Short Digest of Bill

Purpose

To abrogate the prerogative of the Crown in right of the Commonwealth to be paid debts in priority to debts owing to other creditors; and to ensure that in a corporate insolvency the Commonwealth is under an obligation to repay preferential payments in circumstances where other creditors would be obliged to.

Background

The introduction of this Bill is the fruition of a Government policy announced to the House of Representatives by the previous Minister for Business and Consumer Affairs on 13 September 1979, following a report tabled in the Senate by the Senate Standing Committee on Constitutional and Legal Affairs. The Government adopted the main thrust of the Committee's recommendation for the complete abrogation of all Crown priorities in insolvency administrations. The Government decided to abolish all remaining Crown priorities in the Commonwealth except in relation to tax instalment deductions and withholding tax on dividends and interest remitted overseas. Consequential amendments are being made contemporaneously to the Income Tax Assessment Act 1936 and other associated tax legislation in the Taxation Debts (Abolition of Crown Priority) Bill 1980.

Main Provisions

Clause 2 provides that the Act will come into operation on the day on which the Companies Act 1980 comes into operation. (See Digest of Companies Bill 1980)

Clause 3 makes the Commonwealth subject to any provision of the law of a State or Territory relating to the order in which debts or liabilities of a body (whether corporate or unincorporate) are to be paid or discharged (sub-cl. 3(a)). There are three possible categories of laws of this type:
(a) the Companies (Application of Laws) Acts or Ordinances of the other parties to the Formal Agreement relating to the new Companies Act.

(b) the Companies Act or Ordinance or similar legislation of any State or Territory which is not a party to the Formal Agreement; and

(c) laws providing for the winding-up of credit unions, building societies, co-operative societies and unincorporated associations (to the extent that the Commonwealth would not already be bound under (a) or (b) above in respect of such bodies which are wound up under the same legislation as that relating to companies.)

In addition to abrogating the Commonwealth's right to be paid certain taxes and trading debts in priority to other unsecured creditors, the Bill (sub-cl. 3(b)) will give a wider operation to those provisions of the company law of the States and Territories which enable a liquidator to recover as a preference certain payments made to a creditor prior to winding-up. The Bill will ensure that these avoidance of preference provisions also apply to payments made to the Commonwealth. In the absence of the Bill, such payments could not be recovered from the Commonwealth because a State Act cannot bind the Crown in right of the Commonwealth.

The Bill also ensures (sub-cl. 3(c)) that the Crown in right of the Commonwealth is bound by any compromise or scheme of arrangement effected under the laws of a State or Territory.

The Bill will not operate in respect of debts owed by individuals, as the Commonwealth's prerogative priorities in this regard were abrogated by the Bankruptcy Act 1966 which is expressed to bind the Crown in right of the Commonwealth.

In respect of companies wound up in the A.C.T. under the Companies Bill 1980, provisions in that Bill binding the Crown under the Parts relating to schemes of arrangement, receivership, official management and winding up, will have the same effect as this Bill will have in binding the Crown in right of the Commonwealth by similar Parts in the laws of the other States and Territories.

Clause 4 provides that notwithstanding the provisions of the law of a State or Territory relating to the order in which debts of a body are to be paid, the Commonwealth will retain its overriding priority accorded by
sections 221P and 221YU of the Income Tax Assessment Act 1936 in relation to tax instalment deductions and withholding tax on dividends and interest remitted overseas.

Abrogating the Commonwealth's prerogative priorities will not deny to the Crown the priority accorded to secured debts over unsecured debts under the general law.

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Law & Government Group
LEGISLATIVE RESEARCH SERVICE