

1986

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO.2) 1986

EXPLANATORY MEMORANDUM

(This memorandum takes into account amendments made
in the House of Representatives).

(Circulated by authority of the Honourable Lionel Bowen
M.P., Deputy Prime Minister and Attorney-General)

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STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO.2) 1986

General Outline

The amendments made by this Bill have a number of purposes such as the tidying up, correction or updating of legislation. Other amendments implement changes that are of minor policy significance or are of a routine administrative nature. None of the amendments made by this Bill has any significant financial impact. However, the amendments of the Migration Act 1958 are expected to result in a marginal increase in revenue in the long term.

Clause 1 - Short title

Formal

Clause 2 - Commencement

Sub-clause 2(1) provides that, subject to the succeeding special provisions, the Bill shall come into operation on receiving the Royal Assent.

Special provision for the commencement of amendments to specified Acts contained in Schedule 1 is made by sub-clauses 2(2) to 2(8); references to special commencement provisions are made in notes on the relevant provisions. In the absence of any special commencement provisions the amendments will come into force on the day on which Royal Assent is given.

Clause 3 - Amendments of Acts

This clause provides that the Acts specified in Schedule 1 are amended as set out in that Schedule.

Clause 4 - Repeal

This clause provides that the Acts specified in Schedule 2 are repealed.

Clause 5 - Transitional provisions

Sub-clause (1) provides that, unless there is express provision to the contrary, any act done or decision made under the provisions amended or repealed has effect after the amendment or repeal as if it had been done or made pursuant to the provisions as so amended or re-enacted. A specific transitional provision in sub-clause (2) relating to the Migration Act 1958 is referred to in the explanation of the amendments in Schedule 1 to that Act.

Sub-clause (3) provides that sub-clause (1) does not apply to the following Acts:

Ashmore and Cartier Islands Acceptance Act 1933;

Australian Antarctic Territory Act 1954;

Christmas Island Act 1958;

Cocos (Keeling) Islands Act 1955;

Coral Sea Islands Act 1969;

Heard Island and McDonald Islands Act 1953;

Norfolk Island Act 1979;

Seat of Government (Administration) Act 1910.

Clause 6 - Application

Clause 6 contains provisions relating to the application of certain amendments in Schedule 1 of the Bill to the Bankruptcy Act 1966 and the Insurance Act 1973. The provisions are referred to in the explanation of the relevant amendments to those Acts.

SCHEDULE 1

Amendments of Acts

Amendment of the Air Navigation (Charges) Act 1952

Proposed amendment of sub-section 5B(1) ensures that amounts that have been waived or written off under legislation other than the Act are not included as part of the outstanding amount for purposes for dealing with a lien.

Proposed amendment of sub-section 5B(5) clarifies that a number of provisions that apply where a statutory lien has been registered over an aircraft cease to have effect when the lien is removed.

Proposed amendment of sub-section 5B(12) remakes the sub-section with the addition of the power for the Secretary or an authorised officer to direct that a statutory lien cease to have effect.

Amendment of the Ashmore and Cartier Islands Acceptance Act 1933

Sub-section 10(5A) of the Act provides that when an Ordinance is disallowed or deemed to have been disallowed, or becomes void or of no effect, and that Ordinance had repealed an

Ordinance in force in the Territory, then the repealed Ordinance is revived from and including the date of disallowance of the firstmentioned Ordinance or the date on which it became void and of no effect, as the case may be. Proposed amendments to sub-sections 10(5A) and (5B) of the Act will cause it to have the effect that not only repealed Ordinances are revived from and including the date of disallowance, but also any other law in force in the Territory which was repealed by the disallowed or void Ordinance.

Amendment of the Australian Antarctic Territory Act 1954

As in the case of the amendments to the Ashmore and Cartier Islands Acceptance Act 1933, sub-section 12(4A) of the Act provides that when an Ordinance is disallowed or deemed to have been disallowed, or becomes void or of no effect, and that Ordinance had repealed an Ordinance in force in the Territory, then the repealed Ordinance is revived from and including the date of disallowance of the firstmentioned Ordinance or the date on which it became void and of no effect, as the case may be. Proposed amendments to sub-sections 12(4A) and (4B) of the Act provide that not only repealed Ordinances are revived from and including the date of disallowance, but also any other law in force in the Territory which was repealed by the disallowed or void Ordinance.

Amendment of the Australian Capital Territory Supreme Court Act 1933

The proposed amendment of paragraph 28(1)(d) of the Act will enable an ACT Ordinance to permit the Judges of the ACT Supreme Court to make Rules of Court on a particular matter. The Act generally does not enable an Ordinance to permit the making of Rules of Court. This is despite the fact that under the Act, jurisdiction is regularly conferred on the Court by Ordinance and the subordination of Rules of Court to the provisions of Ordinances. The amendment will remove legal doubts that arose recently in two particular cases on whether the current rule-making power would extend to covering all those matters that are appropriate to be dealt with by Rules of Court where jurisdiction is vested in the Court by Ordinance.

Amendment of the Australian Institute of Marine Science Act 1972

Proposed amendments to section 5 amend definitions of "acting member", "member" and "the Chairman" of the Council of the Institute to replace "Chairman" with "Chairperson". They and the proposed amendment to sub-section 12(1) will also make the Director of the Institute a member of the Council. The membership of the Council will thus change from a Chairperson and 4 other members to a Chairperson, 4 other members and the Director.

Proposed new section 10A makes a formal interpretation amendment consequential upon extending membership of the Council to the Director.

