PARLIAMENT OF AUSTRALIA
DEPARTMENT OF THE PARLIAMENTARY LIBRARY

NATIONAL COMPANIES AND SECURITIES COMMISSION BILL 1979

Date Introduced: 28 August 1979
House: House of Representatives
Presented by: Hon. Wal Fife, Minister for Business and Consumer Affairs

Purpose

As the first stage in executing the formal agreement between the Commonwealth and the States on uniform companies and securities law and administration, this Bill establishes the National Companies and Securities Commission.

Background

Partly as a result of the relative failure of the Uniform Companies Act 1961 and the revelations and recommendations of the Report of the Senate Select Committee on Securities and Exchange (the Rae Report) in 1974, concerted efforts have been made both under the Labor Government and the present Government to achieve some lasting and adequate system of national uniformity of laws in the area of companies and securities.

In essence the Rae Report's solution was a uniform set of laws regulated and administered by a national body; it rejected the idea of a regulatory agency created by joint action of the States and the Commonwealth. In its Corporations and Securities Industry Bill 1974, the Labor Government attempted to follow the Report's recommendations, thus depriving the States of their traditional responsibilities in the area. However, the double dissolution of 1975 prevented the further progress of this Bill.

The present Government officially announced definite ideas on the subject in a statement by the then Minister for Business and Consumer Affairs, Mr. Howard in July 1976 which set out the basic elements for a Federal/State cooperative scheme for regulating the industry. After protracted negotiations with the States, final agreement was reached on 22 December 1978. That agreement, which is a schedule to the present Bill, covers the following major matters:
(i) the objectives and operation of the scheme;
(ii) the establishment of the Ministerial Council;
(iii) the operation of the national Companies and Securities Commission established by this Bill;
(iv) the Commission's relationship with existing State and Territory administrations; and
(v) the legislative device which will ensure that the companies and securities industry legislation in force in the ACT at any time will also be the law in force in the 6 States.

Main Provisions

The Bill is divided into 7 Parts as follows:

Part I - Preliminary;
Part II - Establishment, Functions and Powers of the Commission;
Part III - Constitution and Meetings of the Commission;
Part IV - Staff of the Commission;
Part V - Finance;
Part VI - Hearings before the Commission; and
Part VII - Miscellaneous.

Part I

Clause 3 sets out the relevant definitions.

Part II

Clause 5 formally establishes the National Companies and Securities Commission. Clause 6 sets down the general powers and functions of the Commission; these include those powers conferred on it by Commonwealth law under the Territories power (s.122 of the Constitution), or by a law of a State or the Northern Territory. In addition, it is empowered to make recommendations to the Ministerial Council for new laws or amendments to existing laws for the ACT which will then, under the Agreement, have effect in the States.
Subject to the terms of the Agreement, clause 7 requires the Commission to comply with the directions of the Minister, the Ministerial Council or a State Minister in respect to its functions and powers. The Agreement provides that a State Minister may only direct the Commission in respect of:

(i) the initiation of a special investigation (provided his State meets the costs) (Cl.17 and 18); or

(ii) updating information on corporate and securities matters in that State (Cl.39).

Clause 8 requires the Commission to report to the Council on its activities as and when required by the latter.

Part III

This Part outlines details for the Constitution and meetings of the Commission.

Clause 10 provides for the usual characteristics of a statutory authority relating to incorporation e.g., perpetual succession. Clause 11 lays down membership requirements. The Commission is to consist of no fewer than 3 and no more than 5 members appointed by the Governor-General on the nomination of the Ministerial Council. At least 3 must be full-time and any remaining members may be full or part-time. Members may hold office for up to 5 years and may be reappointed (cl.12). Clause 13 provides for the appointment of a Chairman and Deputy Chairman from the members. Clause 18 provides the usual reasons for termination of appointment while including failure to abide by certain fiduciary obligations as grounds for dismissal. These latter reasons include failure to:

(i) register financial interests;

(ii) observe secrecy;

(iii) refrain from dealing in securities where the member has price sensitive information not generally available to the public; and

(iv) notify relevant past employment.

Clause 19 sets out compulsory procedures for members registering their financial interests in the Register of Financial Interests. A financial interest is defined to mean a company directorship or a 'relevant interest' in non-governmental securities. The meaning of 'relevant interest' is to be prescribed by regulations at a
later date. The Register will be open to the public and maintained by a Commission staff member.

Clause 20 outlines details for the meetings of the Commission.

Part IV

This Part deals with the Staff of the Commission. Clause 23 provides that their terms and conditions of employment will be determined by the Commission subject to the approval of the Public Service Board.

Part V

This Part relates to the finances of the Commission. Clause 26 states that Parliament may appropriate such amounts for the Commission as are payable in accordance with directions from time to time given by the Minister for Finance. Clause 27 also provides that the Commission may receive moneys paid by the States. Clause 31 provides that, except where the Council has consented otherwise, the Commission's funds must be expended in accordance with estimates approved by the Council. Clause 34 requires the Auditor-General to audit the Commission's accounts and report to the Council at least once a year on the results.

Part VI

This Part deals with the procedures and the rights and duties of persons in Commission hearings. Clause 36 outlines the requirements for public and private hearings respectively. Clause 38 relates to the type of proceedings before the Commission; in particular sub-clause 38(1)(a) requires such proceedings to be conducted with as little formality as possible.

Part VII

This Part is a collection of miscellaneous provisions.

Clause 43 provides that the Commission may accept gifts, bequests and devises made to it on trust and may act as trustee for such moneys and invest such trust funds according to the terms of the trust or in accordance with the law. Clause 45 permits the Commission to delegate any of its functions and powers to a State or Territory authority. Clause 47 prescribes the secrecy provisions applying to persons who are or were employed by or associated with the Commission under this Bill or any other prescribed Act.
Clause 48 outlines the restrictions on dealing in securities applying to present or past persons associated with or employed by the Commission; it is generally provided that no such person shall deal in or cause other persons to deal in, securities about which he has information which is not generally available. The prescribed penalty for such an offence is a $20,000 fine or 5 years imprisonment; as well, provision is made for compensation payments for any loss to an innocent party caused by the offence.

Clause 49 provides that any person, apart from members or staff of the Commission, who is engaged by or authorised to perform any functions for the Commission, must declare certain relevant interests outlined in the clause. In addition, sub-clause 49(2) requires Commission members or staff to declare any relevant past employment which may conflict with official duties.

Clause 52 requires the Commission to report on its activities to the Council not later than 31 October each year, and that report, along with the financial statements of the Commission and the Auditor-General's Report shall be laid before each House of Parliament.

10 September 1979
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