

# **CORPORATIONS (QUEENSLAND) AMENDMENT BILL 2000**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objectives of the Legislation**

The objective of this Bill is to amend the *Corporations (Queensland) Act 1990* to give effect to decisions of the Ministerial Council for Corporations (MINCO) which is the body overseeing the operation of the latest National Uniform Corporations Law Scheme. MINCO consists of relevant ministers from the Commonwealth, the States and the Northern Territory Governments. The establishment of MINCO is provided for in the “Heads of Agreement” amongst the Commonwealth, States and Northern Territory Governments and is also provided for in the Corporations Agreement dated 23 September 1997—an agreement supplementary to, and envisaged in, the July 1990 Heads of Agreement.

One of the major functions of MINCO is to co-ordinate legislative initiatives in relation to the refining and updating of the *Corporations Law*. In this regard, the Corporations Agreement provides for the manner and method as to how legislative proposals to the *Corporations Law* are to be progressed by either the Commonwealth or the States and Northern Territory Governments.

#### **Reasons for the objectives and how they will be achieved**

By the *Corporations Legislation Amendment Act 1990 (Cwlth)*, the *Corporations Act 1989 (Cwlth)* was converted into a law for the government of the Australian Capital Territory [ACT]. Section 82 of the *Corporations Act 1989 (Cwlth)* contains the *Corporations Law* which is the legislative substance of the national scheme. Each State and the Northern Territory has enacted legislation applying the *Corporations Law* of the ACT as law of that State or Territory [see for example, section 7

*Corporations (Queensland) Act 1990*]. By means of this application of law procedure, amendments to the *Corporations Law* of the ACT automatically apply in each State and Territory throughout Australia.

The uniform body of companies and securities law comprised by the *Corporations Law* of the ACT and the application laws of each State and the Northern Territory is known simply as the *Corporations Law*. Similarly, the regulations in force for the time being under section 22 of the *Corporations Act 1989 (Cwlth)* as applied in each jurisdiction, are known simply as the “*Corporations Regulations*”.

A Working Party of State and Commonwealth drafters and policy officers reported to the April 1999 meeting of MINCO on the amendments to the Corporations ([Name of State]) Acts [State Acts], such as the *Corporations (Queensland) Act 1990*, which were needed as a consequence of the Commonwealth Government’s Financial Sector Reforms and its Corporate Law Economic Reform Program [CLERP].

At the July 1999 meeting of MINCO, the Council, amongst other things:

- (a) approved the amendments to the *Corporations (Victoria) Act 1990*, the *Corporations (New South Wales) Act 1990* and the *Corporations (Western Australia) Act 1990*; and
- (b) approved comparable amendments to implement its April 1999 meeting resolution recognising that minor variations may be needed to accommodate differences between these State Acts.

The aim of the Commonwealth Government’s CLERP is to ensure that Australia’s corporate law is consistent with promoting a strong and vibrant economy. This will involve delivering a corporate regulatory regime which:

- takes full account of the Commonwealth Government’s economic objectives;
- encourages companies to fulfil their basic role of facilitating investment, employment and wealth creation; and
- protects investors and maintains confidence in the business environment.

CLERP includes reforms in the following areas:

- accounting standards
- fundraising

- directors' duties and corporate governance
- takeovers
- electronic commerce
- financial products, service providers and markets and
- the information to be lodged with ASIC (including annual returns) and a review of fees.

**Administrative cost to Government of implementation**

This Bill will not result in any costs to government.

**Fundamental legislative principles**

This Bill does not breach any fundamental legislative principles.

**Consultation**

This Bill is technical in its content and consequently, it has not been necessary to consult the community. However, it has been necessary to consult with Queensland Treasury and Queensland Treasury Corporation. All organisations consulted support the content of the Bill.

**NOTES ON PROVISIONS**

The format to this statute follows the following format:

- There is a long and short title; and
- The Act is divided into three Parts which contain various clauses giving effect to all matters relevant to the purpose of implementing the objectives of the Bill.

## **Part 1—Preliminary**

### **Short Title**

*Clause 1* sets out the short title of the Act.

*Clause 2* provides that the Act commences on a day to be fixed by proclamation.

## **Part 2—Amendment of *Corporations (Queensland) Act 1990***

*Clause 3* provides for the amendment of the *Corporations (Queensland) Act 1990* [“Act”] in this part and the schedule.

*Clause 4* amends section 15 of the Act to confirm that the Crown in right of the State of Queensland retains immunity from the application of Chapters 6, 6A, 6B, 6C and 6D of the *Corporations Law* which contain, amongst other things, the fundraising provisions. These chapters were inserted by the provisions of Schedule 1 of the *Corporate Law Economic Reform Program Act 1999* (Cwlth). This clause inserts a new subsection 15(3) which provides that Chapters 6, 6A, 6B, 6C and 6D of the *Corporations Law* of the Queensland binds the Commonwealth as far as the legislative power of the Parliament permits and does not bind the States and Territories or Norfolk Island.

*Clause 5* repeals Part 6 of the Act - section 21 (accounting standards) - because of the application of the provisions of the *Company Law Review Act 1998* (Cwlth) which repeal Parts 3.6 and 3.7 of the *Corporations Law* by inserting a new chapter: Chapter 2M—Financial Reports and Audit.

*Clause 6* amends the definitions of ‘affairs’ and ‘books’ in section 60 of the Act by correcting the cross-reference in the definition of ‘affairs’; and amending the definition of ‘books’ consistently with the recent amendment of the same term in the *Australian Securities and Investments Commission Act 1989* (Cwlth). The clause also amends the definition of the term “witness” in section 60 and inserts a definition of the term “panel proceeding” in section 60 which are both necessary because of the amendments of the same terms in the *Corporate Law Economic Reform*

*Program Act 1999* (Cwlth). An amendment to the definition of the term “commission” is also made in this clause because of the effect of the *Financial Sector Reform (Amendment and Transitional Provisions) Act 1998* (Cwlth).

*Clause 7* repeals section 94 (Exemptions from Part 7.12) of the Act because of the application of the provisions in the *Managed Investments Act 1998* (Cwlth) and the *Corporate Law Economic Reform Program Act 1999* (Cwlth).

*Clause 8* inserts a new subsection in section 97 of the Act so that it has no application after the commencement of *the Corporations (Queensland) Amendment Act 2000*. Section 97 of the Act relates to the transfer of land by companies in exchange for or in satisfaction of rights referred to in section 195(13) of the *Corporations Law* which was repealed by Schedule 1 of the *Company Law Review Act 1998* (Cwlth).

### **Part 3—Amendment of *Acts Interpretation Act 1954***

*Clause 9* provides for the amendment of the *Acts Interpretation Act 1954*.

*Clause 10* amends the definitions of the terms “ASC Law” and “ASC Regulations” by omitting the term “ASC” and inserting the term “ASIC”.

**SCHEDULE 1**

In Schedule 1, consequential amendments are made to various provisions as follows arising from the *Financial Sector Reform (Amendment and Transitional Provisions) Act 1998* (Cwlth):

- (a) to amend references to “ASC Law” to read “ASIC Law”;
- (b) to amend references to “ASC Regulations” to read “ASIC Regulations”;
- (c) to amend the definitions of “ASC Act” to read “ASIC Act”; and
- (d) to amend the references to the “*Australian Securities Commission Act 1989* (Cwlth)” and the “Australian Securities Commission” to read the “*Australian Securities and Investments Commission Act 1989* (Cwlth)” and the “Australian Securities and Investments Commission”.