Proposed amendment to paragraph 16(c) will have the effect that the Governor-General will not, as now, be obliged to terminate a person's membership of the Council on the ground of having failed to disclose a conflict of interest under section 18 where the person had a reasonable excuse for the failure.

Proposed amendments to sub-sections 17(1), 17(2), 20(2), 20(3) and 20(4) are consequential upon the replacement of "Chairman" with "Chairperson". Proposed new sub-section 20(4) will also clarify that Council members' authority to appoint a member to preside in the absence of the Chairperson does not operate if there is an acting Chairperson present.

Proposed new section 18 requires a member of Council to disclose the nature of any direct or indirect pecuniary interest in any matter being considered by the Council. It will broaden the operation of the section to cover "matters", rather than "contracts" to which existing section 18 is confined. New section 18 will, however, authorise the Minister or the Council (subject to the member concerned being excluded) to allow participation of a member in Council deliberations or decisions on a matter in which the member has disclosed an interest.

Proposed amendment to paragraph 20(5) will increase the quorum at Council meetings from 3 to 4 in consequence of the extending membership of the Council to the Director.

Proposed new section 20A to be inserted in Part III will prevent the Director from taking part in deliberations of Council with respect to the granting of leave to him or her.

Proposed new paragraph 28(d) will, as a consequence of the Director becoming a member of the Council, require the Governor-General to remove him or her from office if he or she fails, without reasonable excuse, to disclose a pecuniary interest in a matter to the Council as required by new section 18. Proposed amendments to paragraphs 28(b) and 28(c) are consequential upon insertion of new paragraph 28(d).

Amendment of the Australian Trade Commission Act 1985

Proposed amendment of section 33 is a formal, drafting amendment.

Proposed amendment of section 46 will enable the Commission to insure a person carrying on business in Australia in respect of the overseas investment transaction undertaken by a corporation in which the person has a substantial shareholding.

Proposed amendment of sections 72 and 73 corrects a drafting error and provides that money of the Commission and the Export Finance and Insurance Fund may be used for loans that may be made under Part V of the Act.

Amendment of the Bankruptcy Act 1966

Proposed amendments to section 12 will empower the Inspector-General to appoint Registrars, Deputy Registrar and other persons as well as Official Receivers to carry out inquiries on his or her behalf. Proposed sub-section 12(3) enables the person who is conducting an inquiry on behalf of the Inspector-General to exercise the powers of the Inspector-General under paragraphs 12(2) (a), (b) and (c) without the need for an instrument of delegation from the Inspector-General.

Proposed amendments to section 18 provide for the repeal of existing sub-sections 18(1) and (3) and the insertion of 2 new sub-sections. Proposed sub-section 18(1) provides for the continuation of the Official Trustee as at present but re-constituted as a corporation sole. New sub-section 18(3) provides that the Secretary to the Department will constitute the Official Trustee.

Sub-section 18(6) providing for the affixing of the seal of the Official Trustee by an Official Receiver is unnecessary and is to be repealed.

Proposed amendments provide for the omission of sub-section 18(8), and the insertion of new sub-sections 18(8), (8A), (8B) and (8C). Proposed sub-section 18(8) provides that an Official Receiver may, in the name of and on behalf of the Official Trustee, exercise any of the powers and perform any of the functions of the Official Trustee, as is provided by existing sub-section 18(8). As now, proposed sub-section 18(8A) provides that all acts and things done in the name of or on behalf of the Official Trustee by or under the authority of an Official Receiver shall be deemed to have been done by the Official Trustee. However an Official Receiver will be subject to the limitation that, under proposed sub-section 18(8B) he or she must, when acting for the Official Trustee, comply with any directions given by the Official Trustee.

Proposed sub-section 18(8C) imposes a requirement upon the Official Trustee to consult with the Inspector-General in Bankruptcy and the Official Receivers on the conduct of the business of the corporation and on its practices and procedures.

Proposed sub-sections 18(9) and (10) which will replace existing sub-section 18(9) and (10) makes purely drafting changes.

By virtue of sub-clause 6(1) of this Bill the amendments to section 18 do not affect property, powers, rights,

authorisations, duties, functions, liabilities or obligations of, or render defective any legal or other proceeding instituted by or against, the Official Trustee as a body corporate continued in existence by force of sub-section 18(1) of the Act as amended by this Bill.

Proposed omission of section 20 and the insertion of a new section 20 will confer the present power of direction of the Inspector-General over the Registrars in relation to the maintenance of books of account, records and returns and bank accounts on the Secretary to the Department, and omit reference to the Official Trustee, and to Official Receivers. The Secretary as Official Trustee will have an inherent power of direction in relation to the Official Receivers as agents of the body corporate.

Proposed amendment of section 20A will omit the definition of "Investment Board" as established by section 20C, because that section is proposed to be repealed.

Proposed amendment of sub-section 20B(4) and replacement of sub-section 20B(5) remove the control of the Inspector-General over the opening of bank accounts by the Official Trustee. As a consequence of the reconstitution of the Official Trustee as the Secretary to the Department the amendments will make the corporation finally responsible for such accounts.

Proposed omission of paragraphs 20B(8)(b), (d) and (e), will mean that money received by the Official Trustee under the provisions referred to in those paragraphs will be paid into the Common Investment Fund. Funds attributable to deeds as well as to estates will, as a result, be paid into the Fund.

Proposed repeal of section 20C will abolish the Investment Board.

