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Ian Ireland
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Corporations (Compensation Arrangements Levies) Bill 2001

Date Introduced: 7 June 2001

House: House of Representatives

Portfolio: Treasury

Commencement: On the commencement of item 1 of Schedule 1 of the proposed Financial Services Reform Act 2001. Subject to certain exceptions, the Financial Services Reform Bill will commence on a day to be fixed by Proclamation on or after the commencement of the *Corporations Act 2001*. The Government has stated its intention that the Financial Services Reform Bill 2001 will commence on 1 October 2001.

Purpose

To impose levies for the purposes of compensation arrangements relating to financial markets not covered by the National Guarantee Fund (NGF).

Background

Division 3 of Part 7.5 of the *Corporations Act 2001*, as amended by the Financial Services Reform Bill 2001, provides for the making of compensation arrangements for financial markets not covered by the National Guarantee Fund. Compensation arrangements are necessary, for example, where the clients of market participants suffer loss as a result of fraud in relation to property entrusted to participants for the purpose of a market transaction.

Section 883D of the *Corporations Act 2001*, as amended by the Financial Services Reform Bill 2001, provides for the payment of levies by participants in a particular financial market to ensure that adequate funds are available for the purposes of compensation arrangements. The levy is payable to the operator of the market, as agent for the Commonwealth.

The National Guarantee Fund is a compensation fund that is available to meet claims arising from dealings with stockbrokers including where: a stockbroker transfers securities without authority; or where the stockbroker becomes insolvent and fails to meet its obligations to a person who had previously entrusted property to it. The Fund is administered by the Securities Exchange Guarantee Corporation (SEGC). The NGF may be funded by levies on securities transactions, the ASX and ASX members.

Readers may note that the provisions proposed by this Bill while relating to provisions in the Financial Services Reform Bill are contained in a separate Bill. The need for this is the requirements of section 55 of the Constitution.

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.

As the *Corporations Act* 2001 will apply throughout Australia and will largely be based on powers in section 51 of the Constitution, it is necessary to introduce separate bills dealing with provisions that may be construed as imposing taxation.

For a detailed analysis of the Financial Services Reform Bill 2001 the reader is referred to the Digest for that Bill.

Main Provisions

Clause 4 formally imposes any levy payable under proposed section 883 of the *Corporations Act 2001*, as amended by the Financial Services Reform Bill 2001.

Clause 5 provides that that the amount of levy payable will be the amount, or a method for determining the amount, specified in, or worked out in accordance with the method specified in subsection 883D(1) compensation rules.

Levies payable before the commencement of this Bill to a securities exchange or to a futures organisation under the *Corporations (Securities Exchanges Levies) Act 2001* and *Corporations (Futures Organisations Levies) Act 2001*, which are being repealed as a consequence of the Financial Services Reform Bill 2001, will become payable to the operator of the financial market that was that securities exchange or futures organisation on the commencement of this Bill (**clause 6**).