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The House of Representatives

Statute Law (Miscellaneous Amendments)
Bill (No. 1) 1982

Explanatory Memorandum

(Circulated by authority of the
Minister for Industrial Relations
The Honourable Ian Viner, M.P.)



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STATUTE LAW (MISCELLANEOUS AMENDMENTS) ACT

(No 1) 1982

General Outline

The Bill has a number of purposes. One purpose is to correct printing and drafting errors that have been found to exist in a number of Acts. Another is to make such amendments to the package of legislation comprising the co-operative companies and securities scheme as have been unanimously approved by the Ministerial Council in accordance with Clause 8(1)(a) of the agreement made on 22 December 1978 between the Commonwealth and the States. Finally, it makes a number of other amendments that, while having some substance, are regarded as being of a non-controversial nature.

PART I - PRELIMINARY

Clause 1 - Short title

Formal

Clause 2 - Commencement

Sub-clause 2(1) provides that clauses 1 and 2 come into operation on Royal Assent. Special provision for the commencement of specified provisions is made by sub-clauses 2(2) to 2(11). These provisions are dealt with in the notes on the relevant clauses.

The remaining provisions of the Bill come into operation, in accordance with sub-clause 2(12), on the 28th day after the day on which the Act receives the Royal Assent.

PART II - AMENDMENTS OF THE ACTS INTERPRETATION ACT 1901

The main purpose of these amendments is to give effect to recommendations of the Senate Standing Committee on Regulations and Ordinances in relation to -

- . the doctrine of "revival" where a regulation repealing the whole or part of a regulation is disallowed by a House of the Parliament;
- . extending the period during which the Senate may consider a motion for disallowance of a regulation where, after notice of the motion has been given, the House of Representatives is dissolved.

Clause 3 - Principal Act

Formal

Clause 4 - Regulations

The effect of the amendments made by paragraphs (a) and (b) is that, where a notice of motion for disallowance of a regulation is pending before the Senate when the House of Representatives is dissolved or prorogued, the regulation in question shall be deemed to have been tabled in the Senate on the first subsequent sitting day of the Senate.

Paragraph (c) substitutes a new sub-section 48(6) which expands the present provision so that it will also cover the position of rights, duties and penalties which accrue or are incurred between the date of making of a regulation and the date on which the regulation becomes void and of no effect by virtue of the operation of sub-section 48(3) if it is not tabled as required. The position is to be the same as in the case of a repeal of the regulation. This is dealt with by section 50 of the Principal Act, which provides that rights, duties and penalties that accrue or are incurred are not affected by repeal, unless the contrary intention appears.

Paragraph (c) also inserts a new sub-section 48(7) to the effect that, where a regulation which repeals, in whole or in part, an earlier regulation ceases to have effect by virtue of section 48, the repealed regulation will be revived from and including the date of disallowance of the repealing regulation or the date that the repealing regulation became void and of no effect by virtue of the operation of sub-section 48(3), as the case may be.

PART III - AMENDMENTS OF THE
ADMINISTRATIVE APPEALS TRIBUNAL ACT 1975

Clause 5 - Principal Act

Formal

Clause 6 - Interpretation

Paragraphs (a) to (e) of this clause amend definitions in sub-section 3(1) of the Principal Act.

Paragraph (f) of this clause inserts a new sub-section 3(4) which deems a document to be furnished and a notice to be served if it is posted by pre-paid letter to the appropriate address. The new sub-section also provides as to the time when such a document or notice is to be deemed to be furnished or served.

Clause 7 - Establishment of Tribunal

Sub-clause 7(1) amends section 5 of the Principal Act to reflect changes to the membership of the Tribunal made by other clauses. Sub-clause 7(2) makes it clear that the continuance in existence of the Administrative Appeals Tribunal is not affected.

Clause 8 - Appointment of members of Tribunal

This clause inserts a new section 6 which provides for the appointment of members of the Tribunal. The membership of the Tribunal is to be as follows:-

(i) presidential members, consisting of -

. the President;

. other persons appointed who are Judges; and

. persons appointed who are not Judges and who are to be appointed as Deputy Presidents;

(ii) senior members; and

(iii) members.

Clause 9 - Qualifications for appointment

Paragraph (a) of this clause substitutes new sub-sections 7(1), (1A) and (1B). New sub-section 7(1) provides that the President must be a Judge of the Federal Court of Australia. New sub-section 7(1A) provides that a Deputy President must be a legal practitioner enrolled for not less than 5 years. New sub-section 7(1B) provides that a senior member must be a legal practitioner enrolled for not less than 5 years or a person who has, in the opinion of the Governor-General, special knowledge or skill relevant to the duties of such a member.

Paragraph (b) of this clause amends sub-section 7(2) to provide that the qualifications for appointment set out therein apply to non-presidential members other than senior members.

Paragraph (c) of this clause is consequential upon the change made by the previous paragraph.

Clause 10 - Term of appointment

This clause substitutes a new section 8 which makes provision for the terms of appointment of Tribunal members.

New sub-section 8(1) provides that a presidential member who is a Judge or a full-time Deputy President holds office until he attains 70 years of age. A full-time senior member holds office until he attains 65 years of age. A part-time member holds office for such period, not exceeding 7 years, as is specified in the instrument of appointment.

New sub-section 8(2) provides that a member who is a Judge ceases to be a member when he ceases to be a Judge.

New sub-section 8(3) provides that a person who has attained 70 years of age shall not be appointed as a full-time Deputy President.

New sub-section 8(4) provides that a Judge who has attained 70 years of age shall not be appointed as a member.

New sub-section 8(5) has the effect that a person shall not be appointed or re-appointed a full-time non-presidential member if he has attained 65 years of age or be appointed as a full-time non-presidential member (other than a senior member) beyond that age.

New sub-section 8(6) provides that, subject to the other provisions of Part II of the Act, a member holds office on such terms and conditions as are prescribed.

Clause 11 - Remuneration and allowances

This clause substitutes a new section 9 to provide for the remuneration and allowances of a Tribunal member who is not a Judge to be those determined by the Remuneration Tribunal. Where there is no determination, the remuneration and allowances are to be as prescribed.

Clause 12 - Acting appointments

This clause amends the provision made by section 10 with respect to appointment of members to act in place of members absent or unavailable to perform their duties.

Paragraph (a) of this clause amends sub-section 10(1) to require a person appointed to act as President to be a Judge of the Federal Court of Australia, and to vest the power to make such an acting appointment in the Governor-General instead of the Minister.

Paragraph (b) of this clause substitutes a new sub-section 10(2) to provide for the appointment of an acting Deputy President. The amendment is consequential upon the change in qualification for appointment as Deputy President.

Paragraph (c) of this clause makes changes of a drafting nature to sub-section 10(3).

Paragraph (d) of this clause substitutes a new sub-section 10(4) which requires a person who is to be appointed as an acting senior non-presidential member or other non-presidential member to be qualified to be appointed to the office to which he is appointed. The amendment is a consequential one.

Paragraph (e) of this clause amends sub-section 10(7) to omit the reference to the President. This is consequential upon the amendment made by paragraph (a) of this clause, providing for a Judge of the Federal Court of Australia to be appointed to act as President. It is no longer necessary to determine terms and conditions of service of an acting President.

Paragraphs (f) and (g) of this clause are consequential upon the change made by paragraph (a) of this clause.

Paragraph (h) of this clause substitutes sub-section 10(8) which ensures that an acting member has the same powers, functions or duties as a person appointed as President, Deputy President, a senior member or other non-presidential member, as the case may be.

Clause 13 - Delegation

Paragraph (a) of this clause substitutes a new sub-section 10A (1) which extends the Presidents's capacity to delegate his functions so as to enable delegation to any member of the Tribunal. At present, he may only delegate to Deputy Presidents.

Paragraph (b) of this clause substitutes a new sub-section 10A (3) which makes changes consequential upon new sub-section 10A (1).

Clause 14 - Oath or affirmation of office

This clause inserts a new section 10B which provides for a member appointed to the Tribunal after the commencement of the clause to take an oath or affirmation of office in the form set out in Schedule 2.

Clause 15 - Outside employment

This clause substitutes a new section 11 which provides that a full-time member may not engage in other paid employment without the consent of the Minister. However, this prohibition does not apply where the employment concerned is an office or appointment in the Defence Force.

Clause 16 - Removal from office

This clause adds a new sub-section 13(11) which has the effect that the provision made by section 13 for removal of members from office does not apply to members who are Judges.

Clause 17 - Constitution of Tribunal for exercise of powers

Paragraph (a) of this clause makes a drafting change.

Paragraph (b) of this clause inserts a new paragraph 21(1)(aa) which enables the Tribunal to be constituted in exercising its powers by a presidential member who is a Judge and two members who are not Judges, or, by a Deputy President and 2 non-presidential members. These are additional to the other possible ways specified in sub-section 21(1) in which the Tribunal may be constituted. These new paragraphs are consequential upon the changes with respect to the appointment of presidential members. It is for the President, in pursuance of section 20, to direct the persons who are to constitute the Tribunal for the purpose of particular proceedings.

Paragraphs (c) of this clause makes changes consequential on other amendments.

Paragraph (d) of this clause amends paragraph 21(1)(d) of the Principal Act so that the Tribunal may be constituted by a non-presidential member sitting alone i.e. by either a senior member or other non-presidential member. The existing paragraph does not enable a member of the latter class to sit alone.

Paragraphs (e) and (f) of this clause amend sub-section 21(1A) so that the Tribunal's power either to make an order under sub-section 30(1) to join a party to a proceeding before the Tribunal or to give a direction under new sub-section 37(1C) can be done on an interlocutory basis.

Paragraph (g) of this clause amends sub-paragraph 21(1A)(a)(i) so as to provide that those Tribunal powers exercisable on an interlocutory basis may be exercised by a senior member authorised by the President.

Paragraphs (h) and (j) of this clause make changes of a drafting nature.

Paragraph (k) of this clause omits paragraph 21(1A)(c) of the Principal Act as it overlaps other provisions in sub-section 21(1A).

