

EXPLANATORY STATEMENT

Issued by the Authority of the

Minister for Business and Consumer Affairs

CORPORATE AFFAIRS COMMISSION ORDINANCE 1980 43 of 1980

SEAT OF GOVERNMENT (ADMINISTRATION) (AMENDMENT) ORDINANCE 1980

44 of 1980

INTRODUCTION

This Explanatory Statement contains a brief outline of the co-operative companies and securities scheme and then deals with the draft Corporate Affairs Commission Ordinance 1980 and the draft Seat of Government (Administration) (Amendment) Ordinance 1980.

THE SCHEME

2. On 22 December 1978 the Commonwealth and the six States executed a Formal Agreement that provides the framework for a co-operative Commonwealth - State scheme for a uniform system of law and administration in relation to company law and the regulation of the securities industry in the States and the Australian Capital Territory.

3. Uniformity of law is to be achieved by a legislative device whereby the Commonwealth Government is to pass legislation, applicable directly to the Australian Capital Territory, dealing with company law and the regulation of the securities industry. Each other jurisdiction that is covered by the Formal Agreement will then pass legislation which will apply the relevant Commonwealth law as the law of that jurisdiction to the exclusion of its present legislation as from the date of commencement of the Commonwealth law. Subsequently, any amendments to the Commonwealth law that are approved by the Ministerial Council will have automatic effect in those jurisdictions without the necessity of further and separate legislation in each other jurisdiction.

4. Uniformity of administration is to be obtained by vesting all administrative functions under all the legislation mentioned in the previous paragraph upon the National Companies and Securities Commission (established by the National Companies and Securities Commission Act 1979) which will, in turn, delegate to the Corporate Affairs Commission or equivalent person or body in each State or Territory its functions. This delegation is intended to be subject to such directions and guidelines as are necessary to obtain substantial uniformity in administrative policies and legislative interpretation. The aim is that, as far as possible, any person or company in a particular Australian jurisdiction should be able to deal on all general companies and securities matters as if that person or company were only subject to one system of law and administration throughout Australia.

THE CORPORATE AFFAIRS COMMISSION ORDINANCE 1980

5. The draft Corporate Affairs Commission Ordinance will establish a Corporate Affairs Commission for the Australian Capital Territory. The making of this Ordinance was approved by the Ministerial Council on 8 August 1980.

Cl. 1: Short Title

6. The Ordinance will be cited as the Corporate Affairs Commission Ordinance 1980.

Cl. 2: Interpretation

7. This clause provides the necessary interpretation provisions.

Cl. 3: Establishment of Commission

8. This clause formally establishes the Corporate Affairs Commission.

/...3

Cl. 4: Constitution of Commission

9. The Commission is to be a corporation sole constituted by a Commissioner.

Cl. 5: Officers and Staff

10. Provision is made for the appointment of the Commissioner, a Deputy Commissioner and Assistant Commissioners by the Minister for Business and Consumer Affairs. All persons so appointed are to be members of the Australian Public Service.

Cl. 6: Incorporation

11. The Commission is to be a body corporate with the usual appurtenances of incorporation. In particular:

- (a) it is to have a common seal;
- (b) judicial notice is to be taken of the seal; and
- (c) judicial notice is to be taken of the signature of the Commissioner, Deputy Commissioner or Assistant Commissioners.

Cl. 7: Functions and Powers of the Commission

12. The Commission will have such functions as are conferred upon it by any Act of Parliament or Ordinance of the Territory and such functions as are delegated to it under any legislation (whether of the Commonwealth or of a State or another Territory) comprising the national scheme.

Cl. 8: Acting Appointments

13. This clause sets out the usual provisions to enable the Minister to appoint persons to act during a vacancy in the offices of Commissioner, Deputy and Assistant Commissioners. Such temporary appointments are not to continue for more than 12 months and may be terminated at any time by the Minister.

Cl. 9: Powers and Functions of Deputy and Assistant Commissioners

14. The Deputy Commissioner and the Assistant Commissioner may perform any functions of the Commissioner subject, however, to any directions given by the latter.

Cl. 10: Notification of Interests

15. This clause applies to any person authorised to perform or exercise any functions of the Commission or on its behalf (other than the Commissioner). If any of those persons are required, in the course of their duties, to consider any matter relating to a body corporate or to securities in which they have an interest, or to a person or body by whom or by which they have been employed during the immediately preceding 3 years or with which they have been associated within that period, or to a body corporate related to such a person or body, they must immediately inform the Commissioner in writing. The purpose of this clause is to place subsequent responsibility for any possible conflict of interests on the Commissioner.

16. The Commissioner himself is not dealt with by this clause; Section 49 of the National Companies and Securities Commission Act 1979 already makes provision for the notification of interests in circumstances similar to those described in the preceding paragraph in relation to persons appointed under prescribed legislation. The Corporate Affairs Commission Ordinance 1980 will be prescribed for the purpose of that section.

Cl. 11: Annual Report

17. The Commissioner is to report to the Minister by 30 September in each year on the operations of the Commission for the year ended on the preceding 30 June.

Cl. 12: Regulations

18. This clause contains the usual regulation-making power.

THE SEAT OF GOVERNMENT (ADMINISTRATION) (AMENDMENT) ORDINANCE 1980

19. The purpose of the Seat of Government (Administration) (Amendment) Ordinance 1980 is to provide that the Corporate Affairs Commission Ordinance 1980 will be administered by the Minister for Business and Consumer Affairs.

Ord. No. 2/80 and

Ord. No. 48/80