SECURITIES INDUSTRY BILL 1980

Date Introduced: 2 April 1980
House: House of Representatives
Presented by: Hon. R.V. Garland, Minister for Business and Consumer Affairs

Short Digest of Bill

Purpose

To regulate the securities industry in the A.C.T.

Background

On 22 December 1978 the Commonwealth and six States executed a Formal Agreement to implement a uniform system of law and administration for the Australian securities industry and company law. This Bill and 4 other bills introduced by Mr. Garland are the first pieces of substantive legislation that are proposed to be enacted.

The Report of the Senate Select Committee on Securities and Exchange, (the Rae Report), in 1974 focused attention on the need for regulation of the securities industry. The attention emanated from comments in the Report of conclusive evidence of failings in the then regulatory system of the securities markets which was based upon the state government agencies and the stock exchanges.

In 1975, partially in response to these criticisms, the four States which were parties to the Interstate Corporate Affairs Agreement, namely N.S.W, Vic., Qld., and W.A., individually passed uniform Securities Industry Acts.

The proposed legislation, whilst based on these Acts substantially, is an improvement because it will apply throughout Australia. In addition evidence obtained in examinations by the National Companies and Securities Commission (NCSC), which will administer the legislation, will be admissible in both civil and criminal proceedings. Furthermore the NCSC will have the power to suspend trading in particular securities and it will have significantly increased investigatory powers.

In November 1979, the Department of Business and Consumer Affairs circulated for public comment a draft Securities Industry Bill 1980. The Bill introduced incorporates a number of amendments resulting from such
comments including a substantial increase in penalties for breaches of the legislation.

Main Provisions

The Bill is divided into 11 parts and there are 151 clauses. The main provisions in each Part are set out below.

Part 1 - Preliminary (clauses 1-6) (see Explanatory Memorandum (E.M.) pp. 10-21).

Clause 2 states that the Act will become operative on a date to be fixed by Proclamation.

Clause 4 defines certain key terms included in the Bill.

Clauses 5 and 6, respectively, define relevant interest in securities and associated persons.

Part II - Administration (clauses 7-14) (see E.M. pp. 22-53).

This Part sets out the powers available to the NCSC when conducting inquiries and special investigations.

With respect to inquiries there is provision for the NCSC to require the production of books (cl.8) and for a magistrate to issue a warrant to seize books if they are not produced (cl.9). A penalty of $10,000 or imprisonment for 2 years, or both, is specified for a breach of these provisions (cl.10). The NCSC can also require a dealer to disclose the name of the person from or through whom securities were acquired or disposed of and the nature of any instructions given (cl.12).

Clause 14 empowers the Supreme Court upon application by the NCSC or a stock exchange to issue in certain circumstances various orders including the restraining of a person from acquiring, disposing of, or dealing in specified securities.

An investigation may be carried out at the instigation of a Minister, the Ministerial Council or the NCSC (cl.16). The investigation may be performed by the NCSC or by an inspector appointed for the purpose. The procedure for conducting an investigation and the powers of an inspector are set out in clauses 17 and 19. Other provisions deal with the making of a written record of an examination (cl.21), the admissibility of evidence given in an examination (cl.23-27) and the availability of an
inspector's report (cl. 30). Furthermore, during an investigation the NCSC has the power to make certain orders such as restraining the disposal or acquisition of securities, restraining the exercise of voting rights or directing a body corporate not to register a transfer (cl. 35). A number of penalties are specified for non-compliance with the provisions of Part II including $20,000 or 5 years imprisonment or both for destroying or concealing a book which is the subject of an investigation.

Part III - Stock Exchanges (clauses 37-42) (see E.M. pp. 54-57).

The formation and operation of a stock exchange requires the approval of the Ministerial Council. In giving its approval for formation the Ministerial Council is required to be satisfied that certain business rules will be adhered to, including the adoption of listing rules. (cl. 38).

The activities of stock exchanges are also regulated by the NCSC: the NCSC must be notified of any amendments to a stock exchange's business rules or listing rules which may disallow all or part of the amendment within 28 days (cl. 39); and where it is necessary to protect investors or the public the NCSC will be able to prohibit trading in particular securities for up to 21 days. (cl. 40).


