

Companies and Securities Legislation (Miscellaneous Amendments) Bill

EXPLANATORY MEMORANDUM

Introduction:

By an agreement made on 22 December 1978 and known as the Formal Agreement, the Commonwealth and each of the six States bound themselves to a decision-making structure for the establishment and implementation of a co-operative scheme to promote commercial certainty, reduce business costs, achieve greater efficiency in the capital markets and maintain investors' confidence in the securities market through suitable measures for their protection. The Northern Territory is now also a party to that agreement.

The schemes' objectives are to ensure that legislation relating to companies and the regulation of the securities industry, futures industry and the franchising agreements remains uniform throughout Australia.

The Ministerial Council has approved this Bill pursuant to the terms of that Formal Agreement. The principal object of the Bill is to amend Victorian scheme legislation to reflect changes which have occurred in Commonwealth scheme legislation as a result of decisions taken by the Ministerial Council.

Clause 1 states the purpose of the Act.

Clause 2 states the dates on which each part of the Act comes into operation. These dates are determined by reference to other legislation both State and Commonwealth to ensure uniformity between the States and the Commonwealth on the commencement of the various provisions.

Clause 3 defines the Principal Act for the purpose of Part 2 of the Act as the *National Companies and Securities Commission (State Provisions) Act 1981*.

Clause 4 makes amendments to the Principal Act to reflect changes made to the *National Companies and Securities Commission Act 1979* of the Commonwealth—

by the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1983* about the form of oath which is required where evidence is given at a hearing of the National Companies and Securities Commission;

by the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985* to prohibit a hearing of the Commission being conducted without the physical presence of the Commission members, to allow the Commission to delegate its powers to its individual members about the persons to whom certain powers of the Commission can be delegated and other consequential amendments.

Clause 5 makes various amendments to the Principal Act to reflect amendments made to the *National Companies and Securities Commission Act 1979* of the Commonwealth by the *Companies and Securities Legislation Amendment (Futures Industry) Act 1986*. The amendments extend the application of the prohibitions (which apply to Corporate Affairs office staff and other persons exercising powers under the scheme legislation), to dealings in securities in certain circumstances, to dealings in futures contracts. The amendments also extend the information which these persons must disclose about their interests in transactions in securities to include interests in futures contracts.

Clause 6 alters reference to the definition of "prescribed interest" in section 15A (1) of the *Securities Industry (Application of Laws) Act 1981* as a result of changes in how that term is defined in the *Securities Industry Act 1979* of the Commonwealth, made by the

Companies and Securities Legislation (Miscellaneous Amendments) Act 1985. This preserves the effect of section 15A (1) which provides a power to make regulations declaring certain activities not to fall within the definition of “prescribed interest”.

Clause 7 amends section 16A of the *Companies (Acquisition of Shares) (Application of Laws) Act 1981* to ensure that the particulars of an offence required for the purposes of a penalty notice (on the spot fine) issued under the *Companies (Acquisition of Shares) (Victoria) Code* are to be set out in the form of a penalty notice prescribed by the *Companies (Victoria) Regulations*.

Clause 8 amends an incorrect section reference in the Schedule to the *Companies (Acquisition of Shares) (Application of Laws) Act 1981*. It is that Schedule which alters some of the wording of the Commonwealth Act as it applies as a Law in this State, called the *Companies (Acquisition of Shares) (Victoria) Code*. These alterations are necessary to accommodate anomalies arising in the State and to identify Commonwealth legislation as such.

Clause 9 inserts a provision into the *Futures Industry (Application of Laws) Act 1986* which empowers the Governor in Council to make regulations prescribing offences for which a penalty notice may be issued and the penalty payable.

Clause 10 amends the Schedule to the *Futures Industry (Application of Laws) Act 1986*. This amendment alters the wording of the Commonwealth Act as it applies as a Law of Victoria. The amendments facilitate the use of penalty notices prescribed under the *Futures Industry (Application of Laws) Act 1986*.

Clause 11 inserts provisions into the *Magistrates (Summary Proceedings) Act 1975* which enable the penalty notice fine recovery procedure in that Act to be available for use in relation to prescribed offences under the *Futures Industry (Victoria) Code* and to allow the use of the Alternative Procedure Summons for all summary offences under that Code.