Proposed amendments to section 20D are consequential on abolition of the Investment Board. Proposed amendments will repeal sub-sections 20D(2) and 20D(3) which empower the Investment Board to give, vary or revoke directions to the Official Trustee.

Proposed amendments to sub-sections 20D(4) and (5) will impose obligations now held by the Investment Board directly on the Official Trustee.

Proposed amendments to section 20E will enable the Official Trustee to apply to borrow money without the requirement for a prior written authorisation from the Investment Board. The amendments are consequential to those proposing abolition of the Board.

Proposed amendments to section 20F are consequent on the proposed amendments to section 20B.

Proposed amendments to paragraph 20H(3) (b) will extend the operation of this provision to interest on moneys forming "a fund" for the purposes of a deed of assignment, deed of arrangement, scheme of arrangement or composition of which the Official Trustee is trustee. Again this amendment is consequent on the amendment of section 20B.

Proposed amendment to sub-section 20H(4) is consequent on the proposed abolition of the Investment Board.

Proposed amendments to section 20J extend its operation to interest on moneys attributable to funds that are realised in respect of deeds of assignment, deeds of arrangement, schemes of arrangement and compositions and which will form part of the Common Fund. Again these amendments are consequent on the proposed amendment of section 20B.

By virtue of sub-clause 6(2) of this Bill, the amendments of sub-section 20B(8) section 20F, paragraph 20H(3) (b) and section 20J apply in relation to moneys received by the Official Trustee after the commencement of clause 6 and to moneys held by the Official Trustee at the commencement of that clause.

Proposed new section 31A will permit the Federal Court of Australia to delegate certain of its powers under the Act to the Registrar, and to Deputy Registrars, District Registrars and Deputy District Registrars of the Court.

Proposed new sub-section 31A(1) provides that certain powers of the Federal Court may be exercised by a Registrar as defined in proposed sub-section 31A(10) if a Judge of the Federal Court, in writing, so directs. The sub-section goes on to specify in paragraphs (a) to (r) the powers which may be delegated.

Proposed new sub-section 31A(2) limits the power of a Registrar to make orders as to costs in proceedings before Registrars.

Proposed sub-section 31A(3) will particularise the kinds of directions which may be given to Registrars.

Proposed new sub-section 31A(4) is an application provision. Where in the Act or Rules there is a reference to the Court exercising a power or making an order, and the power has been delegated to a Registrar or Registrars, the reference to "the Court" is to be construed as including a reference to a Registrar.

Proposed new sub-section 31A(5) provides for the independence of Registrars in exercising delegated judicial powers. In exercising a delegated power, a Registrar will not be subject to the direction or control of any person or body.

Proposed new sub-section 31A(6) provides that a party to a proceeding in which a Registrar has exercised a delegated power may apply to the Court for a review of the exercise of that power.

Proposed new sub-section 31A(7) empowers the Court to review the exercise by a Registrar of a delegated power, on application or on its own motion.

Proposed new sub-section 31A(8) provides that where a Registrar proposes to make one of certain orders under delegated authority and this is opposed by persons, the Registrar is to refer the matter to the Court.

Proposed new sub-section 31A(9) requires a Registrar to refer proceedings under his or her delegated powers to the Court if he or she thinks fit or if persons so request.

The proposed sub-section 31A(10) is an interpretation provision.

By virtue of clause 2(2) of this Bill, proposed new section 31A will come into operation on Proclamation.

Proposed amendment of section 116 of the Act is to make certain payments to farmers non-divisible property. The payments concerned are payments under a new Rural Adjustment Scheme (RAS) agreement between the States, the Northern

Territory and the Commonwealth. The proposed insertion of a new paragraph 116(2)(ma) and necessary consequential amendments to sub-paragraphs 116(3)(iii) and 116(4)(iii) extend that status to payments under the new RAS.

Proposed amendment to sub-section 119A(5) corrects a drafting error.

Proposed insertion of a new paragraph 253B(d) will give recognition to the new Rural Adjustment Scheme provided for in the States and Northern Territory Grants (Rural Adjustment) Act 1985.

Amendments of the Biological Control Act 1984

Proposed amendments will bring the Commonwealth Act into line with a co-operative Commonwealth/State/Northern Territory Scheme on biological control which has been agreed to by all States.

Proposed amendments to sub-section 2(1) -

- . insert a definition of "Australia" to include the external Territories (if any) in respect of which a declaration under sub-section 4(1) is in force.

8.1 repeal the definition of "Commonwealth Minister" or "the Minister" in consequence of the proposed amendment of section 8.

amends the definition of "organism" to omit gender specific language by replacing the word "man" with the words "a human".

Proposed new sub-section 2(4A) is inserted to clarify that a recommendation, decision and approval of the Australian Agricultural Council (AAC) can be made in or out of a Council session, that all Council members must join in a unanimous recommendation or approval, and that an acting Council member fully displaces the member for whom he or she is acting while so acting.

Proposed amendments to section 8 consist of the repeal of sub-sections 8(2), 8(3), 8(4), 8(5), 8(6) and the substitution of a new sub-section 8(2). These amendments relate to the decision by the State/Northern Territory Ministers that each State/Northern Territory Minister responsible for agriculture be a biological control authority in that State or Territory and that there would not be the one legally recognised biological control authority as originally intended.

