National Companies and Securities Commission Amendment Bill 1988

Date Introduced: 24 March 1988
House: House of Representatives
Presented by: Hon. Lionel Bowen, M.P., Attorney-General

Digest of Bill

Purpose

To amend the National Companies and Securities Commission Act 1979 (the Principal Act), to clarify the National Companies and Securities Commission’s (the NCSC) power to give directions to its Divisions and to validate directions given to Divisions made prior to the commencement of the proposed amendments.

Background

In December 1978 the Commonwealth and States executed a Formal Agreement that provided for a co-operative uniform system of law and administration in relation to companies and the securities industry. As a result of that Formal Agreement, the Commonwealth passed the Principal Act which, among other matters, set up the NCSC.

The NCSC has two broad functions. One is to maintain a public record of the formation, the life, the winding up, and the dissolution of registered companies. The second is to supervise the issue of securities, the sale of control of companies by acquisition of shares, and continued disclosure by companies which issue securities.

The NCSC is given power, by resolution, to direct the functions or powers of the NCSC in relation to ‘a matter’ that can be performed or exercised by a Division. In a recent case, the Victorian Supreme Court held that the reference to ‘a matter’ contemplated specific resolutions: National Companies and Securities Commission v. Sim (23 February 1988, unreported). This decision places doubt on the NCSC’s ability to give general directions to Divisions.

This Bill is intended to remove this doubt.
Main Provisions

Clause 3 amends section 21 of the Principal Act to provide that the NCSC may, by resolution, direct that its functions and powers in relation to a matter, any matter of a particular kind, or a class of matters, are to be performed or exercised by a Division.

Directions to Divisions by the NCSC made prior to the commencement of the proposed amendments are deemed valid (proposed sub-s.21 (1AA)).

If, prior to these amendments being enacted, a direction is being questioned in court proceedings on the ground that it does not specify a matter, the direction will not be valid unless the court holds it just and equitable for the direction to be treated as valid (proposed sub-s.21 (1AB)).

For further information, if required, contact the Law and Government Group.

8 June 1988

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