Paragraph (m) of this clause inserts new sub-sections 21(3) and (4) which make provision of a machinery nature relating to an authorisation for the purpose of sub-paragraph 21(1A)(a)(i) as amended.

Clause 18 - Reconstitution of Tribunal in certain cases

Paragraph (a) of this clause amends sub-section 21A(1) so as to enable reconstitution of the Tribunal constituted in accordance with paragraph 21(1)(a) i.e. by a Deputy President and 2 non-presidential members.

Paragraph (b) of this clause inserts a new paragraph (aa) in sub-section 21A(3) providing for the way in which a Tribunal constituted in accordance with paragraph 21(1)(a) can be reconstituted .

These changes are consequential upon changes made by paragraph (b) of clause 17 of this Bill.

Paragraphs (c) and (d) of this clause make changes which are likewise consequential upon the amendment made by paragraph (b) of clause 17 of this Bill.

Clause 19 - Member presiding

This clause amends the provision made by section 22 specifying the member of the Tribunal who is to preside at the hearing of a proceeding before the Tribunal. The amendments are consequential upon changes made to sub-section 21(1) by clause 17 of this Bill regarding the various ways in which the Tribunal may be constituted.

Clause 20 - Tribunal may review certain decisions

Paragraph (a) of this clause makes a drafting change to clarify the intention of sub-section 25(5) of the Principal Act.

Paragraph (b) of this clause amends sub-paragraph 25(6)(b) so as to enable an enactment providing for applications to be made to the Administrative Appeals Tribunal to add to, exclude or modify the operation of sub-section 41(1) (which provides that the operation of a decision is not affected by an application to the Tribunal for review of the decision).

Clause 21 - Tribunal may review decisions as provided by the Schedule 1

The amendments made by this clause to sub-section 26(8) of the Principal Act relate to the case where the regulations provide for applications to be made to the Tribunal for review of decisions made under another enactment before the date of the regulations. The amendment extends the power to provide for an extension of time for requesting a statement of reasons in respect of such a decision.

Clause 22 - Persons affected by decision may obtain reasons for decision

This clause amends the provision made by section 28 which provides that a person entitled to apply to the Tribunal for review of a decision may apply to the decision-maker requesting a statement of reasons for the decision.

Paragraph (a) of this clause inserts 3 new sub-sections. New sub-section 28(1AA) requires a decision-maker to notify a person requesting a statement where he is of the opinion the person is not entitled to a statement. New sub-sections 28(1AB) and (1AC) provide for review by the Tribunal of a decision under sub-section 28(1AA).

Paragraph (b) of this clause substitutes new sub-sections 28(2) and (3) relating to the provision made for protecting from disclosure in a statement of reasons that has been sought under section 28 material that is the subject of a certificate of the Attorney-General. New sub-section 28(2) provides that the Attorney-General may certify that disclosure of any matter contained in a statement of reasons would be contrary to the public interest on one or more of three grounds specified in the sub-section. New sub-section 28(3) provides that a decision-maker is not required to include in a statement any matter the subject of an Attorney-General's certificate. If such a statement of reasons would be false or misleading if it did not include that matter, the decision-maker is not required to furnish a statement. New paragraph 28(3A)(a) provides for notification to be given to the applicant of the action taken in consequence of an Attorney-General's certificate together with the reasons for that action. New paragraph 28(3A)(b) provides that the provisions of section 36 apply to an Attorney-General's certificate under section 28 where subsequently a statement is to be furnished to the Tribunal under section 37.

The purpose of paragraph (b) of this clause is to bring the existing provisions for the issue of a certificate by the Attorney-General under section 28 into line with equivalent provisions in section 13 of the Administrative Decisions (Judicial Review) Act 1977. As the Principal Act now

stands, the issue of such a certificate means that no section 28 statement may be given, even though the certificate applies only to some of the material to be included in the statement. Thus the amendments extend the right to receive a section 28 statement.

Paragraph (c) of this clause adds a new sub-section 28(5) which enables the Tribunal to review the adequacy of a statement of reasons furnished under section 28. Where the Tribunal makes a declaration that the statement is inadequate, the decision-maker is required to furnish further and better particulars.

Clause 23 - Manner of applying for review

Paragraph (a) of this clause makes a change of a drafting nature to sub-section 29(2).

Paragraph (b) of this clause, in substituting a new sub-section 29(8), corrects a drafting error.

Clause 24 - Parties to proceeding before Tribunal

Paragraph (a) of this clause amends the provision made by sub-section 30(1) with respect to the parties to a proceeding consequential on changes made by the following paragraph and the next clause.

Paragraph (b) of this clause inserts new sub-section 30 (1A) which makes clear that the Tribunal has a discretion whether to order that a person whose interests are affected by the decision is to be made a party to the proceeding.

Clause 25 - Intervention by Attorney-General

This clause inserts a new section 30A which provides the Attorney-General may intervene in proceedings before the Tribunal and for payment of costs incurred as a result of that intervention.

Clause 26 - Procedure of Tribunal

Paragraph (a) of this clause substitutes a new paragraph 33(1)(a) in the Principal Act to make clear the power of the Tribunal to regulate its own procedure where there is no contrary provision.

Paragraph (b) of this clause deals with the giving of directions as to procedure. A new sub-section 33(2) is inserted extending the class of members who may give such directions. New sub-sections 33(3), 33(4) and 33(5) are consequential provisions.

Clause 27 - Conferences

This clause, which substitutes a new sub-section 34(1), vests the power to direct the holding of a preliminary conference in the President rather than a presidential member as at present. This is a power which may be delegated by the President under section 10A as amended. The other change made by new sub-section 34(1) is to remove the requirement for the prior agreement of the parties before a conference may be directed to be held.

Clause 28 - Hearings to be in public except in special circumstances

This clause amends paragraph 35(2)(c) of the Principal Act to remove a gap in the Tribunal's powers to make an order directing the prohibition or restricting the disclosure of material.

Clause 29 - Certain documents and information not required to be disclosed

This clause amends the provision made by section 36 for protection of certain material required to be disclosed or produced or lodged with the Tribunal pursuant to section 37 on the making of an application to the Tribunal for a review of a decision.

Paragraphs (a) and (b) of this clause amend sub-section 36(1) so that the Attorney-General's certificate protecting material in a document from disclosure when given is in respect of 'matter' contained in a document rather than the entire document.

Paragraphs (c) and (d) of this clause make consequential changes to sub-section 36(2).

Paragraph (e) of this clause substitutes new sub-sections 36(3) and 36(3A) for sub-section 36(3). New sub-section 36(3) provides for the Tribunal to consider and decide whether or not disclosure is to be made of the information or matter which is the subject of an Attorney-General's certificate specifying a reason in pursuance of paragraph 36(1)(c). The material change made by the new sub-section is that this power is now to be vested in the Tribunal rather than the President (see also new sub-section 36(8)). New sub-section 36(3A) provides that the Attorney-General is to be a party to such a proceeding.

Paragraphs (f) and (g) of this clause make consequential amendments to sub-section 36(4).

Paragraph (h) of this clause inserts a new sub-section 36(4AA) which provides for notification of a decision made by the Tribunal under new sub-section 36(3).

Paragraph (j) of this clause makes consequential amendments to sub-sections 36(4A), (5) and (6).

Paragraph (k) of this clause inserts new sub-sections 36(7) and (8) in section 36. New sub-section 36(7) provides that the power of the Tribunal to determine whether or not information or matter contained in a document should be disclosed to some or all of the parties to a proceeding may be exercised only by the Tribunal constituted by a presidential member who is a Judge of the Federal Court of Australia. The effect of new sub-section 36(8) is to ensure that a decision of the Tribunal under new sub-section 36(3) is appealable to the Federal Court of Australia under section 44.

Clause 30 - Certain questions not required to be answered

Paragraph (a) of this clause substitutes a new paragraph 36A(2)(b) in the Principal Act which provides that it is the Tribunal that considers whether it would be contrary to the public interest to answer a question that is the subject of Attorney-General's certificate specifying a reason referred to of paragraph 36(1) - under the existing paragraph such a question is determined by the President.

Paragraph (b) of this clause inserts new sub-sections 36A(2A) and (2B). New sub-section 36A(2A) provides that the Attorney-General is to be a party to a proceeding before the Tribunal under new paragraph 36(2)(b). New sub-section 36A(2B) provides for notification of a decision made under paragraph 36A(2)(b).

Paragraph (c) of this clause inserts new sub-sections 36A(5) and (6). New sub-section 36A(5) requires the power of the Tribunal under paragraph 36A(2)(b) to be exercised by a presidential member who is a Judge of the Federal Court of Australia. The effect of new sub-section 36A(6) is to ensure that a decision of the Tribunal under paragraph 36A(2)(b) is appealable to the Federal Court of Australia under section 44.

The changes made by this clause parallel those made by clause 29.

Clause 31 - Lodging of material documents with Tribunal

This clause inserts new sub-sections 37(1B), (1C) and (1D). The effect of new sub-section 37(1B) is that, where an application is made for review of a decision but an extension of time for making the application is required so as to regularise the application, the period of 28 days fixed by sub-section 37(1) for lodging a statement and relevant documents with the Tribunal does not run until notice of the application is given or an extension of time is granted, whichever event last occurs. New sub-section 37(1C) enables the Tribunal to direct that the period fixed under sub-section 37(1D) is to be a shorter period than 28 days. New sub-section 37(1D) provides that the provision made by sub-section 37(1B) altering the time for furnishing a statement and other relevant documents does not apply where one or more applications is lodged in respect of which no extension of time is required.

Clause 32 - Operation and implementation of a decision that is subject to review

This clause inserts new sub-sections 41(7) and (8). New sub-section 41(7) enables senior members to be authorised by the President to exercise the Tribunal's powers to make stay orders affecting the operation or implementation of the decision under review. New sub-section 41(8) allows the President to vary or revoke any authorisation given under sub-section 41(7).

Clause 33 - Review by Tribunal

This clause amends section 43 to make new provision with respect to the giving of reasons by the Tribunal for its decisions.

