

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 4 April, 1974.*

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. , 1974.

An Act to approve the Interstate Corporate Affairs Agreement; to make further provisions with respect to companies incorporated in certain other States and in certain Territories of the Commonwealth which carry on business in New South Wales; to validate certain matters; for these and other purposes to amend the Companies Act, 1961; and for purposes connected therewith.

BE

Companies (Further Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Companies (Further Short title. Amendment) Act, 1974".

2. (1) Except as provided in subsection (2), this Act Commence- shall commence on the date of assent to this Act. ment.

10 (2) Section 4 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. The Interstate Corporate Affairs Agreement, a copy Approval of Interstate Corporate Affairs Agreement. of which is set out in the Schedule, is approved.

15 4. (1) The Companies Act, 1961, is amended— Amendment of Act No. 71, 1961.

(a) by inserting in section 3 after the matter relating to Sec. 3. Division 2 of Part XI the following matter :— (Division into Parts.)

DIVISION 2A.—*Recognised Companies.*—ss. 343A–343Q.

20 (b) (i) by omitting from the definition of "Branch Sec. 5. register" in section 5 (1) the matter "section (Inter-pretation.) 354." and by inserting instead the following matter :—

section 354;

25 (c) in relation to a recognised company— a branch register of members of the company kept in pursuance of section 343I.

(ii)

Companies (Further Amendment).

- (ii) by inserting in the definition of "Corporation" in section 5 (1) after the words "foreign company" wherever occurring the words "or recognised company";
- 5 (iii) by inserting after the definition of "Debenture" in section 5 (1) the following definition :—
- "Declared law" means a law of a participating State, being a law in respect of which a declaration referred to in paragraph (b) of subsection (1A) is in force and if that law is amended, that law as amended from time to time.
- 10
- 15 (iv) by inserting in paragraph (a) of the definition of "Foreign company" in section 5 (1) after the words "not being" the words "a recognised company,";
- (v) by inserting after the definition of "Guarantor corporation" in section 5 (1) the following definition :—
- 20
- "Interstate Corporate Affairs Agreement" means the agreement between the States of New South Wales, Victoria and Queensland relating to the establishment of an Interstate Corporate Affairs Commission executed on 18th February, 1974, a copy of which is set out in the Schedule to the Companies (Further Amendment) Act, 1974.
- 25
- 30 (vi) by inserting after the definition of "Part" in section 5 (1) the following definition :—
- "Participating State" means a State or Territory of the Commonwealth in respect of which a declaration referred to in paragraph (a) of subsection (1A) is in force.
- 35

(vii)

Companies (Further Amendment).

(vii) by inserting after the definition of "Public company" in section 5 (1) the following definition :—

5 "Recognised company" means a corpora-^{"Recognised company."}
tion incorporated under a declared
law of a participating State or under
a corresponding previous law of that
State.

10 (viii) by inserting after section 5 (1) the following
subsections :—

(1A) The Governor may by order—

(a) declare a State or Territory of the
Commonwealth to be a participating
State for the purposes of this Act if—

15 (i) the Interstate Corporate
Affairs Agreement has been
signed on behalf of that State
or Territory; and
20 (ii) there are in force in that State
or Territory laws relating to
companies which in the opin-
ion of the Governor enable
that State or Territory to have
25 uniformity in administration,
and to enter into reciprocal
arrangements, as a participa-
ting State in accordance with
the provisions of subclause (1)
of clause 2 of that Agreement;
30 and

(b) declare a law of that State or
Territory to be a declared law for the
purposes of this Act.

35 (1B) A reference in any provision of this
Act to a corresponding interstate officer, in
relation to a participating State, is a reference
to a person who, under a provision of the
declared

Companies (Further Amendment).

declared law of that participating State that corresponds to that provision, exercises functions similar to functions exercised by the Commission under that provision.

