



Legislative Assembly

Financial Services Reform (Consequential Amendments) Bill

04/06/2002

Hansard

Extract

Second Reading

Mr DEBUS (Blue Mountains—Attorney General, Minister for the Environment, Minister for Emergency Services, and Minister Assisting the Premier on the Arts) [9.39 p.m.]: I move:

That this bill be now read a second time.

The purpose of this bill is to amend State Acts and regulations which are affected by changes made to the securities and futures industry provisions in the Commonwealth corporations legislation by the Commonwealth Financial Services Reform Act 2001 and Financial Services Reform (Consequential Provisions) Act 2001. Honourable members will recall that last year New South Wales and other States referred powers to the Commonwealth which enabled the Commonwealth to enact national corporations legislation. The referral of powers overcame difficulties which had arisen as a result of certain legal challenges and High Court decisions in 1999 and 2000. The enactment of national corporations legislation has given Australia an effective, uniform system of corporate regulation.

Prior to enacting national corporations legislation, the Commonwealth had been developing a package of reforms in relation to the regulation of financial services in Australia. Introduction of these reforms was delayed pending finalisation of negotiations on the referral of power and the enactment of national corporations legislation. Last year, with the agreement of the States and the Northern Territory, the Commonwealth enacted the Financial Services Reform Act 2001 and the Financial Services Reform (Consequential Provisions) Act 2001. These Acts commenced on 11 March 2002 and reformed the regulation of financial services in Australia by introducing a harmonised regulatory regime for market integrity and consumer protection across the financial services industry.

The financial services reform Acts introduced a single licensing system for all financial sales and advice, and for financial markets and clearing and settlement facilities. The single licensing system covers a wide range of financial products including shares and debentures, derivatives, managed investment products, general and life insurance products—other than health insurance—superannuation products and retirement savings accounts but not credit or consumer credit. A person who carries on a financial services business is required to hold an Australian financial services licence covering all products or a more limited class of products.

In practical terms, the financial services reform Acts substituted a new chapter 7 dealing with financial services and markets, for the previous chapters 7 and 8 of the Corporations Act. The previous chapter 7 contained provisions relating to the acquisition of securities—principally shares and debentures—and the regulation and operation of the securities industry in Australia. It licensed and regulated participants in the securities industry such as dealers, investment advisers and operators of managed investment schemes. It contained also provisions in relation to title to, and transfer of, securities. The previous chapter 8 provided for the regulation of the futures market in Australia and dealt with the approval and regulation of futures exchanges and participants in that industry.

It is necessary to amend references in State Acts and regulations to the old chapters 7 or 8 of the Corporations Act and expressions and concepts that are no longer consistent with the new regulatory regime. For instance, the term "stock exchange" is replaced by "financial market", licensed dealers and investment advisers are "financial services licensees" and insurance agents who were authorised under the repealed Insurance (Agents and Brokers) Act 1984 of the Commonwealth will have to be licensed under the Corporations Act. The necessary changes to State Acts and Regulations are contained in schedules 2 and 3 to the bill. Schedule 2 also contains amendments to the Minors (Property and Contracts) Act 1970 and the Property (Relationships) Act 1984 to make it clear that legal practitioners are not required to give financial advice for which they would need to be licensed under the corporations legislation when they give certificates under those Acts.

As I mentioned earlier, a limited regulation-making power has been included in the Corporations (Ancillary Provisions) Act 2001. This power will be used to make regulations which specify how references in State Acts to provisions of, or terms, concepts or expressions used in the Commonwealth corporations legislation are to be construed when they are amended by the Commonwealth; and to amend references in regulations to such amended provisions, terms, concepts or expressions. This provision recognises the fact that the Commonwealth will continue to amend the corporations legislation and that such amendments may have an effect on the construction of various State Acts and regulations. The regulation-making power enables any necessary consequential amendments to be made by regulation. In conclusion, the amendments made by this bill are technical and are largely consequential on the amendments made by the financial services reform Acts. The Government remains committed to ensuring that

Australia has a national uniform and constitutionally secure corporations law. I commend the bill to the House.