Proposed amendment to section 9 consists of the repeal of paragraph 9(c) and the insertion of new sub-sections 9(2) and 9(3). Repeal of paragraph 9(c) removes the requirement that a

State biological control authority be constituted at all times by the same person, for the purposes of enabling the State Act establishing it to be declared under the Act. New sub-section 9(2) requires the consent of the responsible State Minister to declaration of a State Act under sub-section 9(1). New sub-section 9(3) provides for automatic termination of a declaration under sub-section 9(1) if the State Act is altered out of conformity with that sub-section.

Proposed new section 11, which will replace the existing section, will provide for biological control declarations under the complementary State/Northern Territory legislation to be regarded as assistance in the terms of the Industries Assistance Commission (IAC) Act 1973. This amendment will allow the IAC mechanism to hold public inquiries into proposed biological control programs for all State/Northern Territory and Commonwealth biological control authorities.

Proposed amendments to sections 12, 17, 19, 20, 21, 26, 28, 29, 30, 31, 32, 33, 38 and 53 require a unanimous recommendation by the AAC before further action is taken by the Biological Control Authority or a Commission of Inquiry.

Proposed repeal of sub-sections 20(2) and 29(3) are in consequence of the insertion of the definition of "Australia" in sub-section 2(1).

Amendment of the Christmas Island Act 1958

As in the case of the amendments to the Ashmore and Cartier Islands Acceptance Act 1933, sub-section 10(4A) of the Act provides that when an Ordinance is disallowed or deemed to have been disallowed, or becomes void or of no effect, and that Ordinance has repealed an Ordinance in force in the Territory, then the repealed Ordinance is revived from and including the date of disallowance of the firstmentioned Ordinance or the date on which it became void and of no effect, as the case may be.

Proposed amendments to sub-sections 10(4A) and (4B) of the Act will cause it to have the effect that not only repealed Ordinances are revived from and including the date of disallowance, but also any other law in force in the Territory which was repealed by the disallowed or void Ordinance.

Amendment of the Cocos (Keeling) Islands Act 1955

As in the case of the amendments to the Ashmore and Cartier Islands Acceptance Act 1933, sub-section 13(4A) of the Act provides that when an Ordinance is disallowed or deemed to have been disallowed, or becomes void or of no effect, and that Ordinance had repealed an Ordinance in force in the Territory, then the repealed Ordinance is revived from and including the date of disallowance of the firstmentioned

Ordinance or the date on which it became void and of no effect, as the case may be. Proposed amendments to sub-sections 13(4A) and (4B) of the Act will cause it to have the effect that not only Ordinances are revived from and including the date of disallowance but also any other law in force in the Territory which was repealed by the disallowed or void Ordinance.

Amendment of the Commonwealth Places (Application of Laws) Act 1970

Proposed amendment removes from the Schedule to the Act paragraphs 6(1)(c), 6(1)(d) and 6(1)(e) of the Director of Public Prosecutions (DPP) Act 1983. As a result these provisions are applicable for the purposes of the Act. The purpose is to enable the DPP, in relation to offences against the applied provisions of State laws committed on Commonwealth places in the States, to institute proceedings for the commitment of persons for trial in respect of indictable offences, to institute proceedings for the summary conviction of persons in respect of the offences and to carry on proceedings of either kind.

The inclusion of new sub-section 5(4) in the Act limits the DPP's power to carry on proceedings of either kind to those which have been instituted by himself or an officer of, or a person employed by, the Commonwealth or a body established by

or under an Act or under a law or a Territory (other than the Northern Territory), or a person holding office under an Act or under a law of a Territory (other than the Northern Territory). This will include proceedings instituted by members or special members of the Australian Federal Police.

Amendment of the Complaints (Australian Federal Police) Act 1981

Proposed amendment to paragraph 24(1)(d), which mirrors an amendment proposed to the Ombudsman Act 1976, is designed to put it beyond doubt that, when exercising the discretion conferred by the provision, the Ombudsman may have regard to all the circumstances and not just those relating to the particular complaint.

Amendment of the Copyright Act 1968

Proposed amendments of section 10 substitute a new definition of "broadcast" to better express the intention that only wireless transmissions to the public are covered by the Act. Accordingly program-carrying signals not intended to be received by the copyright-owner's public will not be "broadcasts" even if a few members of the public possessing specialised equipment are able to pick them up.

Proposed definition will cover broadcasts via satellite because section 5 of the Copyright Amendment Act 1986 expressly includes these within the Act.

By virtue of sub-clause 2(3) of the Bill the amendment will commence immediately after the date to be proclaimed for the commencement of the Copyright Amendment Act 1986.

Amendment of the Coral Sea Islands Act 1969

As in the case of the amendments to the Ashmore and Cartier Islands Acceptance Act 1933, sub-section 7(5A) of the Act provides that when an Ordinance is disallowed or deemed to have been disallowed, or becomes void or of no effect, and that Ordinance had repealed an Ordinance in force in the Territory, then the repealed Ordinance is revived from and including the date of disallowance of the firstmentioned Ordinance or the date on which it became void and of no effect, as the case may be.

Proposed amendments to sub-sections 7(5A) and (5B) of the Act will cause it to have the effect that not only repealed Ordinances are revived from and including the date of disallowance, but also any other law in force in the Territory which was repealed by the disallowed or void Ordinance.

Amendments of the Crimes Act 1914

Proposed amendment to section 10 will make it clear that this section does not, and was never intended to, limit the operation of any Territory law relating to search in connection with offences against any law of that Territory.

Amendment of the Dairy Produce Act 1986

Proposed amendment to paragraph 36(3)(d) corrects a drafting error. Under sub-clause 2(4) of this Bill the amendment will operate retrospectively to 1 July 1986.