5 (ix) by omitting section 5 (8) (a) and by inserting instead the following paragraph :—

(a) a reference in that subsection to a public company shall be construed as including a reference to—

10 (i) a foreign company other than a foreign company that (whether or not Division 3 of Part XI applies to it) is a foreign company of a kind
15 referred to in subsection (5) of section 348; and

(ii) a recognised company that is not an exempt proprietary company under a declared law;

20 (c) (i) by inserting after section 7 (1) the following subsection :—

(1A) In the exercise or performance of its powers, authorities, duties and functions under this Act in relation to any of the matters referred to in subclause (1) of clause 2 of the Interstate Corporate Affairs Agreement, the Commission shall have regard to any determinations made by the Interstate Corporate Affairs Commission constituted under that Agreement.

Sec. 7.
(Adminis-
tration
of Act.)

(ii) by inserting after section 7 (7) the following subsection :—

(7A) Where under a provision of a declared law corresponding to subsection (6) a person is authorised to inspect any books,
35 minute

Companies (Further Amendment).

5 minute book, register or record required by or under that declared law to be kept by a corporation, the person shall have the same powers in New South Wales in relation to that corporation as he would have had if he had been authorised under subsection (6).

(iii) by inserting in section 7 (8) (a) after the matter "subsection (6)" the matter "or subsection (7A)";

10 (iv) by inserting in section 7 (8) (a) after the matter "subsection (7)" the words "or a declaration referred to in a corresponding provision of the declared law of the participating State concerned";

15 (d) (i) by inserting after section 22 (1) the following subsection :— Sec. 22.
(Name of
companies.)

20 (1A) A direction under subsection (1) may distinguish between companies on the basis of whether or not an application under subsection (8A) in relation to the company specifies that the company intends to carry on, or carries on, business in a participating State.

25 (ii) by inserting after section 22 (7) the following subsections :—

30 (7A) A company shall not be registered under subsection (1) of section 16 and the Commission shall not approve the change of name of the company under subsection (1) of section 23 unless the name under which it is proposed to be registered or the proposed new name (as the case may be) has been reserved under this section.

(7B)

Companies (Further Amendment).

5 (7B) Within twelve months after the
commencement of section 4 of the Companies
(Further Amendment) Act, 1974, or such
longer period as is prescribed (whether before
or after the expiry of that twelve months) a
person may apply in the prescribed form for
a notification of the name of a company to
be sent to the corresponding interstate officer
10 in one or more participating States in which
that company (being a company which was
incorporated before that commencement)
intends to carry on business, and the Com-
mission shall, unless the name would not be
15 available under subsection (1) if the appli-
cation were an application for the reservation
of a name, so notify that officer.

(iii) by inserting after section 22 (8) the following
subsections :—

20 (8A) A person applying for the reservation
of a name in respect of an intended company
or company shall specify any participating
State in which the intended company or
company intends to carry on or carries on
business.

25 (8B) Where the Commission reserves a
name in respect of an intended company or
company and the applicant has specified that
the intended company or company intends to
carry on or carries on business in a participat-
30 ing State the Commission shall notify the
corresponding interstate officer of that State
of the reservation of the name.

35 (8C) Where the Commission has notified a
corresponding interstate officer of a par-
ticipating State pursuant to the provisions of
subsection (8B) of the reservation of a name
and—

(a) that name subsequently ceases to be
reserved; and

(b)

Companies (Further Amendment).

5 (b) the intended company is not incorporated, the intended company is incorporated under a name other than the name so notified or the company has not changed its name to the name so notified (as the case may be),
the Commission shall so notify that officer.

10 (8D) Where the Commission has notified a corresponding interstate officer of a participating State—

- 15 (a) pursuant to the provisions of subsection (7B), that a company intends to carry on business in that State; or
(b) pursuant to the provisions of subsection (8B), of the reservation of a name,

and the company concerned—

- 20 (c) is dissolved; or
(d) changes its name to a name other than the name which was so notified,

the Commission shall notify that officer of the dissolution of the company or that the company has so changed its name.

25 (8E) Where, under a provision of a declared law corresponding to subsection (7B) or subsection (8B), the Commission is notified by a corresponding interstate officer, it shall reserve the name concerned and the name shall continue to be reserved until it receives
30 a notification from that officer under a provision of that declared law corresponding to subsection (8C) or subsection (8D).