Paragraph (a) of this clause inserts a new sub-section 43(2) which provides for the Tribunal to give its reasons for decisions either orally or in writing. Where oral reasons are given, new section 43(2A) enables a party to request that the Tribunal furnish a statement in writing of the reasons for its decision and such a statement must be furnished within 28 days. New sub-section 43(2B) provides that, where the Tribunal gives written reasons for decision, those reasons are to include its findings on material questions of fact and a reference to the evidence or other material on which those findings were based - this is the same form in which written reasons are now required to be given.

Paragraph (b) of this clause makes a consequential change to sub-section 43(5).

Clause 34 - Return of documents, etc., at completion of proceeding

This clause amends section 43A to extend the provision to cover non-documentary exhibits.

Clause 35 - Sending of documents to, and disclosure of documents by, the Federal Court of Australia

This clause amends section 46 consequential on changes made in this Bill to sections 28 and 36 respectively.

Clause 36 - False or misleading evidence

This clause inserts a new section 62A which creates an offence where a witness gives false or misleading evidence to the Tribunal.

Clause 37 - Amendments with respect to Schedule

This clause makes drafting amendments required by the insertion by the following clause of a second Schedule in the Principal Act.

Clause 38 - Schedule 2

Clause 38 provides for the insertion of Schedule 2 into the Principal Act setting out the form in which an oath or affirmation of office is to be taken in pursuance of new section 10B.

Clause 39 - Transitional provisions with respect to existing members

Paragraphs (a) and (b) provide for the current President and presidential members (who are Federal Court Judges) to continue to hold office as if appointed under the Principal Act as amended by this Bill. Their present appointments are for terms of years. They will thus hold their respective offices, unless sooner resigning, until 70 years of age or until they cease to be Judges, whichever event first occurs.

Paragraph (c) provides for existing senior non-presidential members to hold office as senior members as if appointed under the Principal Act as amended by this Bill. Their present appointments are for terms of years. In respect of a full-time senior non-presidential member, he will hold office, unless sooner resigning, until 65 years of age. A part-time senior non-presidential member will hold office for the remainder of his term of appointment.

Paragraph (d) provides for a non-presidential member, other than a senior non-presidential member, to hold office as

a member of the Tribunal as if appointed under the Principal Act as amended by this Bill for the rest of the current term of his or her appointment.

Clause 40 - References to members in other enactments, etc.

Sub-clause (1) of this clause provides for references to presidential members in other enactments, other than the Superannuation Act 1976, requiring the Tribunal to be constituted in exercising its powers by or including presidential members to be read as references to such members who are Judges of the Federal Court of Australia. The effect is that where, as for example in reviewing deportation orders made by the Minister for Immigration and Ethnic Affairs under section 12 or 13 of the Migration Act 1958 the Tribunal must be constituted by a presidential member, only a Judge of the Federal Court of Australia who is a presidential member must sit.

Sub-clause (2) of this clause deals with references in enactments (and in determinations by the Remuneration Tribunal) to a senior non-presidential member of the Administrative Appeals Tribunal. Such references are to have effect as if they were references to a senior member of the Tribunal.

PART IV - AMENDMENTS OF THE AGED PERSONS HOSTELS ACT 1972

Clause 41 - Principal Act

Formal

Clauses 42 and 43 - Title and Short title

These clauses amend the long and short titles of the Principal Act to refer to disabled persons as well as aged persons. The new short title is to be the Aged or Disabled Persons Hostels Act 1972

Clause 44 - Interpretation

The amendments made by this clause update references in section 3 of the Principal Act to the Aged or Disabled Persons Homes Act 1954.

Clause 45 - Approval of hostels

Section 5 of the Principal Act currently provides for approval of a building erected or purchased, or to be erected or purchased, by a prescribed organisation as a home for the accommodation of aged persons.

Paragraph (a) of this clause substitutes 'eligible' for 'aged' in section 5 of the Principal Act. Under section 2 of the Aged or Disabled Persons Homes Act 1954, 'eligible person' means a person who is an aged person or a disabled person. By sub-section 3(2) of the Principal Act, expressions used in the Principal Act that are defined by the Aged or Disabled Persons Homes Act have the same meaning as in that Act.

Paragraph (b) of this clause updates a reference in sub-section 5 of the Principal Act to the Aged or Disabled Persons Homes Act 1954.

Clause 46 - Amount of grants

Paragraphs (a), (b) and (e) of this clause make formal drafting amendments.

Paragraphs (c), (d) and (f) make amendments consequential upon the amendment made by paragraph (a) of clause 45.

Clause 47 - Grants for furnishings

Paragraph (a) of this clause is consequential upon the amendment made by paragraph (a) of clause 45.

Paragraph (b) of this clause makes a formal drafting amendment.

Clause 48 - Transfer of rights in respect of persons

The amendment made by this clause is consequential upon the amendment made by paragraph (a) of clause 45.

Clause 49 - Terms and conditions of grants

Paragraphs (a) and (b) of sub-clause 49(1) make formal and minor drafting amendments.

Paragraph (c) of sub-clause 49(1) is consequential upon the amendment made by paragraph (a) of clause 45.

Under sub-section 9(4) of the Principal Act, the Director-General, before making a grant, may require a prescribed organisation to enter into an agreement with him with respect to the terms and conditions upon which the grant is to be made, and under sub-section 9(5) these terms and conditions may include an undertaking with respect to the continued use of the hostel as a home for aged persons.

Sub-clause (2) of this clause will deem any such undertaking to have been given with respect to the continued use of the hostel as a home for eligible persons, thus enabling prescribed organisations to accommodate disabled as well as aged persons.

Clause 50 - Period of operation

Formal amendment.

Clause 51 - Further grants under Aged or Disabled Persons
Homes Act

Paragraphs (a) and (d) of this clause update a reference to the Aged or Disabled Persons Homes Act 1954.

The amendments made by paragraphs (b) and (c) of this clause are consequential upon the amendment made by paragraph (a) of clause 45.

PART V - AMENDMENTS OF THE ASHMORE AND
CARTIER ISLANDS ACCEPTANCE ACT 1933

Clause 52 - Principal Act

Formal

Clause 53 - Tabling of Ordinances

The amendments are similar in effect, mutatis mutandis, to those made by clause 4 to section 48 of the Acts Interpretation Act 1901 in relation to regulations.

PART VI - AMENDMENTS OF THE AUDIT ACT 1901

Clause 54 - Principal Act

Formal

Clause 55 - Commonwealth Public Account

This clause amends section 21 of the Principal Act to provide for distinguishing between accounts which compromise the Commonwealth Public Account and those which are not intended to form part of the Commonwealth Public Account and validates the existence of the latter accounts.

Clause 56 - Delegation by Minister

This clause amends section 70A to empower the Minister to give binding directions as to the exercise of a delegation granted by him.

PART VII - AMENDMENTS OF THE AUSTRALIAN
ANTARCTIC TERRITORY ACT 1954

Clause 57 - Principal Act

Formal

Clause 58 - Tabling of Ordinances in Parliament

The amendments are similar in effect, mutatis mutandis, to those made by clause 4 to section 48 of the Acts Interpretation Act 1901 in relation to regulations.

PART VIII - AMENDMENTS OF THE AUSTRALIAN
CAPITAL TERRITORY SUPREME COURT ACT 1933

Clause 59 - Principal Act

Formal

Clause 60 - Interpretation

Clause 61 - Establishment of Supreme Court

Clause 62 - Appointment and tenure of Judges

Clause 63 - Acting Chief Justice

Clause 64 - Arrangement of business of Court

Clauses 60, 61, 62, 63 and 64 amend sections 5, 6, 7, 7A and 7B respectively of the Principal Act to substitute the words "Chief Justice" for "Chief Judge" wherever occurring.

Clause 65 - Salary and allowances of Judges

Paragraph (a) of this clause substitutes the words "Chief Justice" for "Chief Judge" in sub-section 8B(1) of the Principal Act.

Paragraph (b) inserts new sub-sections 8B(5) and 8B(6).

New sub-section 8B(5) provides that, subject to sub-section (6), a person who holds office as a Judge of the Court by virtue of an appointment that took effect while he was a Judge (including the Chief Judge) of the Federal Court of Australia is not entitled to receive the salary or annual allowances of a Judge of the Court while he continues to hold office both as a Judge of the Court and as a Judge of the Federal Court of Australia.

The effect of this sub-section is that a Federal Court Judge does not become entitled, by appointment to the Supreme Court of the Australian Capital Territory, to receive double salary.

New sub-section 8B(6) provides that in the case of a Judge of the Supreme Court to whom sub-section (5) applies, if the salary or annual allowance to which he would be entitled as a Judge of the Court if sub-section (5) were not applicable to him exceeds the salary or annual allowance by which he is remunerated as a Judge of the Federal Court of Australia, he is entitled to receive an additional amount by way of salary or additional allowance equal to the excess.

This sub-section ensures that, notwithstanding the provision in sub-section (5) preventing entitlement to double salary, where the salary or allowances payable to a Judge of the Court exceeds the salary and allowances payable to a Judge of the Federal Court of Australia, a person who holds office both as a Judge of the Court and as a Judge of the Federal Court of Australia is entitled to the higher salary or allowances.

Clause 66 - Oath of allegiance and office by Judge

This clause amends section 10 of the Principal Act by substituting the words "Chief Justice" for "Chief Judge" wherever occurring.

Clause 67 - Rules of Court

This clause amends section 28 of the Principal Act by omitting sub-sections (3), (4) and (4A) and substituting a new sub-section (3) providing that sections 48, 49 and 50 of the Acts Interpretation Act 1901, which relate to the Parliamentary scrutiny of regulations, will apply to Rules of Court.

Clause 68 - Seal

This clause amends section 47 of the Principal Act by substituting the words "Chief Justice" for "Chief Judge".

Clause 69 - Transitional provisions

Sub-clause (1) of this clause provides for the person who held office as Chief Judge of the Australian Capital Territory Supreme Court immediately before the commencement of the section to hold office after the commencement of the section as Chief Justice of the Court.

Sub-clause (2) provides that a reference in any Act or in any instrument to the Chief Judge of the Australian Capital Territory Supreme Court shall, in relation to any act or thing done or to be done after the commencement of this clause, be read as a reference to the Chief Justice of the Court.