Amendment of the Defence (Re-establishment) Act 1965

Proposed amendment to sub-section 17(1) will substitute a reference to the Veterans' Entitlements Act 1986 for the Repatriation Act 1920 which was repealed by the former Act. Under sub-clause 2(5) of this Bill, the amendment will operate retrospectively to 22 May 1986.

Amendment of the Dried Vine Fruits Equalisation Act 1978

Proposed repeal of sub-section 3(3) and the insertion of a new sub-section 3(3) will mean that an establishment that repacks dried fruit or removes seeds from raisins on behalf of the original processing establishment is no longer regarded as a packer. This will enable equalization levy payments which

apply to this fruit to be passed to individual producers by the original processing establishment which holds the records of producers' fruit deliveries. For consistency the new sub-section also covers similar situations involving repacking establishments and retains the present provision that the supply of dried fruit by a packer to a repacker or deseeding establishment does not constitute a supply of dried fruit for human consumption.

Proposed replacement of certain words at the end of paragraph 10(1) (a) is to enable levy rates to be set later in a season without the possibility of fruit delivered early in the season being excluded from penalty provisions for non-payment of levy.

Proposed replacement of sub-section 10(1A) with a new provision will ensure that the circumstances in which dried fruit is deemed to remain in the custody of a packer for the purposes of payment of the levy is clarified and not affected by changes proposed under the new sub-section 3(3).

Proposed amendments to sections 11, 12, 16, 18, 19, 22, 26, 27, 28 and 30 are drafting changes to make the language non-gender specific.

Proposed amendment inserting a new sub-section 25(2A) will overcome the present inequity whereby interest which accrues on equalization moneys held in trust by packers prior to distribution to individual producers must be returned to the

Australian Dried Fruits Corporation. Proposed amendment provides for such interest to be passed on by packers to producers in proportion to their individual entitlements to the principal sum. Other amendments to section 25 make drafting changes to substitute non-gender specific language.

Amendment of the Export Market Development Grants Act 1974

Proposed amendment of section 38 corrects a drafting error.

Amendment of the Family Law Act 1975

Proposed amendment of sub-section 110(2) adds paragraph (e), which will allow regulations to be made to enable any court having jurisdiction under the Act to conduct a hearing based on a petition for maintenance remitted by courts of States of the USA which have concluded reciprocal arrangements with Australia. Under the present provisions Australian courts may deal with final orders of those courts, but not petitions.

This minor extension will allow regulations to be made empowering the courts to treat US petitions in the same way as paragraph 110(2) (d) allows prescription of treatment of provisional orders from the reciprocating jurisdictions.

Amendment of the Heard Island and McDonald Islands Act 1953

As in the case of the amendments to the Ashmore and Cartier Islands Acceptance Act 1933, sub-section 11(4A) of the Act provides that when an Ordinance is disallowed or deemed to have been disallowed, or becomes void or of no effect, and that Ordinance had repealed an Ordinance in force in the Territory, then the repealed Ordinance is revived from and including the date of disallowance of the firstmentioned Ordinance or the date on which it became void and of no effect, as the case may be.

Proposed amendments to sub-sections 11(4A) and (4B) of the Act will cause it to have the effect that not only repealed Ordinances are revived from and including the date of disallowance, but also any other law in force in the Territory which was repealed by the disallowed or void Ordinance.

Amendment of the Insurance Act 1973

Insertion of proposed new paragraph (ba) in the definition of "debenture" in sub-section 3(1) excludes from the definition promissory notes for more than \$50,000. It is designed to bring the definition into line with the relevant definition of the Companies Act 1981.

Proposed amendments to section 30 are designed to clarify the existing provisions to the extent that current account balances due from related bodies corporate are not to be regarded as assets for solvency purposes unless they have been approved by the Insurance Commissioner for this purpose. The amendments insert a new sub-section (5A) affirming the duty of the Commissioner to revoke or vary an approval which he thinks is unnecessary or should be varied, and to notify the company concerned. Also, by virtue of proposed new sub-section 30(7), assets otherwise subject to the approval of the Insurance Commissioner cannot be placed outside the operation of the section through the use of trusts.

Proposed amendment to sub-section 31(3), will allow the Commissioner to specify a date, as an alternative to specifying a period, in a notice to a body corporate, when it must fix its liability provision at a specified level.

Proposed new sub-section 33(6A), requires that for solvency margin calculation, the value of shares held by a body corporate in a related body corporate that is an authorised insurer, as calculated in accordance with sub-sections (4) and (6), is to be reduced by an amount equivalent to the required solvency margin per share of that authorised insurer. The new sub-section is designed to ensure that a group of insurers has collectively sufficient net assets to satisfy the solvency margin based on premiums written by the group.

By virtue of sub-clause 6(3) of this Bill, the amendments of sections 3 and 30 (other than new sub-section (5A) and the amendment to sub-section (6)), 31 and 33 do not apply in relation to a financial year of a body corporate that commenced before the commencement of the amendments. These provisions in their pre-amended form continue to apply in relation to such a financial year.

Proposed amendment to sub-section 62(2) will give the Treasurer a discretion, which he now does not have, whether to publish notice of a direction issued under sub-section 62(1), e.g., a direction to a body unable to meet its liabilities to stop issuing policies. His discretion to publish will be exercisable if he is satisfied that to do so would be in the public interest. Thus, where publication would destroy the chance of an orderly transfer of a portfolio to minimise losses, publication might not be in the public interest.