(8F)

Companies (Further Amendment).

5 (8F) Where the name of a recognised company would not be available under subsection (1) as a name under which a company could be registered but the name of the recognised company has been reserved (whether through inadvertence or otherwise and whether originally or on change of name) as a result of the Commission receiving a notification under a provision of a declared law corresponding to subsection (7B) or subsection (8B), the Commission shall inform the corresponding interstate officer that the name is unavailable and the name shall thereupon cease to be reserved.

15 (8G) Where the Commission receives a notification under a provision of a declared law corresponding to subsection (8F) it shall thereupon notify the company concerned that the name is unavailable and that the name has ceased to be reserved in the participating State from which the notice was received and the fee paid to the Commission in respect of the reservation of that name in that participating State shall be refunded to the company.

(iv) by inserting in section 22 (11) after the words "intended company, company," wherever occurring the words "recognised company,";

30 (e) (i) by inserting in section 39 (1) (c) before the word "shall" where firstly occurring the words "except in the case of a prospectus, registered in a participating State, of a recognised company";

Sec. 39.
(Contents
of pros-
pectuses.)

35 (ii) by omitting from section 39 (1) (h) the word "and" where secondly occurring;

(iii)

Companies (Further Amendment).

(iii) by omitting from section 39 (1) (i) (v) the words "principal office in the State." and by inserting instead the following matter :—

principal office in the State; and

5 (j) shall specify each participating State (if any) in which it is proposed to issue, circulate or distribute the prospectus.

10 (f) (i) by omitting section 42 (2) (b) and by inserting instead the following paragraph :—

(b) the prospectus appears to comply with the requirements of this Act;

(ii) by omitting section 42 (2) (d) and by inserting instead the following paragraph :—

15 (d) the Commission is of the opinion that the prospectus does not contain any statement or matter which is misleading in the form or context in which it is included; and;

20 (iii) by inserting after section 42 (2) the following subsection :—

(2A) Nothing in paragraphs (b) and (d) of subsection (2) prevents the Commission from registering a copy of a prospectus in respect of a foreign company incorporated in another State or Territory of the Commonwealth if the Commission is satisfied that—

25 (a) the prospectus has been registered or is acceptable for registration under a law corresponding to this section in that other State or Territory; and

(b)

Companies (Further Amendment).

5 (b) the prospectus complies with such of the requirements of paragraph (i) of subsection (1) of section 39 as apply to a prospectus issued by that foreign company.

(g) by inserting after section 47 the following Sec. 47A.
section :—

10 47A. Where a prospectus in respect of a recog- Prospectus
nised company has been registered in the State in for
which that company is incorporated under a recognised
declared law corresponding to this Division, it shall
for the purposes of this Division be deemed to have
been registered by the Commission and anything
15 required to be done before that registration in
relation thereto shall be deemed to have been done.

(h) by inserting after section 74i the following sec- Sec. 74J.
tion :—

20 74J. Notwithstanding anything in this Division, Exemption
in the case of a borrowing corporation which is a from pro-
recognised company or a guarantor corporation of visions of
such a borrowing corporation it shall be sufficient Division
compliance with this Division if the corporation has for certain
25 complied with the laws corresponding to this companies.
Division in the State in which the borrowing
corporation is incorporated.

(i) by omitting from section 76 (1) the definition of Sec. 76.
“Company” and by inserting instead the following (Interpre-
definition :— tation.)

30 “Company” means a public company and
includes—

- (a) a corporation that is a public com-
pany under the law of a proclaimed
State and is registered as a foreign
company in this State; and
35 (b) a corporation that is a public
company under a declared law.

(j)

Companies (Further Amendment).

- (j) by inserting at the end of section 77 the following subsection :—

Sec. 77.
(Approved
deeds.)

5 (2) In the case of a management company
which is a recognised company, a deed shall be an
approved deed for the purposes of this Division if
the deed and the company acting as trustee or
representative for the purposes of the deed have
been approved under a provision of a declared law
10 which corresponds to this Division in the partici-
pating State in which that recognised company is
incorporated.

