

NEW SOUTH WALES INVESTMENT CORPORATION (SALE) BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to authorise the sale of the business undertaking of the New South Wales Investment Corporation.

The Investment Corporation's business undertaking comprises—

- (a) the old loan portfolio, being the loans transferred to it (when it was constituted) under the State Development and Industries Assistance (Amendment) Act 1986; and
- (b) the venture capital business undertaken since it was constituted.

The Bill authorises the Minister to sell the undertaking (either as a whole or in the 2 parts mentioned above). The sale may be effected by a direct sale of assets etc. to a purchaser or by the sale of the shares in a subsidiary company controlled by the Minister to which the assets etc. have been transferred. The Minister is also authorised to exclude assets etc. from the sale and vest them in a government agency. The proceeds of the sale are to be paid into the Consolidated Fund.

After the sale has been effected, the Bill provides for the Investment Corporation to be dissolved and for the Acts constituting or relating to the Investment Corporation to be repealed or consequentially amended.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be appointed by proclamation (the provisions that dissolve the Corporation and effect the consequential repeals and amendments are not to commence until after the sale of the Investment Corporation's business undertaking).

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Clause 3 contains definitions for the purposes of the proposed Act. The Investment Corporation's "business undertaking" is defined to include all its assets, rights and liabilities except those excluded by the Minister from the sale. A "subsidiary company" is defined as a company in which the Government has a controlling interest and which the Minister has nominated under clause 7.

PART 2—SALE OF CORPORATION'S BUSINESS UNDERTAKING

Clause 4 gives the Minister general authority to enter into an agreement for the sale of the Investment Corporation's business undertaking, either as a whole or in the 2 parts mentioned above.

Clause 5 enables the Minister to determine the manner in which the sale is to be conducted. Members of the public are to be given an opportunity to express an interest in the sale. Under the clause, the Treasury Corporation is appointed as agent for the sale.

Clause 6 authorises the sale by means of a sale of the whole or relevant part of the undertaking directly to a purchaser.

Clause 7 authorises the sale by means of a sale of shares in a subsidiary company to which the whole or relevant part of the undertaking has been transferred.

Clause 8 provides for the vesting of the Corporation's assets, rights and liabilities in the purchaser to whom the undertaking is sold or the subsidiary company to which the undertaking is transferred prior to sale. The clause facilitates the sale by avoiding the necessity for extensive documentation and the exercise by third parties of rights to re-negotiate loans etc. as a result of the change in ownership of the Investment Corporation's business undertaking.

Clause 9 authorises the Minister to exclude from the sale any assets, rights and liabilities of the Investment Corporation. The excluded undertaking is to be vested in the Ministerial Corporation for Industry or some other person on behalf of the Crown.

PART 3—MISCELLANEOUS PROVISIONS RELATING TO SALE

Clause 10 makes provision with respect to the staff of the Investment Corporation. Those staff who do not exercise any right they have to re-employment in the public sector are to be employed by the person or company that acquires the Investment Corporation's business undertaking.

Clause 11 provides that (before the sale) the Treasurer is to be paid the income tax equivalent payment by the Investment Corporation for the period after 30 June 1987. In addition the Treasurer may require the Investment Corporation to pay from its cash reserves into the Consolidated Fund an amount determined by the Treasurer as surplus to its requirements.

Clause 12 provides for the closure of the Investment Corporation's Fund in the Special Deposits Account.

Clause 13 requires the proceeds of sale (after the deduction of the costs of the sale) to be paid into the Consolidated Fund.

Clause 14 provides that stamp duty must be paid on a sale of the undertaking to a purchaser despite the statutory vesting. Associated documents to give effect to the statutory vesting are not to be dutiable. The payment of stamp duty on any transfer of shares in a subsidiary company is preserved.

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Clause 15 provides that the disclosure of information for the purposes of the sale (including a disclosure in a memorandum of information sent to persons expressing an interest in the sale) is not to be regarded as a breach of contract or confidence or other civil wrong or as a contravention of certain statutory provisions relating to secrecy etc. However a disclosure which is contrary to a written undertaking of confidentiality will be a criminal offence.

Clause 16 authorises the making of regulations for the purposes of the proposed Act, including savings and transitional regulations consequent on the enactment of the proposed Act.

Clause 17 contains miscellaneous provisions relating to the Corporation, including provisions that validate certain matters concerning the capital and accounts of the Corporation which have been dealt with in accordance with an uncommenced Act.

PART 4—REPEALS, AMENDMENTS ETC. FOLLOWING SALE

Clause 18 provides for the Investment Corporation to be dissolved following the sale.

Clause 19 provides that the persons who, immediately before the dissolution of the Investment Corporation, held office as directors of the Corporation cease to hold office as such and are not entitled to any remuneration or compensation because of that loss of office. However, the managing director is to be entitled to the same compensation as statutory officers removed under Part 8 of the Public Sector Management Act 1988.

Clause 20 repeals certain Acts that constitute or relate to the Investment Corporation.

Clause 21 makes a consequential amendment of the Statutory and Other Offices Remuneration Act 1975.

Clause 22 makes a consequential amendment of the Public Finance and Audit Act 1983.

Clause 23 makes a consequential amendment of the Public Authorities (Financial Arrangements) Act 1987.

Clause 24 makes a consequential amendment of the Electricity Act 1945.