Amendment of the Insurance (Agents and Brokers) Act 1984

Proposed omission of the definition of "contravention" from section 9 is designed to avoid duplication of the definition in paragraph 22(j) of the Acts Interpretation Act 1901.

Proposed amendment to sub-section 13(1) is designed to widen the scope of misrepresentation to embrace misleading as well as false statements. It will remove the requirement that, for such misrepresentation to be in breach of the Act, it needs to be wilfully made with the intention that it be acted upon.

Proposed sub-section 13(1A) is designed to make it clear that a misleading statement of the type referred to in the proposed amendment to sub-section 13(1) includes failing to disclose a material matter.

Proposed amendments to sub-sections 13(2) and (3) are designed to remove the requirement that any misrepresentation needs to be wilfully made to be in breach of the Act and are consistent with the proposed amendment of sub-section 13(1).

Proposed sub-section 16(1A) is designed to ensure that where a registered insurance broker acts as an agent of the insurer under an agreement other than the normal "binder", the intending insured is required to be advised of that fact. A consequential amendment is proposed to sub-section 16(2) to replace the reference to sub-section 16(1) with a reference to section 16 as a whole.

Proposed amendments to paragraph 19(1)(b) are designed to provide for the relevant Commissioner's acceptance, rather than his approval, of a contract of professional indemnity insurance. They will allow the required amount of professional indemnity insurance to be specified in the regulations, and make it clear that such insurance relates to all the broker's insurance business rather than merely that part undertaken in a purely broker capacity (i.e., as agent for the insured).

Proposed new sub-section 19(3) is designed to allow the relevant Commissioner to declare that a particular professional indemnity insurance contract is no longer acceptable for the purposes of paragraph 19(1)(b). Under proposed new sub-section 19(4) the registered insurance broker concerned must be given 21 days notice before that declaration takes effect.

Proposed sub-section 20(2A) is designed to make it clear that the regulations made for the purposes of sub-section 20(2) may include a requirement relating to the provision of statistical information and information required under any other provision of the Act or regulations.

Proposed amendment of sub-section 20(3) is designed to bring the wording of this provision into line with that of section 13 by deleting the requirement that the intention to deceive needs to be wilful for such conduct to be in breach of the Act.

Proposed sub-section 26(1A) is designed to permit building societies which enjoy trustee investment status to act as initial depositories for insurance broking account moneys.

Proposed sub-section 27(13) is designed to provide that the duty of the broker in respect of the payment of moneys and notification to the insurer under sub-sections (1)-(5) may be

satisfied if such payments are made to a Lloyd's broker where a Lloyd's underwriter is the insurer. The proposed sub-section 27(14) is designed to make it clear that "Lloyd's" has the same meaning as in the Insurance Act 1973.

Proposed amendment to sub-section 37(2) is designed to:

- (1) remove the need for bodies other than insurance intermediaries (especially those such as employers and financial institutions which are deducting premiums on behalf of an insured from the salary or account of that insured, or some other person (e.g., a family member), under an automatic deduction authority) to provide a receipt in respect of each deduction; and
- (2) limit the obligation of insurance intermediaries to provide such receipts in respect of the initial payment.

Proposed sub-section 37(3A) is designed to allow the agent referred to in sub-section 37(1) to retain any amounts due to that agent pursuant to an agreement with an insurer, except, in the case of life insurance business, where the agreement is one in force pursuant to section 10.

Proposed sub-section 37(3B) is designed to provide that where premiums have been paid by an agent to the insurer in advance of the receipt of premiums from intending insureds the requirements of sub-section 37(3) do not apply to the premiums received to the extent of the advance payments.

Amendment of the Insurance Contracts Act 1984

Proposed amendment to sub-section 11(9) is designed to make it clear that the term "renewal" is confined to contracts of general insurance.

Proposed new sub-section 11(10) is designed to make it clear that notices required to be provided by sections 22, 35, 37, 40, 44, 49 and 68 need only be provided upon the original entering into of the contract, or the first renewal, extension or reinstatement of a contract, whichever is the sooner. Where a contract is subsequently varied, the requirement to provide a notice under the abovementioned sections is limited to the provision of information regarding the contractual provision(s) varied or proposed to be varied.

Proposed new sub-section 11(11) is to be inserted to make it clear that where a provision in the Act requires something to be done before a contract is entered into this may be interpreted as requiring action at the time the contract is entered into.

By virtue of sub-clause 2(6) of this Bill the amendments to section 11 will operate retrospectively to 1 January 1986.

Proposed amendment to section 37 is designed to bring the wording regarding ways in which an insurer can satisfy the requirement to clearly inform the insured in writing of any unusual term of an insurance contract into line with sub-section 35(2).

Proposed amendment to sub-section 49(2) is designed to remove any uncertainty that the amount being referred to could be construed as the sum insured as this may be an amount greater than the amount of the loss.

Proposed sub-section 49(6) is designed to ensure that, in circumstances where an insurer could not have known of the interest of more than one interest holder and where the insurer paid an amount equal to the notional liability to (and therefore over-indemnified) the insured, the rights of other persons to be indemnified are not against the insurer but against the insured.

Proposed amendment to sub-section 58(2) is designed to make it clear that a notice sent to a broker who is acting as agent for the insured satisfies an insurer's responsibilities under section 58.

Proposed sub-section 69(4) addresses the situation where, while it was practicable for the insurer to give required information before or at the time of conclusion of a contract, the insurer did not do so. In these circumstances, the rights of a person other than the insurer in respect of a loss which occurred after the contract was entered into and before the information was given are the same as if the information had not been given.