Sub-clause (3) ensures that references in Acts of the Parliament to a Judge of a federal court will continue to include a reference to the Chief Justice of the Australian Capital Territory Supreme Court.

PART IX - AMENDMENTS OF THE AUSTRALIAN SHIPPING COMMISSION
ACT 1956

Clause 70 - Principal Act

Formal

Clause 71 - Schedule

This clause amends the Schedule to the Principal Act by omitting the reference to the Beaches, Fishing Grounds and Sea Routes Protection Act 1932. That last-mentioned Act is to be repealed by the Environment Protection (Sea Dumping) Act 1981, and, when the Environment Protection (Sea Dumping) Act 1981 is brought into operation, that reference in the Schedule will become unnecessary.

This Part is, by sub-clause (2) of clause 2 of this Bill, to come into operation or to be deemed to have come into operation, on the day on which the Environment Protection (Sea Dumping) Act 1981 comes into operation.

PART X - AMENDMENTS OF CERTAIN BOUNTY ACTS

Clause 72 - Amendments of certain Bounty Acts

Paragraph (1) of this clause amends certain Bounty Acts in the manner specified in Schedule 1 of this Bill. The effect of the amendments is that returns relating to certain bounties paid are to be made on a financial year basis rather than other periods specified in the relevant Acts as at present. Thus, the effect is that there will be no returns straddling financial years as at present.

Paragraph (2) of this clause has the effect that the first return to be made on a financial year basis is for the first bounty period beginning after 30 June 1982.

Paragraph (3) of this clause provides that a return under the new provision is not required to include particulars of any bounties that were included in any previously furnished return.

Paragraph (4) of this clause substitutes the word "paid" for the word "payable" in the sections of Bounty Acts specified in Schedule 2 of this Bill. This will mean that returns after 30 June 1982 will only show the amount of bounty actually paid in a financial year.

PART XI - AMENDMENTS OF THE CENSUS AND STATISTICS
AMENDMENT ACT (NO.2) 1981

Clause 73 - Principal Act

Formal

Clauses 74 and 75

These clauses make drafting amendments to the Census and Statistics Amendment Act (No. 2) 1981.

This Part is, by sub-clause (3) of clause 2 of this Bill, to come into operation, or to be deemed to have come into operation, on the date of commencement of the Principal Act.

PART XII - AMENDMENT OF THE CHRISTMAS ISLAND
ACT 1958

Clause 76 - Principal Act

Formal

Clause 77 - Tabling of Ordinances in Parliament

The amendments are similar in effect, mutatis mutandis, to those made by clause 4 to section 48 of the Acts Interpretation Act 1901 in relation to regulations.

PART XIII - AMENDMENTS OF THE COCOS (KEELING)
ISLANDS ACT 1955

Clause 78 - Principal Act

Formal

Clause 79 - Laying of Ordinances before the Parliament

The amendments are similar in effect, mutatis mutandis, to those made by clause 4 to section 48 of the Acts Interpretation Act 1901 in relation to regulations.

PART XIV - AMENDMENTS OF THE COMMONWEALTH TEACHING
SERVICE ACT 1972

Clause 80 - Principal Act

Formal

Clause 81 - Officers

This clause substitutes a new sub-section 20(5) in the Principal Act which permits a determination made under sub-section 20(4) in relation to the terms and conditions of officers to make provision for and in relation to a matter by applying, adopting or incorporating, with or without modification, any of the provisions of a determination made under section 82D of the Public Service Act 1922 by making it clear that the determination under section 82D can be the determination as in force at a particular time or as in force from time to time.

New sub-section 20(5) also permits a determination made under sub-section 20(4) of the Principal Act to make similar use of another determination made under that sub-section or of a determination made under sub-section 23(4).

Clause 82 - Employees

This clause substitutes a new sub-section 23(5) in the Principal Act. The new sub-section has the same effect in relation to determinations in respect of employees as the amendment to sub-section 20(5) above has in relation to determinations in respect of officers.

Clause 83 - Promotions Appeal Boards

Drafting amendment.

This clause is, by sub-clause (4) of clause 2 of this Bill, deemed to have come into operation on 10 August 1981.

PART XV - AMENDMENTS OF THE COMPANIES ACT 1981

Sub-clause (5) of clause 2 of this Bill provides that this Part shall come into operation on the day on which the Principal Act comes into operation.

Clause 84 - Principal Act

Formal

Clause 85 - Investigation of certain matters

The National Companies and Securities Commission (NCSC) is empowered to inspect the books of any company that is required by the Principal Act to be kept and is also empowered to require the production of books relating to the affairs of a corporation. (Principal Act, ss. 11, 12). A magistrate may also issue a warrant for the seizure of books required to be produced (s. 13).

This clause inserts a new section 16A providing that where the NCSC has reason to suspect that a person has committed an offence under a provision of the Principal Act it will be able to investigate the matter. This capacity to investigate will also extend to suspected offences against the Companies (Acquisition of Shares) Act 1980 by virtue of the operation of section 5 of that Act and of section 12 of the Companies (Acquisition of Shares) Amendment Act (No. 2) 1981. The effect of those 2 provisions is that the Companies (Acquisition of Shares) Act is incorporated and read as one with the relevant companies legislation. In the ACT the relevant companies legislation is the Companies Ordinance 1962 until the commencement of operation of the Principal Act.

Clause 86 - Cancellation or suspension of registration

Persons seeking to practise as either auditors or liquidators must register with the NCSC (Principal Act, Division 2 of Part II). Such registration may be suspended or cancelled by any of the Companies Auditors and Liquidators Disciplinary Boards established in the ACT and the six States (see Principal Act, s. 27 as to the functions of the Boards). Separate legislation establishing these Boards will be enacted in each State. It is anticipated that the ACT Board will be created by Ordinance.

Under these amendments to section 27 of the Principal Act, the disciplinary boards will be able to summon persons to give evidence and produce documents at hearings, and to require evidence to be given on oath or affirmation. These powers will be similar to those conferred on existing Companies Auditors Boards by sub-section 9(10) of the Companies Acts of the States which are parties to the Interstate Corporate Affairs Agreement.

In addition, the amendments create offences for interrupting Board hearings or otherwise acting in contempt of the Board.

Clause 87 - Interpretation

Section 38(1) of the Principal Act allows for the reservation of a name for a company unless that name is rejected by the NCSC on grounds set out in the section.

Paragraph (a) of this clause will enable the Ministerial Council to review decisions taken by the NCSC with

respect to such names under paragraphs 38(1)(a) (b) or (c) of the Principal Act. The amendment will bring the provision into line with the Companies Acts in force in the States which are parties to the Interstate Corporate Affairs Agreement.

Paragraph (b) of this clause inserts a new sub-section (5) which will make it clear that the only avenue of appeal for a review of a decision by the NCSC under section 38 is to the Ministerial Council and not to a court under section 537 of the Principal Act.

Clause 88 - Alteration of provisions of memorandum

This amendment of section 73 of the Principal Act makes it clear that it is only a special resolution effecting an alteration to the memorandum with respect to the objects or powers of the company which is to be lodged with the NCSC not before the expiration of 21 days after the passing of the resolution or before any appeal to the court has been considered.

Clause 89 - Copies of memorandum and articles

This amendment of section 79 of the Principal Act provides that companies will now be required to provide copies of the memorandum and articles of a company requested by shareholders within 21 days of payment or of the date of the request, if no fee is payable. The NCSC may however approve a longer period.

Clause 90 - Application by recognized company for registration under Division

Companies, wherever incorporated, can apply to transfer their "home jurisdiction" to a State or Territory which is a participating jurisdiction under the co-operative

companies and securities scheme. A company incorporated in a participating jurisdiction must apply to the NCSC in both the State or Territory in which it is currently incorporated and in the State or Territory of its proposed domicile (Principal Act, ss. 83, 84).

This amendment of section 84 provides that a company registered in another jurisdiction and making application for registration in the ACT will need to provide details of the proposed registered office of the company in the Territory.

Clause 91 - Application by foreign company for registration under Division

Foreign companies applying to transfer incorporation to a participating jurisdiction are to required to notify the NCSC in that State or Territory of their proposed registered office. This amendment of section 85 of the Principal Act gives effect to this requirement in the ACT.

Clause 92 - Redeemable preference shares

The clause amends section 120(8) of the Principal Act by providing that details of the redemption of any preference share are to be required on the prescribed form. The details proposed are -

- . the shares redeemed;
- . the nominal value of the shares redeemed;
- . whether they are redeemed out of profits or the proceeds of a fresh issue of shares.

Clause 93 - Commission to be informed of special rights carried by, or division or conversion of, shares

This amendment to section 124(1) of the Principal Act requires a prescribed form to be used for the statement required relating to special rights carried by shares. The form is to cover -

- . the nominal value of each share;
- . the names of the holders of the shares; and
- . the number and classes of shares.

Clause 94 - Company financing dealings in its shares, etc.

The amendment corrects a cross referencing error in sub-section 129(10) of the Principal Act.

Clause 95 - Register of options

This clause inserts new sub-sections 131(4) and (5) in the Principal Act which will make it clear that the register may be inspected or copies obtained without charge. If a charge is made by the company then such a charge is not to exceed the prescribed amount. Copies are to be sent to a person applying for a copy within 21 days of the date of application, if no charge is made, or 21 days of payment of the amount charged whichever is applicable. The NCSC may however approve a longer period.

A new sub-section 131(5A) is also inserted which provides that companies are not required to keep copies of every instrument by which options to take up unissued shares in the company are granted if the options have been granted official quotation by a stock exchange.

Clause 96 - Company to keep register of substantiated shareholders

These amendments of section 143 of the Principal Act are similar to those made to sub-sections 131(4) and (5) by clause 95.

Clause 97 - Powers of Court with respect to defaulting substantial shareholder

Under section 146 of the Principal Act the Supreme Court of the ACT may, on the application of the NCSC, make certain orders in respect of a failure to comply with the obligations of a substantial shareholder relating to notice of his shareholding or changes in his shareholding.