A number of different licences is provided for in this Part for persons involved in the securities industry. Licences are required to be held by:

- a dealer (cl. 43),
- a dealer's representative (cl. 44),
- investment advisers (cl. 45) and
- investment representatives (cl. 46).

The NCSC has the power to grant these licences after consideration of a number of matters (cl. 48 and 49). The granting of a licence may be subject to conditions and restrictions including the lodgement of a bond not exceeding $20,000 by the holder of a dealer's or investment adviser's licence, and the financial position of the holder of a dealer's licence complying with certain conditions. (cl. 51).
The NCSC is required to keep a register of licence holders which is open for public inspection (cl.54). The holder of a dealer's licence or an investment adviser's licence must lodge with the NCSC each year a statement containing such information as is prescribed (cl.56). Moreover the NCSC will be able to revoke or suspend a licence in certain prescribed circumstances (cl. 59 and 60).

Part V - Conduct of Securities Business (clauses 63-68) (see E.M. pp. 72-80).

This Part imposes certain obligations on persons involved in conducting securities business. These include:

- the issue of contract notes in respect of a transaction of sale or purchase of securities (cl.64),
- the disclosure, by persons who recommend securities, of their interests in those securities and any financial benefit or advantage that will accrue directly or indirectly to them upon the disposal of those securities (cl.65),
- the prohibition of a dealer acting as a principal without first informing the other person of that fact (cl.66),
- the use by dealers of client's money (cl.67), and
- the prohibition subject to certain conditions of short selling (cl.68).

Part VI - Accounts and Audit (clauses 69-86) (see E.M. pp.81-93).

Part VI deals with the accounts to be kept by the holder of a dealer's licence, including trust accounts, and the auditing and supervision of those accounts, including the purposes for which money may be withdrawn from a trust account.

Part VII - Registers and Interests in Securities (clauses 87-94) (see E.M. pp.94-97).

Part VII deals with the establishment and maintenance of a register of interests in securities by licence holders and financial journalists. The Part applies to these categories of persons if they are not required to maintain a register under a corresponding law within the cooperative scheme (cl.88).
Part VIII - Deposits with Stock Exchanges (clauses 95-99) (see E.M. pp. 98-100).

Each sole trader and member firm must lodge and maintain with the stock exchange a deposit (cl. 95). The deposit required is two-thirds of the lowest balance in the trust account during the previous 3 months or such lesser proportion prescribed. No deposit is required if the amount is less than $3,000 (cl. 96).

Part XI - Fidelity Funds (clauses 100-122) (see E.M. pp. 102-116).

Each stock exchange is required to establish a fidelity fund (cl. 100). Clause 101 specifies the moneys which are to be paid into this fund and clause 103 the payments which may be made out of the fund. A person cannot be admitted to membership of a stock exchange unless a contribution, of an amount determined by the exchange (at least $500), is made to the fidelity fund (cl. 106). Moneys in the fund may be invested with an authorised dealer in the short-term money market (cl. 110). The main purpose of the fund is to compensate persons who suffer pecuniary loss (e.g. defalcation, fraud) or where there is a deficiency in an insolvency situation (cl. 111, see also cl. 112-122).


Part X regulates trading in securities including the prohibition of:

- stock market manipulation (cl. 123),
- false trading and market rigging (cl. 124),
- the making of false or misleading statements (cl. 125), and
- insider trading (cl. 128).

Clause 129 specifies penalties for breaches of clauses 123-128. In the case of a non-body corporate, $20,000, or 5 years imprisonment, or both; in the case of a body corporate, $50,000. Clause 130 provides that where a person sustains losses through breaches by another person of the above trading regulations he is entitled to compensation from that person. Clause 132 regulates the dealings of employees of dealers or investment advisers.
Part XI - Miscellaneous (clauses 133-151) (see E.M. pp.130-140).

Part XI deals with various miscellaneous matters including:

- appeals to the Supreme Court against any decision of the NCSC or its refusal to grant a licence or revocation of a licence (cl.134),
- general penalty for breach (cl.141);
- the power of the Supreme Court to prohibit transfer of moneys, securities or other property out of the Territory or Australia (cl.147), and
- the ability of the Supreme Court to grant an injunction restraining a person from engaging in conduct that constitutes or would constitute an offence on the application of the NCSC or a person whose interests are or would be affected by the conduct (cl.149).

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LEGISLATIVE RESEARCH SERVICE

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