Proposed amendment to sub-section 71(1) is designed to ensure that notices referred to in that sub-section do not include notices referred to in section 58. The requirement in section 58, viz, for insurers to give notices relating to renewals, should be still applicable even though a broker is acting as agent for the insured, as there is no reason to believe that the broker would necessarily know an insurer's intentions concerning the renewal or otherwise of particular policies.

Proposed amendment to paragraph 73(1)(c) is designed to avoid the impression that a supplier may be obliged to arrange the particular insurance cover being offered to a customer with an insurer of the customer's choice.

Amendment of the Interstate Road Transport Act 1985

Proposed amendment to sub-section 3(1) inserts a new definition of "insurance" to include participation in a scheme under a law of a State or Territory relating to motor vehicle accident compensation.

Proposed amendments to paragraph 11(3)(b) and sub-section 30(5) make it clear that regulatory authorities are to apply objective tests in determining certain matters under the Act.

Proposed amendments of paragraph 39(g) and the new sub-section 39(2) are designed to remove a minor drafting anomaly which may have had the effect of precluding the use of certain mechanical devices which would otherwise have been acceptable.

Proposed amendment of paragraph 39(h) corrects a minor drafting anomaly.

Proposed amendment to sub-section 50(4) corrects a drafting error.

By virtue of sub-clause 2(7) of this Bill the amendments will come into operation on the day on which the provisions that they amended come into operation.

Amendment of the Merit Protection (Australian Government Employees) Act 1984

Proposed amendment of sub-paragraph 49(1)(b)(iii), which mirrors an amendment proposed to the Ombudsman Act 1976, is designed to put it beyond doubt that, when exercising the discretion conferred by the provision, the Merit Protection and Review Agency may have regard to all the circumstances and not just those relating to the particular application.

Amendments of the Migration Act 1958

Proposed amendment of section 5A will extend the Act to the Territory of the Cocos (Keeling) Islands and to the Coral Sea Islands Territory. The proposed amendments to sub-sections 5(1) and 5(1A) and paragraph 5(4)(b) and section 57 make amendments consequent upon this extension.

By virtue of sub-clause 2(8) of this Bill the amendment of section 5A will commence on Proclamation. Sub-clause 5(2) of the Bill provides that where a non-citizen was present in the Territory of Cocos (Keeling) Islands or the Coral Sea Islands Territory before the commencement of section 5A of the Act as amended, he or she is deemed to have entered Australia as a non-citizen at the time on the day of that commencement when he or she is issued with an entry permit under the Act:

Proposed amendment of section 67 will make it clear that different levels of charges can be imposed for different classes of visas.

Amendment of the Norfolk Island Act 1979

As in the case of the amendments to the Ashmore and Cartier Islands Acceptance Act 1933, sub-section 28(7) of the Act provides that when an Ordinance is disallowed or deemed to have been disallowed, or becomes void or of no effect, and

that Ordinance had repealed an Ordinance in force in the Territory, then the repealed Ordinance is revived from and including the date of disallowance of the firstmentioned Ordinance or the date on which it became void and of no effect, as the case may be.

Proposed amendments to sub-sections 28(7) and (7A) of the Act will cause it to have the effect that not only repealed Ordinances are revived from and including the date of disallowance, but also any other law in force in the Territory which was repealed by the disallowed or void Ordinance.

Amendments of the Ombudsman Act 1976

Proposed amendments to section 3 -

- . omit from the definition of "prescribed authority" in sub-section 3(1) and paragraph 3(3) (a) references to the former ACT House of Assembly; and
- . reflect, in sub-section 3(6B), paragraph 3(12) (b) and sub-section 3(13), the change in title of the Chief of the Defence Force (formerly Chief of Defence Force Staff).

Proposed amendments of sub-paragraph 6(1)(b)(iii) and sub-section 6(3) are designed to put it beyond doubt that,

when exercising the discretions conferred by those provisions, the Ombudsman may have regard to all the circumstances and not just those relating to the particular complaint.

Proposed amendment of sub-section 7A(1) will enable preliminary inquiries to be made not only when the Ombudsman has received a complaint, but also when he is considering investigating action of his own motion.

Proposed amendments of section 9 -

- . insert a new sub-section 9(1AA), and consequentially amend sub-section 9(1A), so as to enable the Ombudsman to require a Department or prescribed authority to furnish information or produce documents where he does not know the identity of the particular officer who is able to furnish that information or produce those documents; and
- . amend sub-section 9(2) so that a notice issued by the Ombudsman under the sub-section may require attendance before a person other than the Ombudsman himself.

Proposed amendment to section 14 makes a purely grammatical change to sub-section 14(6).

Proposed amendments of section 19 delete references to the former ACT House of Assembly.

Proposed repeal of section 19A, and the amendments of sub-sections 19E(1) and (2), reflect the fact that redress systems for all Defence Force members are now provided by or under the Defence Act 1903 (formerly redress for members of the Naval Forces and the Air Force was provided under the Naval Defence Act 1910 and the Air Force Act 1923, respectively).

Proposed amendment to section 24 provides for the deletion of words that are no longer necessary.

Proposed amendments to section 29 are designed to confer the power to make acting appointments of Deputy Ombudsman on the Minister, in lieu of the Governor-General, so as to expedite and simplify the making of such appointments.

Part V, which was inserted in the Act in 1978 as part of transitional arrangements for Northern Territory Self-Government, is now obsolete and is therefore being repealed.

