Date Introduced: 27 August 1980
House: House of Representatives
Presented by: The Treasurer, the Hon. John Howard, M.P.

Short Digest of Bill

Purpose

To abolish the prerogative right, and any statutory priority, of the Commonwealth to receive preferential payment in company insolvencies, other than in relation to debts for tax instalment deductions and withholding tax.

Background

This Bill gives effect, in relation to taxation debts, to the Government's intention, announced by the Minister for Business and Consumer Affairs on 13 September 1979, to achieve the above purpose.

Under the present income tax law, the liquidator of a company that is being wound up is required to pay income tax in priority to all other unsecured debts. A liquidator and a receiver for debenture holders who has taken possession of assets of a company must also set aside some or all of the assets, to the value of an amount notified by the Commissioner of Taxation under each of the various taxation Acts being amended by this Bill, to provide for payment of the relevant tax or charge.

The amendments will give statutory recognition to the decision to withdraw the priority of the Crown, with effect from 1 November 1979. The Minister for Finance, in terms of section 70C of the Audit Act 1901, gave his authority with effect from that date for Crown priority to be postponed so as to rank with unsecured ordinary creditors in cases of company insolvency.

The Bill also makes a number of purely formal amendments to certain of the taxation Acts that are being amended.
Main Provisions

. Amendments of the Income Tax Assessment Act 1936
   (Clauses 4 and 5)

Clause 5 repeals section 221 of the Income Tax Assessment Act 1936 and thus abolishes the statutory priority for payment of income tax of a company in liquidation over all other unsecured debts of the company. The Crown Debts (Priority) Bill 1980 abolishes the Crown's prerogative right to priority of payment.

Clause 4 modifies the requirement on a liquidator or a receiver for debenture holders under section 215 of the Income Tax Assessment Act 1936 to hold sufficient of the assets of the company to pay in full the amount in respect of income tax, as notified by the Commissioner of Taxation. The liquidator or receiver is to be permitted to part with assets to satisfy secured debts or debts which are preferential debts under Commonwealth, State or Territory law. After allowance is made for payment of secured or preferred debts, a liquidator will be required to set aside part of the remaining assets, equal to the proportionate amount that the Commissioner, as an ordinary creditor, would be entitled to receive. The amendments include a formula for the trustee to calculate this amount.

. Amendments of the Pay-roll Tax (Territories) Assessment Act 1971
   (Clause 7)

Clause 7 amends section 30 of the Pay-roll Tax (Territories) Assessment Act 1971 to similarly require a liquidator to set aside for payment of pay-roll tax imposed in relation to the Australian Capital Territory only so much of the assets available for payment of ordinary debts as reflects the fact that pay-roll tax is to rank for payment as an ordinary debt. This will allow the liquidator to pay secured and preferential creditors in priority to any debt for pay-roll tax.

. Amendments of the Sales Tax Assessment Act (No. 1) 1930
   (Clauses 9 and 10)

Clause 9 amends section 32 of the Act so that a liquidator will only need to set aside out of assets available for payment of ordinary debts so much of those assets as the amount notified by the Commissioner as sufficient to meet sales tax bears to the total of the amounts of ordinary debts owing by the company, including any amounts which the Commissioner of Taxation has notified
to the liquidator under similar provisions in respect of various taxes and charges under this and the other Acts being amended. Again, secured and preferential debts will be able to be paid in priority to sales tax.

Certain formal amendments which do not disturb the substance of the law in any way are also to be made, as set out in Schedule 1, to reflect modern drafting style in Commonwealth legislation.

Amendments of the Stevedoring Industry Charge Assessment Act 1947
(Clauses 12 and 13)

Clause 12 makes similar amendments to those already outlined in relation to income tax, pay-roll tax and sales tax in this Act with regard to the setting aside of assets in accordance with section 27 to meet an amount of stevedoring industry charge of which a liquidator or receiver for debenture holders is formally notified by the Commissioner. A liquidator or receiver will be expressly authorised to pay secured and preferential creditors in priority to the charge and will be required only to set aside assets of the company to the value of such amount as reflects the entitlement of the Commissioner as an unsecured creditor.

Formal amendments to the Act to accord with modern drafting practice are contained in Schedule 2 of the Bill.

Amendments of the Tobacco Charges Assessment Act 1955
(Clauses 15 and 16)

Clause 15 amends section 27 of the above Act, so that liquidator's obligation to set aside assets for payment of tobacco charge is, in line with other amendments proposed by this Bill, to be reduced to an obligation to set aside from the assets remaining after secured and preferential debts have been paid, the amount which the Commission as an ordinary creditor would be entitled to expect to receive.

Formal amendments of the kind referred to in relation to clauses 10 and 13 are also made by clause 16 and Schedule 3 of the Bill.

Amendments of the Wool Tax (Administration) Act 1964
(Clauses 18 and 19)

Clause 18 amends section 47 of the above Act so that the formula proposed by the Bill for calculating the amount of assets which a liquidator of a company is required to set aside for payment of wool tax is consistent with the
proposals for amendments of other taxation Acts, as already described. There are also to be formal amendments (Schedule 4) to this Act to accord with the change in drafting style being made in those other Acts.