- (k) by inserting after section 80 (1) the following subsections :—

Sec. 80.
(Covenants
to be
included
in deeds.)

15 (1A) The Commission may by notice published
in the Gazette declare that, subject to such terms
and conditions as are specified in the notice, a
specified deed that makes provision for the
appointment of a specified company as trustee for
or representative of the holders of interests issued
20 or proposed to be issued by the management
company is not required to contain covenants to
the effect of such of the matters referred to in
subsection (1) as are specified in the notice.

25 (1B) Any provisions contained in a notice
purporting to have been published under sub-
section (1) of section 88 before the commencement
of section 4 of the Companies (Further Amend-
ment) Act, 1974, that, had subsection (1A) been
30 in force when the notice was published, could have
been contained in a notice under subsection (1A)
shall be and be deemed always to have been as
valid and effectual as those provisions would have
been had the publication of the notice been
authorised under subsection (1) of section 88.

- 35 (l) by inserting at the end of section 82 the following subsection :—

Sec. 82.
(State-
ment
to be
issued.)
(4)

Companies (Further Amendment).

- 5 (4) Where a statement in respect of a recognised company has been registered, under a provision of a declared law corresponding to Division 1 of Part IV, in the State in which the company is incorporated that statement shall, for the purposes of this Division, be deemed to have been registered by the Commission under Division 1 of Part IV and anything required to be done before that registration shall be deemed to have been done.
- 10 (m) by inserting in section 83 (2) after the word "Division" the words "or under a provision of a declared law which corresponds to this Division";
- 15 (n) (i) by inserting in section 85 (1) after the words "approved deed" the words "under subsection (1) of section 77";
- (ii) by inserting at the end of section 85 the following subsection :—
- 20 (4) Subsection (1) does not apply to a management company which is a recognised company and which has complied with a provision of a declared law corresponding to subsection (1) in the State or Territory in which it was incorporated.
- 25 (o) by inserting at the end of section 100 the following subsection :—
- 30 (11) The declaration under subsection (1A) of section 5 of a State as a participating State that results in a foreign company becoming a recognised company does not affect any obligation under this section with which that foreign company was liable to comply immediately before it became a recognised company.

(p)

Companies (Further Amendment).

(p) by inserting after section 102 the following Sec. 102A.
section :—

102A. (1) Where a recognised company estab-
lishes a place of business or commences to carry
on business in the State and has prior to such
establishment or commencement—

Duty of
recognised
company to
register
charges on
property
acquired.

(a) created a charge which if it had been
created by the recognised company while it
was carrying on business in the State would
have been required to be registered under
this Division; or

(b) acquired property which is subject to a
charge of any such kind as would, if it had
been created by the company after the
acquisition and while it was carrying on
business in the State, have been required to
be registered under this Division,

the company shall cause a statement of the pre-
scribed particulars and the instrument by which the
charge was created or is evidenced or a copy
thereof accompanied by a statutory declaration
containing such particulars as are prescribed, and
where a copy is lodged also verifying it as a true
copy thereof, to be lodged with the Commission
for registration within thirty days after the date
on which the acquisition is completed or the date
of establishment of the place of business or the
commencement of carrying on business (as the case
may be).

(2) If default is made in complying with
subsection (1), the recognised company and every
officer of the company who is in default shall be
guilty of an offence against this Act.

Penalty : One hundred dollars. Default penalty.

(3)

Companies (Further Amendment).

5 (3) The declaration under subsection (1A) of section 5 of a State as a participating State that results in a foreign company becoming a recognised company does not affect any obligation under section 102 with which that foreign company was liable to comply immediately before it became a recognised company.

10 (q) by omitting from section 110 the words “, but nothing in this Division applies to a charge on property outside the State of a foreign company.” and by inserting instead the words “and to a recognised company which has a place of business or is carrying on business within the State, but nothing in this Division applies to a charge on property outside the State of a foreign company or a recognised company.”; Sec. 110 (Application of Division.)