This amendment of section 146 of the Principal Act provides that the Court will be empowered, before considering an application by the NCSC, to grant an interim order pending the determination of the application. The NCSC will not be required to give any undertakings as to damages when seeking an interim order.

Clause 98 - Register of debenture holders and copies of trust deed

These amendments of section 147 of the Principal Act are similar to those made to sub-section 131(4) and (5) by clause 95.

Clause 99 - Branch registers

This amendment of section 148 of the Principal Act, provides that details of every entry in a branch register are to be transmitted to its principal register within 28 days of their entry in the branch register.

Clause 100 - Obligations of borrowing corporation

A typographical error in sub-section 158(17) of the Principal Act is corrected.

Clause 101 - Loss or destruction of certificates

Where a certificate of title to shares, debentures or prescribed interests in a company is lost or destroyed, the company may be required by the owner to issue a duplicate certificate.

This amendment of section 182 of the Principal Act provides that the requirement is to be completed within 21 days of application, if no payment is required, or 21 days of payment. The NCSC may however approve a longer period.

Clause 102 - Charges required to be registered

This is a technical amendment of section 200 of the Principal Act to widen the category of charges that need to be registered to include a "charge on wool".

Clause 103 - Company to keep documents relating to charges and register of charges

This amendment of section 209 of the Principal Act is similar to the amendments of sub-section 131(4) and (5) made by clause 95.

Clause 104 - Registration under Instruments Ordinance 1933

A company which transfers, assigns or gives security over a personal chattel within the meaning of the local bills

of sale legislation is not required to register it under that legislation if it also constitutes a charge that is subject to registration under the companies code whether locally or in any other participating jurisdiction in the co-operative companies and securities scheme. A drafting change is made by this clause in section 211 of the Principal Act to ensure that this intention is given effect.

Clause 105 - Charges created before commencement of this Act

A variety of charges over company property created after the commencement of the Principal Act are required to be registered with the NCSC. This requirement extends to charges existing on property acquired by a company. The registration will determine the priorities to be accorded these registrable charges as against each other.

The new section 215A inserted in the Principal Act by this clause gives effect to the decision that charges created by any company (wherever incorporated) prior to the commencement of the Principal Act and charges over property acquired before the commencement of the Act are to continue to be subject to the registration system operating in each jurisdiction prior to the commencement of the Principal Act, namely a system in which registrable charges not registered within 30 days of creation are void against the liquidator and any creditor of the company.

Determination of priorities between charges registrable under the "old" system vis-a-vis charges registrable under the "new" system will be left to the general law.

Clause 106 - Register of directors' shareholdings, etc.

Clause 107 - Register of directors, principal executive officers and secretaries

These amendments of sections 231 and 238 respectively of the Principal Act are similar to those made to sub-section 131(4) and (5) by clause 95.

Clause 108 - Statutory meeting and statutory report

The directors of a public company issuing its first prospectus must provide members, prior to a statutory meeting of the company, with a report as to the total number of shares allotted, total cash received by the company for the shares allotted, etc.

This amendment of section 239 of the Principal Act will make it necessary for the report to distinguish not only between shares fully and partly paid up otherwise than in cash but also between shares fully or partly paid up in cash.

Clause 109 - Resolutions of exempt proprietary companies

This clause corrects a typographical error in sub-section 250(5) of the Principal Act.

Clause 110 - Lodgment with the Commission, etc., of copies of certain resolutions and agreements

Clause 111 - Inspection of minute books

Clause 112 - Inspection and closing of register

These amendments of section 251, 254 and 257 respectively of the Principal Act are similar to the amendments of sub-section 131(4) and (5) of the Principal Act made by clause 95.

Clause 113 - Branch registers

This amendment of section 262 of the Principal Act has the same effect in relation to branch registers of members as clause 99 above has in relation to branch registers of debenture holders.

Clause 114 - Provisions for facilitating reconstruction and amalgamation of corporations

Where a Supreme Court in one participating jurisdiction under the co-operative scheme makes an order approving a reconstruction or amalgamation of any company or companies and the order affects property in another participating jurisdiction, it may be enforced in relation to that property by the filing of an office copy thereof with the Supreme Court of the latter jurisdiction (Principal Act sub-section 317(4)).

This clause makes a drafting change to ensure that this intention is given effect.

Clause 115 - Functions of committee of management and appointment of deputy official manager

This amendment makes a drafting change in section 357(4) of the Principal Act.

Clause 116 - Liabilities as contributories of present and past members

This amendment corrects a cross-referencing error in paragraph 360(1)(n) of the Principal Act.

Clause 117 - Certain notices to be lodged with Commission

An applicant for the winding-up of a company is required at appropriate times to lodge with the NCSC -

- (a) notice of the application;
- (b) notice of the making of the winding up order; and
- (c) if the application is withdrawn or dismissed, notice of the withdrawal or dismissal (Principal Act, s. 370).

This amendment requires the applicant to indicate the date on which the application was filed, withdrawn or dismissed or the winding-up order made, as the case may be.

Clause 118 - Effect of voluntary winding up

This amendment of section 394 of the Principal Act corrects a spelling error.

Clause 119 - Liquidator's accounts

This amendment of paragraph 422(1)(b) of the Principal Act requires the liquidator of a company to lodge the statement on the position in the winding up in a prescribed form. The proposed form will cover -

- (a) an account of his receipts and payments; and
- (b) a statement of the position in the winding-up.

Both matters will need to be verified by a statement in writing.

Clause 120 - Member of committee not to accept extra benefits

A creditor of a company may apply to the Supreme Court to set aside any arrangement which a member of a committee of inspection may have made to derive a pecuniary benefit from the winding-up of the company or to purchase any property of the company (Principal Act, s. 435).

The effect of this amendment is that a member of the company will also have standing to apply to the Court to set aside such an arrangement.

Clause 121 - Agents

This amendment of section 514 of the Principal Act corrects drafting errors.

Clause 122 - Notice to be filed where documents, etc., altered

This amendment of section 515 of the Principal Act requires notification of a change of name of an agent.

Clause 123 - Service of documents on company

This amendment of section 513 of the Principal Act provides for some required cross-references.

Clause 124 - Address of registered office, principal office, etc.

This amendment of section 530A of the Principal Act allows for notification of a proposed registered office.

Clause 125 - Continuing offences

This clause corrects a typographical error in sub-section 571(4) of the Principal Act.

Clause 126 - Power of Court to prohibit payment or transfer of moneys, securities or other property

The Supreme Court is empowered under section 573 of the Principal Act to prohibit a person subject to investigation or to legal proceedings from transferring his property out of the ACT or Australia.

This amendment will allow the Court to grant an interim order before considering an application of the NCSC under section 573, pending the determination of the application. When the NCSC applies for an interim order, it will not be required to give any undertakings as to damages.

Clause 127 - Injunctions

This amendment corrects a typographical error in sub-section 574(1) of the Principal Act.

Clause 128 - Schedule 1

Schedule 1 of the Principal Act sets out the ACT Ordinances to be repealed when the Principal Act comes into operation.

This amendment updates the list by adding the Companies (Amendment) Ordinance (No. 2) 1980 and the Companies (Amendment) Ordinance 1981.

PART XVI - AMENDMENTS OF THE COMPANIES
(ACQUISITION OF SHARES) ACT 1980

Clause 129 - Principal Act

Formal

Clause 130 - Provisions relating to acquisition and disposal of, and entitlement to, shares, and associated persons

For the purposes of the Principal Act, the shares to which a person is entitled include those in which he or any of his associates has a relevant interest, except where the person is a nominee corporation approved by the NCSC by a certificate in force under sub-section 7(8) of the Principal Act.

This amendment to sub-section 7(3) makes reference to a certificate in force under a provision of a law of a participating State or Territory that corresponds to sub-section 7(8) of the Principal Act. This will mean that once a nominee corporation has been declared to be an approved nominee corporation under the law of its home jurisdiction it has equivalent status under the laws of the other participating jurisdictions.

Clause 131 - Miscellaneous provisions relating to orders

Section 49 of the Principal Act contains general provisions relating to orders which the Supreme Court of the ACT may make under the Act.

This clause inserts a new sub-section (2A) under which the Court will be empowered to grant an interim order pending the determination of an application made to the Court for an order under one of the following provisions of the Act:-

- Section 45 (Orders where prohibited acquisitions take place)
- Section 47 (Orders to protect rights under take-over schemes or announcements)
- Section 48 (Court may excuse contravention or non-compliance due to inadvertence, etc.)
- Section 57 (Power to exempt from compliance with Act)
- Section 60 (Power of Commission to declare acquisition of shares or other conduct to be unacceptable).

Such interim orders are to be taken to be an order under sections 45, 47, 48, 57 or 60, as the case may be, for purposes of sub-sections 49(3), (7) and (8) with result that:

- (a) the Court will also be empowered to include in the interim order such ancillary or consequential provisions as it thinks just;
- (b) the Court will also be empowered to rescind, vary or discharge the interim order or suspend its operation; and
- (c) contravention or failure to comply with an interim order will be an offence.

This clause also inserts a new sub-section 49(2B) providing that, where the NCSC applies for an interim order, it will not be required to give any undertakings as to damages.

Clause 132 - Power of Commission to declare acquisition of shares or other conduct to be unacceptable

Under section 60 of the Principal Act, the NCSC is empowered within 14 days to declare that, for the purposes of that Act, a specified acquisition is an unacceptable acquisition and that specified conduct (once a Part A statement has been served, or a take-over announcement has been made) is unacceptable conduct. Before the NCSC makes a declaration under section 60 it must be satisfied of certain matters set out in sub-section 60(7) or sub-section (7A).

Paragraph (a) of this clause amends sub-sections 60(1), (3) and (4) to extend the relevant time periods from 14 days to 90 days. This allows the NCSC to make a declaration under section 60 within 90 days after the acquisition of shares in a company or within 90 days after specified conduct has been engaged in by a specified person in relation to the shares in, or the affairs of, a target company.

Paragraph (b) of this clause amends sub-section 60(5) to allow the target company or a member of the target company to apply to the Court for an order to protect the rights of any person affected by unacceptable conduct. Previously, only the NCSC had the right to apply for such an order.

