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Corporations (Repeals, Consequential and  
Transitional) Bill 2001

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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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No. 158 2000-01

Corporations (Repeals, Consequentials and Transitionals)  
Bill 2001

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15 June 2001

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# Corporations (Repeals, Consequential and Transitional) Bill 2001

**Date Introduced:** 24 May 2001

**House:** House of Representatives

**Portfolio:** Treasury

**Commencement:** Most provisions of the Bill commence at the same time as the *Corporations Act 2001*. It is intended that Act will commence on July 1 2001.

## Purpose

To repeal the existing Commonwealth elements of the corporations law national scheme and the former co-operative scheme for corporate regulation. The legislation will be replaced by a new framework based in part on a referral of powers by the States to enact the proposed *Corporations Act 2001* and *Australian Securities and Investments Commission Act 2001*. The Bill also amends a large number of Acts to remove references to repealed legislation and insert references to the new corporations legislation. Furthermore the Bill also contains transitional arrangements for the ACT.

## Background

This Bill is one of 7 pieces of legislation<sup>1</sup> 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*<sup>2</sup> and *The Queen v Hughes*<sup>3</sup>. 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 2001<sup>4</sup>.

**Warning:**

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## Main Provisions

**Part 3** of the Bill provides for transitional arrangements for the ACT. These provisions are necessary because under the current national scheme the *Corporations Act 1989 (Cth)* applies the Corporations Law to the ACT<sup>5</sup>.

Chapter 10 of the proposed *Corporations Act 2001* and Part 16 of the proposed *Australian Securities and Investments Commission Act 2001* (the corporations legislation) contain transitional provisions which have the effect of creating a new right or liability in specified circumstances to replace rights and liabilities that existed under the Corporations Law. The Explanatory Memorandum states that as far as possible new rights and liabilities are equivalent to those existing under present legislation<sup>6</sup>. **Clause 6(1)** complements this legislation in relation to the ACT by cancelling rights and liabilities existing prior to the commencement of the new corporations legislation. It is expected that the States and the Northern Territory will introduce legislation to extinguish liabilities in their jurisdiction.

The new corporations legislation attempts to bring existing court proceedings under federal jurisdiction. Where the corporations legislation creates a new proceeding, **clause 6(2)** terminates existing proceedings that relate to the present ACT corporations legislation.

**Clause 6(3)** extinguishes existing liabilities to pay fees or levies under the *Corporations Act 1989*. Transitional provisions in other Bills<sup>7</sup> create a new liability where a person owed fees or levies prior to the commencement of the *Corporations Act 2001*.

**Schedule 1** repeals the *Australian Securities and Investments Commission Act 1989* and the *Corporations Act 1989*. The schedule also repeals the Commonwealth elements of the co-operative scheme that operated between 1982 and 1990.

**Schedule 2** amends the proposed *ASIC Act 2001* and the proposed *Corporations Act 2001*. Most of the substantive amendments made by the schedule arise from the High Court's decision in *ASIC v Edensor Nominees*<sup>8</sup>. The case overturned a decision of the Full Federal Court that it had no power to grant the declarations and injunctions sought by ASIC under the Victorian Corporations Law because of the *Re Wakim*<sup>9</sup> decision. The High Court held that the Federal Court had jurisdiction because ASIC was the moving party. The High Court stated that ASIC was 'the Commonwealth' for the purposes of the Constitution and the *Judiciary Act 1903* and that because the Commonwealth was a party the Federal Court was exercising federal jurisdiction when ASIC sought relief. In addition, section 79 of the *Judiciary Act* operated to apply the Corporations Law of a State in proceedings brought by ASIC in the Federal Court<sup>10</sup>.

**Item 4** of **schedule 2** amends the definition of 'federal ASIC proceeding' in section 266 of the proposed *ASIC Act 2001* to cover proceedings of the type before the Court in *Edensor*. **Item 15** makes a similar amendment to the definition of 'federal corporations proceeding' in section 1382 of the proposed *Corporations Act 2001*.

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The effect of the amendments is that a greater range of existing proceedings will be continued as federal proceedings<sup>11</sup>. Section 268 of the proposed *ASIC Act 2001* and 1384 of the proposed *Corporations Act 2001* state that if a proceeding is a federal proceeding that had not been terminated before the commencement of the new corporations legislation, the proceeding continues in the same court as if it had always been a proceeding under a corresponding provision of the new legislation.

**Schedule 3** makes minor amendments to a large number of Commonwealth Acts. For the most part these amendments simply delete references to repealed corporations legislation and insert new references to the proposed *Corporations Act 2001*.

## Endnotes

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- 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 (Fees) 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>
- 5 The Corporations Law is contained in section 82 of the *Corporations Act 1989*.
- 6 p. 4.
- 7 See Corporations (Securities Exchanges Levies) Bill 2001; Corporations (Futures Organisations Levies) Bill 2001; Corporations (National Guarantee Fund Levies) Bill 2001 and Corporations (Fees) Bill 2001.
- 8 (2001) 19 ACLC 427.
- 9 In *Wakim*, the High Court ruled that cross-vesting legislation was invalid to the extent that it purported to invest federal courts with State jurisdiction.
- 10 Section 79 states: 'The laws of each State or Territory, including the laws relating to procedure, evidence, and the competency of witnesses, shall, except as otherwise provided by the Constitution or the laws of the Commonwealth, be binding on all Courts exercising federal jurisdiction in that State or Territory in all cases to which they are applicable.'
- 11 Explanatory Memorandum, p. 10.

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