Amendment of the Postal Services Act 1975

Proposed new section 100B provides that it is an offence to send, without lawful authority, a prescribed narcotic

substance, as defined in section 4 of the Customs Act 1901, through the mail. A maximum penalty of 2 years' imprisonment and/or a fine not exceeding \$5,000 is prescribed for the offence. New sub-section 100B(2) ensures that existing offences under State law are not invalidated by the creation of the Commonwealth offence in sub-section (1).

Amendment of the Public Order (Protection of Persons and Property) Act 1971

Proposed amendment of section 4 places the Northern Territory on the same footing as the States, consistent with the grant of self-government to the Northern Territory.

Sub-section 25(2) has the effect that, as from the commencement of the Act, the Northern Territory provisions now listed in the Schedule are repealed, and the provisions of the Act take their place. Proposed new sub-section 25(2A) is necessary to avoid the possibility of doubt as to the laws operating in the Northern Territory between the time of commencement of the Act, and the coming into effect of the amendments in this Bill.

Proposed amendment of sub-section 25(5) is to take account of the special nature of the legislature of the Northern Territory.

Proposed addition of reference to Northern Territory provisions in the Schedule is consequent upon the amendment of the definition of "State", and the reference to State enactments in sub-section 25(3). Changes to the Schedule headings and territory references are to ensure consistency in the Schedule with the other proposed amendments.

Amendments of the Removal of Prisoners (Australian Capital Territory) Act 1968

Proposed amendment to sub-section 5(3) will enable ACT offenders to have not only their sentences but also their non-parole periods reduced by remission in New South Wales.

Proposed new sub-sections 5(4) and (5) will ensure that prisoners sentenced by ACT courts to 3 years or less will be able to have their non-parole periods reduced by remission in New South Wales.

Proposed section 5A will make it clear that where a Territory prisoner escapes from custody, his sentence will cease to run while he is at large. At common law a prisoner who escapes while serving a term of imprisonment cannot be detained once the term has expired.

Amendment of the Seat of Government (Administration) Act 1910

As in the case of the amendments to the Ashmore and Cartier Islands Acceptance Act 1933, sub-section 12(6A) of the Act provides that when an Ordinance is disallowed or deemed to have been disallowed, or becomes void or of no effect, and that Ordinance had repealed an Ordinance in force in the Territory, then the repealed Ordinance is revived from and including the date of disallowance or the date on which the Ordinance became void and of no effect, as the case may be.

Proposed amendments to sub-sections 12(6A) and (6B) of the Act will cause it to have the effect that not only are repealed Ordinances revived from and including the date of disallowance, but also any other law in force in the Territory which was repealed by the disallowed or void Ordinance.

Amendment of the Trade Practices Act 1974

Proposed omission of the words "in a market" from sub-section 50(2A) removes a possible unintended limitation on its operation. Whilst the ability of a body corporate to exert a substantial degree of influence over another body corporate, pursuant to sub-section 50(2A), is related to the market power of the latter body corporate (for the purposes of determining dominance of a market), it was never intended that the provision be confined to those bodies corporate which engaged

in market activities. The proposed amendment will ensure that section 50 can apply also to associated companies where the body corporate which is in a position to exert a substantial degree of influence over another is not itself engaged in any activities in a market, e.g. where its sole function is to act as a holding company.

Section 63A is designed to ensure that consumers are not provided with a credit or debit facility unless they first ask for it. To ensure that this provision is effective, a new sub-section (2A) is being inserted which provides that a corporation shall not take steps to enable a credit card holder to use it as a debit card and vice versa, unless the customer has first requested it. This section only prohibits a corporation providing a totally different facility without a prior request. It does not affect the mere enhancement of an existing service, as where a financial institution takes steps to enable its customers easier access to those services they have already requested. It also does not cover the mere promotion by a financial institution of a new service, as advertising or promotion of a new service does not enable a person to use the service.

Proposed amendment to sub-sections 65Q(4) and 74D(1) correct minor wording errors.

Proposed sub-section 87(1C) is being inserted to make it clear that a right of action under sub-section 87(1A) in respect of a contravention of Part V is available independently of any other right of action. Consistent with the limitation on actions for damages in sub-section 82(2), proposed sub-section 87(1CA) will require applications under sub-section 87(1A) to be commenced within 3 years of the day on which the cause of action accrued, except for applications in respect of contraventions of section 52A which will have to be commenced within 2 years.

Amendment of the Wheat Marketing Act 1984

The proposed sub-section 65(2A) amends the Act in respect of the provisions relating to the Wheat Marketing Act 1979, which are still applicable to wheat harvested before 1 July 1984.

Proposed amendment will enable the Australian Wheat Board to treat as wheat of a season wheat which was sown after 1 January in a year but delivered to the Board prior to 1 October, as from 29 November 1979, the date of Royal Assent for the Wheat Marketing Act 1979.

Schedule 2

Repeal of Acts

Repeal of -

- . Julius Dam Agreement Act 1974
- . Mount Stomlo Observatory Act 1956
- . Queensland Grant (Proserpine Flood Mitigation) Act 1974
- . States Grants (Water Resources Assessment) Act 1976

These Acts are no longer operative.

Repeal of -

- . Trading with the Enemy Act 1939
- . Trading with the Enemy Act 1940
- . Trading with the Enemy Act 1947
- . Trading with the Enemy Act 1952
- . Trading with the Enemy Act 1957

These Acts were passed to provide for war-time offences in respect of trading with the enemy, and also to provide for the control of enemy property. The Acts are no longer operative.