Paragraphs (c) and (d) of this clause substitute new paragraphs (7)(d) and (7A)(d) in section 60. In future, before the NCSC makes a declaration under section 60 it will have to be satisfied, amongst other things, that shareholders of the company concerned did not have reasonable and equal opportunities to participate in any benefits accruing in connection with the acquisition or proposed acquisition.

Clause 133 - Power of Commission to make certain orders

This clause inserts a new section 60A which provides that where the NCSC has declared an acquisition of shares or other conduct to be unacceptable under section 60 it may make certain orders by written instrument published in the Gazette. The nature of additional orders that may be made are set out in the new sub-section 60A(1). The orders will be one or more of the following:

- (i) an order restraining the disposal or acquisition of an interest in specified shares;
- (ii) an order restraining the exercise of voting rights;
- (iii) an order directing the registered holder of shares subject to an order under this clause to notify that order to any person entitled to exercise a right to vote attached to those shares;
- (iv) an order directing a company not to make a payment in respect of those shares (except in a winding up);
- (v) directing a company not to register a transfer;
- (vi) directing a company not to issue shares to a person who holds shares in it.

Other features are:

The NCSC will be able to vary or revoke an order (new sub-section 60A(2)).

- A copy of an order shall be served on any person to whom the order is directed and on a company where it relates to specified shares in that company (new sub-section 60A(3)).
- A person aggrieved by an order will be able to apply to the Supreme Court for its variation or revocation and the Court will be able to do either if satisfied it is reasonable to do so (new sub-section 60A(4)).
- It will be an offence not to comply with an order of the NCSC (new sub-section 60A(5)).
- Where an offence is committed by a company, each officer of the company in default is guilty of an offence (new sub-section 60A(6)).
- An order will cease to operate after 30 days, or on the day specified in the order, whichever is the earlier (new sub-section 60A(7)).
- The NCSC may not make an order unless the person to whom it is directed has had an opportunity to be heard and to make submissions (new sub-section 60A(8)).
- The NCSC may not make an order in reliance on a declaration made by it if -
 - (i) an application has been made to the Court for an order under s. 45 of the Principal Act;

- (ii) an application has been made to the Court under sub-s. 60(5) of the Principal Act for an order to protect the rights of any person affected by unacceptable conduct; or
- (iii) the Court has revoked the order. (New sub-section 60A(9))

PART XVII - AMENDMENTS OF THE CONSULAR PRIVILEGES
AND IMMUNITIES ACT 1972

Clause 134 - Principal Act

Formal

Clause 135 - Provisions relating to exemption from customs
duties

The amendments made to section 6 of the Principal Act by this clause increase from 2 years to 3 years the period within which persons entitled to customs duty exemptions under the Consular Privileges and Immunities Act may not dispose of imported motor vehicles without restriction. The amendments also define "motor vehicle".

PART XVIII - AMENDMENTS OF THE
COPYRIGHT ACT 1968

Clauses 136 - Principal Act

Formal

Clause 137 - Interpretation

This clause inserts a new definition defining "Judge", for the purposes of Part VI of the Principal Act, as a Judge of a federal court or of a State or Territory Supreme Court, or a person who has the same designation and status as a Judge of a federal court. It also amends the definition of "member", for the purposes of Part VI, so that it will mean the President, the Deputy President or other member of the Copyright Tribunal.

Clause 138 - Constitution of Tribunal

This clause substitutes a new section 138 in the Principal Act to the effect that the Tribunal established under the existing section is to continue in existence but is to consist of a President, Deputy President, and such other members as are appointed. Sub-clause (2) preserves the existing terms of appointment of the existing President, Deputy President and members of the Tribunal.

Clause 139 - Qualifications of members

This clause substitutes a new section 140 in the Principal Act providing that a person shall not be appointed as -

- (a) the President or Deputy President of the Tribunal unless he is a Judge of the Federal Court of Australia; and
- (b) an other member unless he -
 - (i) is or has been a Judge (as defined under clause 138);
 - (ii) is an enrolled legal practitioner of 5 or more years standing;
 - (iii) has had at least 5 years' high level experience in industry, commerce, business public administration, education or a profession;
 - (iv) has a degree or equivalent qualification in law, economics or public administration; or
 - (v) has, in the opinion of the Governor-General, special knowledge or skill relevant to the duties of a member.

Clause 140 - Tenure of office

This clause inserts 3 new sub-sections in section 141 of the Principal Act to provide that a member of the Tribunal who is a Judge is to cease to hold office as a member if he ceases to be a Judge (but is eligible for re-appointment as a non-judicial member), and that a non-judicial member may be dismissed for incapacity and shall be dismissed if he is guilty of misbehaviour or becomes bankrupt.

Clause 141 - Acting President

This clause repeals sub-section 142(1) of the Principal Act, which will be rendered redundant by proposed new section 138 (clause 138 above), and amends sub-section 142(2) to affirm that the Deputy President of the Tribunal, when acting as President, may exercise and shall perform all the powers, functions and duties of the President.

Clause 142 - Remuneration and allowances

This clause substitutes a new section 143 in the Principal Act to affirm that the remuneration of members of the Tribunal is to be subject to determination by the Remuneration Tribunal, and that they are to receive such allowances as are prescribed by regulations. The new section also provides that these provisions are subject to the Remuneration Tribunals Act 1973 and that a member who is a Judge is not to receive remuneration as a member.

Clause 143 - Removal from office for failure to disclose interest

This clause amends section 144B of the Principal Act to prevent a Judge from being liable to dismissal as a member of the Tribunal for failure to disclose a conflict of interest as required under section 144A.

Clause 144 - Sittings of the Tribunal

This clause substitutes a new section 146(8) in the Principal Act to provide that, where one or more members of a Tribunal constituted by 2 or more members cease to be members or cease to be available, the hearing being conducted by the

Tribunal will be able to be continued if the remaining member or members is or include the President or Deputy President of the Tribunal.

Clause 145 - President to arrange business of Tribunal

A formal amendment to section 147 of the Principal Act.

PART XIX - AMENDMENTS OF THE CORAL SEA ISLANDS ACT 1969

Clause 146 - Principal Act

Formal

Clause 147 - Tabling of Ordinances

The amendments are similar in effect, mutatis mutandis, to those made by clause 4 to section 48 of the Acts Interpretation Act 1901 in relation to regulations.

PART XX - AMENDMENTS OF THE DIPLOMATIC PRIVILEGES
AND IMMUNITIES ACT 1967

Clause 148 - Principal Act

Formal

Clause 149 - Limitation on exemption from customs duties

The amendments made to section 8 of the Principal Act by this clause increase from 2 years to 3 years the period within which persons entitled to customs duty exemptions under the Diplomatic Privileges and Immunities Act may not dispose of imported motor vehicles without restriction. A definition of "motor vehicle" is also inserted.

PART XI - AMENDMENTS OF THE ENVIRONMENT
PROTECTION (IMPACT OF PROPOSALS) ACT 1974

Clause 150 - Principal Act

Formal

Clause 151 - Orders to be notified and may be disallowed

The amendments are similar in effect, mutatis
mutandis, to those made by clause 4 to section 48 of the Acts
Interpretation Act 1901 in relation to regulations.

PART XXII - AMENDMENTS OF THE ENVIRONMENT
PROTECTION (NUCLEAR CODES) ACT 1978

Clause 152 - Principal Act

Formal

Clause 153 - Codes of practice to be notified and may be disallowed

This clause makes it clear that where a notice of motion for disallowance of an order is pending before the Senate when the House of Representatives is dissolved or prorogued, the order in question shall be deemed to have been tabled in the Senate on the first subsequent sitting day of the Senate.

Part XXIII - AMENDMENT OF THE FEDERAL
COURT OF AUSTRALIA ACT 1976

Clause 154 - Principal Act

Formal

Clause 155 - Rules of Court

) This clause amends section 59 of the Principal Act by
repealing the present provisions for Parliamentary scrutiny of
rules of court and inserting a new sub-section (4) providing
) that sections 48, 49 and 50 of the Acts Interpretation Act
1901, which relate to the Parliamentary scrutiny of
regulations, will apply to Rules of the Federal Court.

PART XXIV - AMENDMENTS OF THE HEARD ISLAND
AND McDONALD ISLANDS ACT 1953

Clause 156 - Principal Act

Formal

Clause 157 - Laying of Ordinances before the Parliament

The amendments are similar in effect, mutatis mutandis, to those made by clause 4 to section 48 of the Acts Interpretation Act 1901 in relation to regulations.

PART XXV - AMENDMENT OF THE IMMIGRATION
(UNAUTHORIZED ARRIVALS) ACT 1980

Clause 158 - Principal Act

Formal

Clause 159 - Restrictions on disembarking from certain vessels

) This clause corrects a drafting error in section 8 of
the Principal Act.

)

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PART XXVI - AMENDMENTS OF THE JUDICIARY ACT 1903

Clause 160 - Principal Act

Formal

Clause 161 - Application of sections 48, 49 and 50 of the
Acts Interpretation Act 1901

This clause repeals the present section 87 and provides that sections 48, 49 and 50 of the Acts Interpretation Act 1901, which relate to the Parliamentary scrutiny of regulations, will apply to Rules of the High Court.

PART XXVII - AMENDMENT OF THE MINERALS
(SUBMERGED LANDS) (REGISTRATION FEES) ACT 1981

Clause 162 - Principal Act

Formal

Clause 163 - Imposition of registration fees

) This clause amends paragraph 4(5)(a) of the Principal Act by replacing the reference to the "Companies Ordinance 1962" etc. by a reference to the "Companies Act 1981".

) Part XXVII is, by sub-clause (6) of clause 2 of this Bill, to come into operation on the day on which the Companies Act 1981 comes into operation or the day on which the Minerals (Submerged Lands) (Registration Fees) Act 1981 comes into operation, whichever is later.

)

)

PART XXVIII - AMENDMENTS OF THE NORFOLK ISLAND ACT 1979

Clause 164 - Principal Act

Formal

Clause 165 - Laying of certain Ordinances before the Parliament

The amendments are similar in effect, mutatis mutandis, to those made by clause 4 to section 48 of the Acts Interpretation Act 1901 in relation to regulations.

