Australian Companies and Securities Commission Bill 1988

Date Introduced: 25 May 1988
House: House of Representatives
Presented by: Hon. Lionel Bowen, MP, Attorney-General

Digest of Bill

Purpose

To establish an Australian Securities Commission (ASC) to administer the proposed national scheme of corporate regulation.

Background

Refer to the digest of the Corporations Bill 1988.

Main Provisions

The ASC Bill establishes the major administrative organs of the new scheme. These are:

(a) Australian Securities Commission;

(b) Corporations and Securities Panel;

(c) Companies Auditors and Liquidators Disciplinary Board;

(d) Accounting Standards Review Board; and

(e) Companies and Securities Advisory Committee.

(a) Australian Securities Commission

The ASC is to replace the National Companies and Securities Commission (the NCSC) which administers the present co-operative scheme. The State
Corporate Affairs Commissions are to become delegates of the ASC. The State Commissions will participate in an ASC management committee to supervise the operation of the scheme.

The ASC will have similar discretionary powers to the NCSC and will report to the responsible Commonwealth Minister. The ASC will be responsible for day-to-day administration and will be required to advise the Minister on law reform (Clause 11).

The Minister is permitted to give directions to the ASC as to general policies or priorities, but not on specific matters (Clause 12). Directions given must be gazetted. In contrast, directions given to the NCSC can be in respect of a particular case and need not be publicised.

The ASC will comprise at least three and not more than eight members (Clause 9). Its functions will be those conferred under companies and securities laws (Clause 11).

The Bill gives the ASC stronger investigation powers than those currently held by the NCSC. The Minister may direct that an alleged or suspected breach of the law, or any one of a variety of listed matters be investigated by the ASC where he or she believes it is in the public interest to do so (Clause 14). The ASC may also, of its own motion, investigate suspected contraventions of the law (Clause 13). The powers of examination are also extended by the Bill (Clause 19).

The power of the ASC to conduct hearings has been narrowed because the Corporations and Securities Panel is to take on the role of conducting hearings into whether conduct is unacceptable.

The ASC is permitted to exempt, or to vary or modify the Code in its application to particular persons or classes of persons (Clause 1084, Corporations Bill, and see, for example, Clauses 1113 and 728).

(b) Corporations and Securities Panel

The function of this panel is to conduct private hearings with respect to declarations of unacceptable acquisitions or conduct (Part 6.9, Corporations Bill). The panel is intended to be separate from the ASC which has the investigatory function. The ASC will bring matters to the panel for a determination.

The members will be appointed on a part-time basis on the nomination of the Minister, qualifications required being knowledge of, or experience in, one or more of the fields of business, the administration of companies, the financial markets, law, economics and accounting (Clause 172). Provision is made for disclosure to avoid conflicts of interests (Clause 182).
The panel has power to hold hearings but they must be in private (Clause 185). If the panel finds conduct to be unacceptable it has power to make certain restraining or remedial orders (Clauses 733 – 736, Corporations Bill).

There is no express right of appeal from orders of the panel to a court. However, if its decisions are classed as ‘administrative’ in character, appeal, but not on merits, would lie under the Administrative Decisions (Judicial Review) Act 1977.

(c) Companies, Auditors and Liquidators' Disciplinary Board

This Board is simply an amalgamation under the scheme of bodies currently constituted under different States' legislation (Part 11).

(d) Accounting Standards Review Board

This Board is simply recreated under federal auspices (Part 12).

(e) Companies and Securities Advisory Committee

This statutory consultative body is intended to ensure that the views of business and the community are put before the Minister.

The members of the Committee are to be appointed by the Minister and are required to have substantial experience and prominence in one or more of the fields of business, the administration of bodies corporate, the financial markets, law, economics and accounting (Clause 147). The functions of the Committee are to advise the Minister and make such recommendations as it thinks fit about any matter connected with the national scheme law, companies, close corporations, securities or the futures industry, or a proposal for improving the efficiency of the securities markets or futures markets (Clause 148).

Compared with the current Companies and Securities Law Review Committee, the new Committee will be more independent. It will be separately constituted with separate funding and an independent discretion to prepare recommendations and to publish them.

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

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