1987

The Parliament of the Commonwealth of Australia

Senate

Statute Law (Miscellaneous Provisions) Bill 1987

Amendments and new clauses moved and accepted on behalf of
the Government in the House of Representatives

Supplementary Explanatory Memorandum No. 3

(Circulated by Authority of the Attorney-General,
the Hon. Lionel Bowen MP.)

Statute Law (Miscellaneous Provisions) Bill 1987

General Outline

The Bill was passed by the Senate with amendments on 7 October
1987. The Senate amended the bill by omitting certain
proposed amendments. Three of the substantive amendments were
referred to Senate Standing Committees for inquiry and
report. This course of action was adopted to permit the
Bill's speedy passage through the Senate.

These amendments have now been considered by the Senate
Committees, and approved, with a minor drafting change in the
case of the amendments to the Acts Interpretation Act.

The Government reinstated those amendments with the change I
have mentioned in the House of Representatives on 25 November
1987.

The Government also moved to replace some amendments to the
National Measurement Act with new clauses. The new clauses
were accepted.

None of the amendments made by this Bill has any significant
financial impact.

Acts Interpretation Act 1901

In some cases it is desirable to make regulations commence on
the date of commencement of a specified Act. There is some
doubt whether this can be done if the specified Act is to
commence on a date to be proclaimed. Proposed amendment of
s.48(1) will make it clear that this can be done in such a
case. It will also make it clear that regulations may
commence at a specified time on a specified day.

Audit Act 1901

Proposed substitution of s.32 eliminates the requirement for the Governor-General's Warrant and the Auditor-General's certificate on such warrant prior to appropriated amounts being issued in accordance with an appropriation. S.32 currently provides for the issue of appropriated amounts to Departments by means of a Warrant signed by the Governor-General and in which the Auditor-General has certified that the amounts are lawfully available ie have been appropriated. Since all Appropriation Acts become law once the Governor-General gives Royal Assent, the Governor-General's further involvement in the actual distribution of appropriated amounts to Departments is unnecessary.

The involvement of the Auditor-General in the issuing of appropriated amounts, which is, essentially, an administrative process by the Executive Government, is also inappropriate and contrary to the modern concepts of the independence of the Auditor-General.

The new s.32 proposed to be inserted provides instead for the Minister for Finance to have complete responsibility for the process of issuing appropriated amounts. The Minister would be empowered to authorise the Secretary of the Department of Finance to draw amounts (not exceeding the appropriations) from the Commonwealth Public Account.

Proposed repeal of s.33 and substitution of a new s.33 involves machinery provisions relating to the powers of the Secretary of the Department of Finance and are consequential upon the substitution of new s.32.

Cl.5(2) provides that s.32 and s.33 in their present form continue to apply, along with other provisions of the Act, in relation to Warrants issued before the commencement of cl.5.

Proposed amendment of s.49(1) & (2) removing reference to Form
4 is a formal amendment consequent upon the amendment to s.32.

It is proposed to repeal s.57.(2). S.57 purports to set out
the details which should be included in any Act appropriating
moneys of the Loan Fund. The effect of s.57 is that, should
the Parliament pass a Loan Act which did not contain the
details required under s.57(2), then the Minister for Finance
could not lawfully expend the moneys covered by that Act.
Thus, the intention of such an Act, although expressing the
will of Parliament, could be frustrated.

Proposed amendments to headings and Form 4 are minor drafting
amendments. Proposed amendments omitting Forms 1, 2 and 3 are
consequential upon the proposed amendment of s.32.

National Measurement Act 1960

Proposed new s.12A(1) is inserted to make clear that where
real estate transactions are entered into by reference to
units of measurement, Australian legal units of measurement
should be used. Legal units of measurement are prescribed by
regulations under the Act. It is proposed,when this amendment
is made, to exclude from the regulations imperial units of
measurement previously used in real estate transactions. Thus
the amendment will have the effect of requiring that, subject
to the exception listed below, real estate transactions be
entered into by reference to metric units of measurement.

Proposed new s.12A(2) is similar to existing s.12(2) and
ensures that a reference to a unit of measurement is, unless
otherwise provided, a reference to that Australian legal unit
of measurement.

Proposed new s.12A(3) provides that real estate dealings that
are entered into by reference to an additional unit of
measurement that has been prescribed in the National
Measurement Regulations, do not contravene subsection 12A(1).

Proposed new s.12A(4) provides that real estate dealings may be entered into by reference to units of measurement that are not Australian legal units of measurement without contravening subsection (1), if

(a)   in the case of land registered under a State or Territory Torrens land registration system, the folium of the register or the duplicate certificate of title use or refer to those units of measurement; or

(b)   in any other case, including old system land titles all title documents refer to such other units of measurement.

Proposed new s.12A(5) provides that s.12A(1) will not affect the validity of any contract, dealing or other transaction in real estate.

Proposed new s.12A(6) provides that contravention of subsection (1) is an offence, punishable on conviction by a fine.   This is the only sanction for contravening the provisions of this section.