PART XXIX - AMENDMENT OF THE NURSING
HOMES ASSISTANCE ACT 1974

Clause 166 - Principal Act

Formal

Clause 167 - Moneys from which payments under this Act to be
made

This clause updates the reference to the National
Welfare Fund Act 1943 in section 36 of the Principal Act.

PART XXX - AMENDMENTS OF THE PARLIAMENTARY
ALLOWANCES ACT 1952

Clause 168 - Principal Act

Formal

Clause 169 - Allowances to Senators

Deletes sub-sections 4(1) and (2) of the Principal Act (allowances are now determined by the Remuneration Tribunal).

Clause 170 - Allowances to member of the House of Representatives

Deletes sub-sections 5(1) and (2) of the Principal Act (allowances are now determined by the Remuneration Tribunal).

Clause 171 - Allowances to President, Speaker and Chairmen of Committees

This clause amends section 6 of the Principal Act to provide that a Presiding Officer who is deemed to continue to be Presiding Officer by virtue of sections 3, 4 or 6 of this Parliamentary Presiding Officers Act 1965, shall continue to receive the allowance appropriate to that office, until a successor is chosen. Sections 3, 4 and 6 of the 1965 Act deal respectively with the resignation of a Presiding Officer, the expiration of the term of service of the President of the Senate and dissolution of the House concerned.

The amendment also provides for the circumstances where a Chairman of Committees is deemed to be the Presiding

Officer, by virtue of sections 5 or 7 of the Parliamentary Presiding Officers Act 1965 - i.e. where the Presiding Officer or the person deemed to continue to be Presiding Officer is prevented from exercising his functions by death, absence from the Commonwealth or illness. In those circumstances, the Chairman shall receive an allowance at the Presiding Officer level. This is, however, subject to the condition that he is not entitled to an allowance as Chairman of Committees in the relevant period.

The amendment further provides for the situation in which the former Chairman of Committees is deemed to be President by virtue of Section 5 of the Parliamentary Presiding Officers Act 1965 - i.e. where the Chairman of Committees has died, is absent from the Commonwealth or is incapacitated by illness.

Clause 172 - Repeal

Deletes sub-sections 7, 7A, 8, 8A, 9, 10, 11, 11A and 12 of the Principal Act (allowances are now determined by the Remuneration Tribunal).

PART XXXI - AMENDMENTS OF THE PATENTS ACT 1952

Clause 173 - Principal Act

Formal

Clause 174 - Interpretation

Inserts a definition of "patent application" in section 6 of the Principal Act.

Clause 175 - References to prescribed court

Clarifies the jurisdiction of prescribed courts for the purpose of section 6A of the Principal Act.

Clause 176 - Crown to be bound

This clause extends section 7 of the Principal Act to make the Act binding on the Crown in right of the Northern Territory and of Norfolk Island (in addition to the Crown in right of the Commonwealth and of the States).

Clause 177 - Priority date of complete specification

This clause inserts a new sub-section 45(3A) in the Principal Act. This is necessary to guarantee priority rights of persons who made divisional applications under section 49A of the Principal Act before that section was repealed and substituted by the Patents Amendment Act 1979.

By sub-clause (7) of clause 2 of this Bill, this amendment is to be deemed to have come into operation immediately after the commencement of section 17 of the Patents Amendment Act 1979.

Clause 178 - Voluntary division of patents

Sub-clause (1) of this clause amends section 51 of the Principal Act, which relates to the making of divisional applications (e.g. where an earlier application is not allowable as being in respect of two or more different inventions). The amendment allows the more liberal requirements currently applying before acceptance of the earlier application to obtain until 3 months after advertisement of acceptance of a standard application or until 3 months after advertisement of sealing of a petty patent (new sub-section 51(5A)).

Sub-clause (2) of this clause deals with the application of the amendments of section 51 to further applications for a standard patent or a petty patent.

Clause 179 - Infringement action may be instituted in a prescribed court

Clarifies the jurisdiction of courts for the purpose of section 113 of the Principal Act.

Clause 180 - Declaration as to non-infringement

Deals with the jurisdiction of courts for the purpose of section 120 of the Principal Act.

Clause 181 - Groundless threats of legal proceedings

Clarifies the jurisdiction of courts for the purposes of section 121 of the Principal Act.

Clause 182 - Interpretation

This clause inserts a new definition in section 132 appearing in Part XIV of the Principal Act. Part XIV relates to the use of inventions for the services of the Crown. The new definition extends the operation of these provisions to the Crown in right of the Northern Territory and of the Administration of Norfolk Island. The amendment takes the form of repealing the existing section 132 and re-enacts it with the new definition.

Clause 183 - Regulations with respect to the professional conduct of patent attorneys

This clause introduces a new section 135A into the Principal Act. The new section allows for a wider range of disciplinary control of patent attorneys under the regulations, as has been requested by the profession, than is presently permitted by section 135.

Clause 184 - Jurisdiction of prescribed courts

Clause 185 - Transfer of proceedings

Clause 186 - Appeals

These clauses clarify the jurisdiction or procedures of prescribed courts for purposes of section 146, 147 and 148 of the Principal Act respectively.

Clause 187 - Application for review

This clause adds to section 151 of the Principal Act provisions allowing for applications for review by the Administrative Appeals Tribunal of decisions of the Commissioner under sections 59 and 82.

Clause 188 - Fees

This clause amends section 176 of the Principal Act to allow the making of regulations to prescribe graduated scales of fees depending on the time at which an action is done, and to prescribe for remission of fees.

Clause 189 - Regulations

This clause enables the making of regulations requiring persons to furnish statutory declarations in proceedings under the Act, not being proceedings in a court. This is to overcome deficiencies in this regard in the present regulations.

Clause 190 - Formal amendments

The formal amendments made by this clause are set out in Schedule 3 of the Bill.

Clause 191 - Transitional

This clause contains transitional provisions guaranteeing the rights of applicants who made divisional applications under repealed section 49A of the Principal Act, or who had a right to lodge an application under that section at the time of its repeal. Section 49A was repealed and substituted by the Patents Amendment Act 1979.

By sub-clause (7) of clause 2 of this Bill, sub-clause 193(1) is to be deemed to have come into operation immediately after the commencement of section 17 of the Patents Amendment Act 1979.

By sub-clause (8) of clause 2 of this Bill, sub-clauses 193(2) to 193(12) are to commence on a date fixed by Proclamation.

Clause 192 - Compensation

This clause provides for compensation for persons who suffer loss of property rights by virtue of the operation of the Bill. This is intended to protect a third party who is deprived of property by virtue of the transitional provisions in clause 193. Compensation might be expected, if any case arises, to be by way of a licence to make use of a patented invention. It is necessary to include this provision because of paragraph 51(xxxi) of the Constitution.

PART XXXII - AMENDMENTS OF THE PUBLIC SERVICE ACT 1922

Clause 193 - Principal Act

Formal

Clause 194 - Determination of matters by reference to other instruments

Section 82E of the Principal Act permits determinations made by the Public Service Board under section 82D in relation to terms and conditions of officers and employees to refer to the provisions of any Act, regulations, rules and award as in force at a particular time or as in force from time to time.

The amendment of section 82E made by this clause will now permit reference to be made to another determination made by the Public Service Board under section 82D as in force at a particular time or as in force from time to time.

Clause 195 - Regulations

This clause amends section 97 of the Principal Act to permit regulations made under the section to make provisions for or in relation to any matter by referring to determinations made by the Public Service Board under section 82D as in force at a particular time or as in force from time to time.

Clause 196 - Amendment of Schedule 3

The clause amends the reference to the title of Director-General of Social Security and recognises the

continuance of the office holder. The amendment complements amendments to be made to the Social Services Act 1947 by the Social Services Legislation Amendment Bill 1982.

This clause is, by sub-clause (9) of clause 2 of this Bill, to come into operation on a date fixed by Proclamation.

PART XXXIII - AMENDMENTS OF THE REMUNERATION
AND ALLOWANCES ACT 1973

Clause 197 - Principal Act

Formal

Clause 198 - Salaries and allowances of certain office holders

This clause amends section 13 of the Principal Act by providing that the President of the Administrative Appeals Tribunal receives an annual allowance in respect of that position over and above his annual allowance as a Judge of the Federal Court.

It also provides that the section does not apply to the Director-General of Security unless that person is a Judge of a court created by the Parliament.

Clause 199 - Travelling allowances payable to holders of certain offices

The clause amends that sub-section 13C(1) of the Principal Act to provide that the section does not apply to the Director-General of Security unless he is a Judge of a court created by the Parliament.

Clause 200 - Schedule

This clause deletes references in the Schedule to the President of the Administrative Appeals Tribunal.

PART XXXIV - AMENDMENTS OF THE ROYAL
COMMISSIONS ACT 1902

Clause 201 - Principal Act

Formal

Clause 202 - Statements made by witness not admissible in
evidence against him

This clause inserts a new section 6DD in the Principal Act which reflects the intention that all statements and disclosures by a witness before a Royal Commission would not be admissible against him in any court proceedings. As it is presently worded, the provision would appear to limit this protection to statements and disclosures made by a witness to questions put to him by a Royal Commissioner.

Clause 203

This clause inserts new sections 7A, 7B and 7C into the Principal Act.

The effect of new section 7A is that, where Australia has entered into appropriate arrangements with a foreign country for a Royal Commission to be given an authority under the law of that foreign country to take evidence in relation to the subject matter of its Australian commission, information and evidence obtained pursuant to the authority of the foreign country may be dealt with as if it has been obtained pursuant to the Australian commission. This would, of course, include use of that evidence for the purpose of the Commission's report to the Governor-General.

New section 7B provides that a Royal Commission may take evidence on oath or affirmation outside Australia pursuant to its Australian commission where arrangements in this regard have been made with a foreign country. Evidence so obtained may be dealt with in the same way as evidence obtained by the Royal Commission within Australia.

New section 7C provides the same protection from civil or criminal proceedings in relation to evidence obtained outside Australia as is to be provided by clause 3 in relation to evidence obtained in Australia.

