Short Digest of Bill

Purpose

To effect necessary amendments to companies and securities scheme legislation following the adoption of new articles and business rules by the stock exchanges allowing corporate membership and unfixing brokerage rates.

Background

The co-operative companies and securities scheme provides for a uniform system of company law and uniform regulation of the securities industry throughout Australia. Although Labor policy provides for Federal regulation of this sphere, the Government is continuing with the co-operative scheme at this stage. One of the machinery mechanisms of the scheme is that once the Commonwealth Parliament passes this Bill changing the relevant A.C.T. Acts, the State law will be automatically amended.

The Bill amends three pieces of scheme legislation: the Companies Act 1981, the Securities Industry Act 1980 and the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980. There are provisions in these Acts which need to be changed as a consequence of two changes in the operation of stock exchanges. Stock Exchanges are subject to regulation under the Securities Industry Act. In particular s.39 of the Act gives the Ministerial Council the power to disallow amendments to business and listing rules of the exchanges. The first change enables body corporates to be eligible for membership of stock exchanges. The second change results from the fact that the stock exchanges are no longer free to fix brokerage rates.

The stock exchanges were forced to make these changes in order to comply with the competition provisions of the Trade Practices Act. The stock exchanges had applied
to the Trade Practices Commission seeking authorisation of its business rules relating to eligibility for membership and the fixing of brokerage rates charged by members. Authorisation is a procedure available under the Trade Practices Act where conduct is in breach of the Act but the applicant makes out a case of public benefit. The Trade Practices Commission would only give interim authorisation to these practices until April 1, 1984.

In preparation for this date, the stock exchanges altered their business rules and Articles and Memoranda of Association. Although the new rules apply from 1 April 1984, it will be some time before the exchanges receive their first corporate membership.

The Bill makes some other changes on matters not related to the above.

Main Provisions

Clause 4 amends the interpretation section of the Companies Act 1981 to ensure that the "prescribed interest" provisions of the Act extend to time sharing investment schemes.

Clause 5 and 6 of the Bill relate to the registration of certain charges under the Companies Act. The clauses amend sections 200 and 211 of that Act to ensure that registration under Companies legislation is sufficient compliance with relevant Instruments or Bills of Sale Legislation and will automatically confer the benefits of the latter laws. The changes are necessary to ensure that the above legislation interacts with the companies code as originally intended.

Clause 8 of the Bill amends the interpretation code for the scheme. The new provision relates to the interpretation of gender and number terms in provisions in scheme legislation and is identical to the provision in the recently introduced Acts Interpretation Amendment Bill 1984.

Clause 10 of the Bill amends the interpretation section of the Securities Industry Act to accommodate body corporate members of stock exchanges and to change the definition of "prescribed interest" in the same way as clause 4 changes the Companies Act 1981.

Clauses 11 and 12 make procedural changes to the Act consequent on the admission of corporate members and the unfixing of brokerage rates respectively.
Clause 14 makes changes to section 95 of the Securities Industry Act which requires members of stock exchanges to lodge deposits with the exchange. Changes to these provisions are required because of the change in the articles of stock exchanges enabling brokers to be members of more than one exchange.

Clauses 15 to 18 change the provisions on stock exchange fidelity funds. Clause 16 amends section 107 of the Act which covers the situation where the amount of money in a fund exceeds $2,000,000. The changes are to take into account membership by corporate bodies. Clause 17 amends section 111 of the Act which deals with payments out of the fidelity fund. The Bill makes changes to cover the situation where payment is required because of fraudulent activity by a corporate member.

For further information, if required, contact:

Law & Government Group
LEGISLATIVE RESEARCH SERVICE

3 April 1984