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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Corporations (Fees) Bill 2001

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15 June 2001

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Corporations (Fees) Bill 2001

Date Introduced: 24 May 2001

House: House of Representatives

Portfolio: Treasury

Commencement: At the same time as the *Corporations Act 2001*. It is intended that Act will commence on 1 July 2001.

Purpose

To provide for the imposition of fees for things done under the proposed *Corporations Act 2001*. This Bill, in substance, re-enacts the existing fee imposition provisions of the Corporations Law national scheme as a single piece of Commonwealth legislation.

Background

This Bill is one of 7 pieces of legislation¹ introduced by the Government to deal with the implications for corporate regulation arising out of the High Court decisions in *Re Wakim; ex parte McNally*² and *The Queen v Hughes*³. In response to these judgements the Government has decided to essentially re-enact the existing corporations law based in part on a referral of powers to the Commonwealth by the States under section 51(xxxvii) of the Constitution. For a detailed discussion of the issues that have resulted in this legislation see the Bills Digest for the Corporations Bill 2001⁴.

Under the existing corporations law scheme, the Commonwealth's *Corporations Act 1989* law does impose fees (including fees that are taxes) but only in relation to the ACT⁵. Fees are imposed in other jurisdictions by State or Territory legislation⁶.

Section 55 of the Constitution provides in part that 'Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect'. The High Court has held however that the limitation in section 55 does not apply to laws made under section 122 of the Constitution in relation to a Territory⁷. Consequently, the Commonwealth was able to enact provisions in the *Corporations Act 1989* which imposed fees as taxes in the ACT. As the proposed *Corporations Act 2001* will apply throughout Australia and will largely be based on

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powers in section 51 of the Constitution⁸, it is necessary to introduce separate bills dealing with provisions that may be construed as imposing taxation.

Main Provisions

Clause 5 provides that the regulations may prescribe fees for ‘chargeable matters’. This term is defined in **clause 4** and, in effect, mirrors the existing definition in section 9 of the Corporations Law. Chargeable matters include things such as:

- the lodgement of a document under the proposed *Corporations Act 2001*
- the registration of a document under the Act, and
- the submission to ASIC of a document for examination by ASIC.

Clause 6 is based on section 1352 of the *Corporations Law* and sections 25 and 26 of the *Corporations Act 1989*. The regulations may specify an amount not greater than \$5 000 for a particular matter or specify a method for calculating the fee. In any event, the fee or sum of fees for a particular chargeable matter must not exceed \$25 000.

Clause 7 is a mechanism for identifying the person liable for the payment of fees prescribed in the regulations. These rules are simply summarised in the Explanatory Memorandum⁹.

The transitional provisions in **subclause 9(1)** are designed to ensure that regulations made under the Corporations Law continue in force. Where a person has a liability to pay a fee under the current national scheme at the time when the proposed *Corporations Act 2001* commences, then **subclause 9(2)** imposes a new liability to pay the fee. Current liabilities to pay fees will be extinguished by Commonwealth, State and Territory consequential legislation¹⁰.

Endnotes

1 The other Bills are: Corporations Bill 2001; Australian Securities and Investments Commission Bill 2001; Corporations (Securities Exchanges Levies) Bill 2001; Corporations (Futures Organisations Levies) Bill 2001; Corporations (National Guarantee Fund Levies) Bill 2001 and Corporations (Repeals, Consequentials and Transitionals) Bill 2001.

2 (1999) 198 CLR 511

3 (2000) 171 ALR 155.

4 <http://www.aph.gov.au/library/pubs/bd/2000-01/01BD140.htm>

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- 5 Section 33.
- 6 For example, section 22 of the *Corporations (NSW) Act 1990*.
- 7 *Buchanan v Commonwealth* (1913) 16 CLR 315. This holding was endorsed in *Spratt v*
8 *Hermes* (1965) 114 CLR 226
- 8 Especially the reference power in section 51(xxxvii) of the Constitution.
- 9 p.4.
- 10 See for example clause 6(3) *Corporations (Repeals, Consequential and Transitional) Bill*
2001.

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