Clause 204 - Evidence of issue of Commission, etc.

This clause inserts new sub-sections 16(2) and (3) in the Principal Act. Machinery provisions are inserted to enable certificates to be issued by appropriate Ministers in relation to any legal proceedings that may arise concerning activities undertaken by a Royal Commission pursuant to proposed new sections 7A and 7B.

PART XXXV - AMENDMENTS OF THE SEAT OF
GOVERNMENT (ADMINISTRATION) ACT 1910

Clause 205 - Principal Act

Formal

Clause 206 - Ordinances

The amendments are similar in effect, mutatis mutandis, to those made by clause 4 to section 48 of the Acts Interpretation Act 1901 in relation to regulations.

PART XXXVI - AMENDMENTS OF THE
SECURITIES INDUSTRY ACT 1980

Clause 207 - Principal Act

Formal

Clause 208 - Interpretation

This clause amends the existing interpretation provisions in section 4 of the Principal Act by providing that a person shall be taken to acquire shares for the purposes of the definition of "dealing" in that section in circumstances where he is taken to acquire shares in a company for the purposes of the share acquisition code.

Clause 209 - Disclosure to Commission

The provisions concerning disclosure to the NCSC of information about dealings in securities are contained in section 12 of the Principal Act.

This clause amends section 12 to provide that a reference in section 12 to an acquisition of securities will now include a reference to an acquisition of shares where a person is taken to acquire shares in a company for the purposes of the share acquisition code.

Clause 210 - Power of Court to make certain orders

Under section 14 of the Principal Act, when it appears to the Supreme Court that a person has committed (or is about to commit) an offence relating to trading in securities or has contravened a condition of a licence or the stock exchange business rules or listing rules, the Court may make various orders on the application of the NCSC or a stock exchange.

This clause amends section 14 to provide that the Court will now have the power to grant an interim order pending the determination of an application made by the NCSC or the stock exchange. Further, it provides that where the NCSC makes an application to the Court for an order under section 14, it will not be required to give any undertakings as to damages.

Clause 211 - Use by dealer of client's moneys

The clause removes any reference in section 67 of the Principal Act to the depositing of money by a client with a dealer in securities.

Clause 212 - Power of Court to restrain dealings with dealer's bank accounts

Section 83 of the Principal Act empowers the Supreme Court to make an order restraining dealing in relation to an account where the NCSC satisfies the Court of various matters.

This clause, as well as making a drafting amendment, amends section 83 to provide that the Court will have the power, before it considers the application of the NCSC, to grant an interim order restraining such dealing pending the determination of the application. When the NCSC applies for an interim order, it will not be required to give any undertakings as to damages.

This amendment is in line with amendments in the Bill to other Acts in the co-operative companies and securities package of legislation.

Clause 213 - Power of Court to prohibit payment or transfer of moneys, securities or other property

The Supreme Court is presently empowered under section 147 of the Principal Act to prohibit a person subject to investigation or to legal proceedings from transferring his property out of the ACT or Australia.

This clause amends section 147 to provide that the Court will be able to grant an interim order before considering an application of the NCSC under section 147, pending the determination of the application. When the NCSC applies for an interim order, it will not be required to give any undertakings as to damages.

PART XXXVII - AMENDMENT OF THE STATUTE
LAW (MISCELLANEOUS AMENDMENTS) ACT 1981

Clause 214 - Principal Act

Formal

Clause 215 - Persons entitled to enrolment and to vote

With the amendment effected by section 32 of the Principal Act, British subject status will be replaced by Australian citizenship as the nationality criterion for enrolment and voting, but British subjects who are not Australian citizens but who were on the Federal roll when section 32 comes into operation will retain their enrolment and voting rights.

This clause amends section 32 to make it clear that the amendment made by section 32 extends to voters on rolls kept for the representation in the Parliament of the ACT and the Northern Territory.

The commencement of this Part is, by sub-clause (10) of clause 2 of this Bill, to be on the date proclaimed under sub-section 2(5) of the Principal Act.

PART XXXVIII - AMENDMENTS OF THE STATUTE
LAW REVISION ACT 1981

Clause 216 - Principal Act

Formal

Clause 217 - Schedule 1

This clause amends Schedule 1 to the Statute Law Revision Act 1981 to correct 2 references in that Schedule to Acts of the Parliament.

These amendments are, by sub-clause (11) of clause 2 of this Bill, to be deemed to have come into operation on 12 June 1981.

PART XXXIX - AMENDMENTS OF THE
STUDENT ASSISTANCE ACT 1973

Clause 218 - Principal Act

Formal

Clause 219 - Title of Principal Act

This clause substitutes a more general long title for the present one which lists the schemes of assistance by name. A change in the long title became necessary because of the need to delete reference to Senior Secondary Scholarships.

Clause 220 - Benefits provided under this Act

This clause amends section 4 of the Principal Act by removing the reference to Senior Secondary Scholarships from the list of benefits provided.

Clause 221 - Interpretation

This clause amends section 5 of the Principal Act by removing a reference to Senior Secondary Scholarships and a definition of "Secondary school" which is relevant only to those Scholarships.

Clause 222 - Repeal of Part II

This clause repeals the redundant Part II of the Principal Act, which provides for Senior Secondary Scholarships.

Clause 223 - Grant of Tertiary Education Assistance

This clause amends section 10 of the Principal Act to provide that the Minister may approve, for the purposes of the Tertiary Education Assistance Scheme (TEAS), part only of a course, in addition to the existing authority in relation to a course as a whole.

Clause 224 - Benefit under Tertiary Education Assistance Grants

This clause amends section 11 of the Principal Act to provide for a wording similar to paragraph 15(d) in relation to Post-graduate Awards to be substituted in place of the specific provision in sub-paragraph 11(b)(iii) in relation to Tertiary Education Assistance. In particular, this will enable regulations to be made which would provide for the payment under TEAS of amounts associated with travel to and from an institution, other than by way of reimbursement of fares.

Clause 225 - Repeal of sections 12 and 13

This clause repeals transitional arrangements for persons who received assistance under the Commonwealth Scholarship Schemes which preceded the TEAS.

Clause 226 - Grant of Post-graduate Awards

This clause amends section 14 of the Principal Act to provide that the Minister may approve for the purposes of Post-graduate Awards part only of a course, in addition to the existing authority in relation to a course as a whole.

Clause 227 - Benefit under Post-graduate Awards

This clause amends section 15 of the Principal Act and is consequential on the proposed amendment of section 14.

Clause 228 - Repeal of section 16

This clause repeals a transitional arrangement for persons who received benefits under the Commonwealth Post-graduate Awards which preceded the present Post-graduate Awards.

Clause 229 - Remuneration and allowances

This clause amends section 19 of the Principal Act to provide for remuneration of members of Student Assistance Review Tribunals to be determined in accordance with the Remuneration Tribunals Act 1973.

Clause 230 - Termination of appointment

This clause amends section 20 of the Principal Act to provide that the Minister shall dismiss a Student Assistance Review Tribunal member who fails to make a disclosure of interest in a proceeding as required by proposed new section 25B.

Clause 231 - Resignation

This clause amends section 21 of the Principal Act to provide the procedure for resigning office and has the effect of removing the present provision that a Student Assistant Review Tribunal member's resignation does not take effect until accepted by the Minister.

Clause 232 - Request for review by Tribunal

This clause adds a new sub-section 23(3) to the Principal Act to allow a person who has requested a review of a decision of an authorized person to withdraw that request. This amendment has been requested by the Chairmen of the Student Assistance Review Tribunals.

Clause 233

This clause adds new sections 25A and 25B to the Principal Act.

Constitution of Tribunal: A Student Assistance Review Tribunal consists of a Chairman and two other members (sub-section 18(2)). Proposed new section 25A enables a hearing to proceed with the Tribunal comprising the Chairman and one member where the other member is unable to sit on the Tribunal. Paragraph 25A(2)(c) requires the consent of the appellant for this arrangement. This amendment has been requested by the Tribunal Chairmen.

Disclosure of interests by members: Proposed new sub-section 25B(1) provides that a Tribunal member shall declare any interest he may have in the proceedings under review, and that the member shall not participate in the review without the consent of the parties to the proceedings. New sub-section 25B(2) enables a Tribunal Chairman to require a Tribunal member who has an interest in the proceedings to withdraw from the proceedings or to make a disclosure to the parties. These amendments are consistent with the Government's experience with other review bodies and the recommendations of the Bowen Report on Public Duty and Private Interest, and are in the interests of appellants.

Clause 234 - Powers of Tribunal with respect to decision under review

This clause makes a consequential amendment of sub-section 26(1) of the Principal Act to allow for the possible effect of the new sub-section 27(5) on section 26.

Clause 235 - Procedure of Tribunal to be informal, etc.

This clause makes a consequential amendment of section 27 of the Principal Act to provide by a new sub-section (5) for the possibility of a Tribunal, which by the new sub-section 25A(1) consists of a Chairman and only one other member, not being able to agree on a decision. In such a case, the review will be conducted again by a normally constituted Tribunal (a Chairman and two other members).

Clause 236 - Hearings to be in public except in special circumstances

This clause repeals section 29 and substitutes new sections 29 and 29A. The new sections follow sections 35 and 39 of the Administrative Appeals Tribunal Act 1975.

Proposed new section 29 provides that in general a hearing shall be held in public but enables a Tribunal to direct that proceedings be held in private or otherwise to safeguard the confidentiality of evidence or documents in relation to a hearing. In exercising their discretion regarding the confidentiality of proceedings, evidence and documents, Tribunals are to follow the principle that these matters should be open to public scrutiny unless the particular circumstances warrant confidentiality.

Proposed new section 29A ensures the reasonable rights of a party to the proceedings to present his case and to be aware of the documents which the Tribunal proposes to consider, subject to the confidentiality provisions of section 29.

Clause 237 - Request for reconsideration or review may be made on behalf of person

This clause adds a new section 30A, to allow a person to seek a reconsideration or a review of a decision of an authorized person on behalf of another person where the other person is unable to make the request himself.
