Companies and Securities Commission Act 1979 is the 'Principal Act'.

Cl. 2: Commencement

8. The Bill will come into operation on the day on which the National Companies and Securities Commission Act 1979 comes into operation.

Cl. 3: Interpretation

9. Section 3 of the Principal Act defines a series of terms for the purposes of the Act. Clause 3 of the Bill contains a number of amendments to section 3.

10. The definition of the Formal Agreement (described in para. 3 of this ex memo and referred to in the Principal Act as the 'Agreement'), is amended so that it will apply to the Formal Agreement as amended or affected by another agreement even if that other agreement is executed before the Principal Act comes into operation (Bill para. 3(a)).

11. This definition will be identical to the definition given in other legislation under the Co-operative Companies and Securities Scheme.

12. Section 3 is also amended to include a definition of the Ministerial Council secretariat which will mean the staff provided by the NCSC pursuant to proposed new section 44A of the Principal Act. (See ex memo paras. 15 and 19 for details of the provisions concerning the establishment of and expenses incurred by the proposed secretariat to the Ministerial Council).

Cl.4: Divisions of Commission

13 It will no longer be compulsory for the Chairman to be a member of a Division of the NCSC. Where the Chairman is not a member of such a Division, the resolution that constitutes the Division shall specify a member as Chairman of that Division (Bill cl. 4).

14. There will also be an additional provision whereby the member specified as Chairman of a Division shall, for the purposes of determining a matter specified in a direction under sub-section 21(1), be deemed to be the Chairman of the NCSC.

Cl. 5: Application of Moneys

15. The NCSC will be enabled to pay or discharge the expenses, charges, obligations or liabilities incurred or undertaken by the proposed Ministerial Council secretariat (Bill cl. 5 - proposed sub-paragraph 29(1)(aa)).

16. Moneys that vest in the NCSC under another law will be able to be dealt with in accordance with that law (Bill cl. 5). An example of such a provision is in cls. 461 and 462 of the Companies Bill 1980 which requires the vesting of outstanding property of defunct companies in the NCSC. The NCSC must pay any prescribed commission or net receipts, derived from the sale, or disposition of that property, to the Minister for Finance.

Cl. 6: Audit

17. Section 34 of the Principal Act (which deals with audits by the Commonwealth Auditor-General) will be amended to ensure that the State Governments participating in the co-operative scheme retain exclusive control over the auditing of the books and records kept by their authorities or officers where they are acting as delegates of the NCSC (Bill cl. 6).

Cl. 7: Failure of witnesses to attend and answer questions

18. Where a legal practitioner refuses to provide information that he claims concerns a privileged communication (see s. 39 of the Principal Act), then he shall, if he knows the name and address of that person, forthwith furnish in writing the name and address of the person to whom or by whom the communication was made (Bill cl. 7 - a similar amendment has been made to s. 11 of the Securities Industry Act).

Cl. 8: Provision of staff and facilities to Ministerial Council

19. The Ministerial Council will be able to obtain whatever staff and facilities it requires from the NCSC to set up and maintain a Ministerial Council secretariat (Bill cl. 8 - proposed s. 44A).