20 (r) by inserting after section 159 (2) (b) the following paragraph :— Sec. 159. (Annual return by company not having a share capital.)
(b1) the address of the principal office of the company (if any) in each participating State;

(s) by inserting in section 161B (1), (2) and (3) after the words “foreign company” wherever occurring the words “or a recognised company”; Sec. 161B. (Financial years of grouped companies.)

25 (t) by inserting after paragraph (a) of the definition of “company” in section 168 (1) the following paragraph :— Sec. 168. (Interpretation and application.)
(a1) a recognised company carrying on business in the State; and;

30 (u) (i) by omitting from section 180 (1) the words “in respect of a company or foreign company”; Sec. 180. (Application for winding up.)

35 (ii) by inserting in section 180 (1) (a) after the word “company” where firstly occurring the words “the subject of the report”;

(iii)

Companies (Further Amendment).

- 5 (iii) by omitting from section 180 (1) (b) the words "is a foreign company" and by inserting instead the words "the subject of the report is a foreign company or a recognised company";
- (iv) by inserting in section 180 (2) and (3) after the words "foreign company" wherever occurring the words "or a recognised company";
- 10 (v) by omitting from section 203B (2) the words Sec. 203B. "incorporated in any other State or Territory of the Commonwealth is registered in New South Wales and is placed" and by inserting instead the words "which is incorporated in a State or Territory of the Commonwealth and which is registered in New South Wales or a recognised company is"; (Stay of proceedings.)
- 15 (w) by inserting in section 314 (1) after the words Sec. 314. "foreign company" the words ", a recognised company"; ("Unregistered company.")
- 20 (x) by inserting after Division 2 of Part XI the following Division :— Division 2A.

DIVISION 2A.—Recognised Companies.

25 343A. (1) Except as provided in section 343E and section 343G, this Division applies to a recognised company only if it has a place of business or is carrying on business within the State. Recognised companies to which this Division applies.

30 (2) A reference in this Act to a recognised company carrying on business includes a reference to that company establishing or using a share transfer or share registration office or administering, managing or otherwise dealing with property situated in the State as an agent, legal personal representative or trustee, whether by servants or agents or otherwise.

(3)

Companies (Further Amendment).

(3) Notwithstanding subsection (2), a recognised company shall not be regarded as carrying on business within the State for the reason only that within the State it—

- 5 (a) is or becomes a party to any action or suit or any administrative or arbitration proceeding or effects settlement of an action suit or proceeding or of any claim or dispute;
- 10 (b) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;
- (c) maintains any bank account;
- (d) effects any sale through an independent contractor;
- 15 (e) solicits or procures any order which becomes a binding contract only if such order is accepted outside the State;
- (f) creates evidence of any debt, or creates a charge on real or personal property;
- 20 (g) secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts;
- (h) conducts an isolated transaction that is completed within a period of thirty-one days, but not being one of a number of similar transactions repeated from time to time; or
- 25 (i) invests any of its funds or holds any property.
- 30

343B. A recognised company shall have power to hold land in the State.

Power of recognised companies to hold land.

343C. (1) A recognised company which has established a place of business or commenced to carry on business within the State shall have a

Principal office of recognised company.

Companies (Further Amendment).

5 principal office within the State to which all communications and notices may be addressed and which shall be open and accessible to the public for not less than three hours between the hours of nine o'clock in the forenoon and five o'clock in the afternoon each day, Saturdays, Sundays and holidays excepted.

10 (2) A recognised company which has established a place of business or commenced to carry on business within the State shall within one month after doing so lodge with the Commission notice of the situation of its principal office in the State.

15 (3) Where a recognised company, immediately before it became a recognised company, had as a foreign company a registered office in the State notice of the situation of which had been lodged with the Commission, that registered office shall be deemed to be the principal office in the State of that recognised company until
20 it lodges under section 343D with the Commission notice of any change or alteration in the situation of its principal office.

25 343D. Where any change or alteration is made in— Altered particulars to be notified.

(a) the situation of the principal office of the recognised company in the State or of the days or hours during which it is open and accessible to the public; or

30 (b) the name of the recognised company, the recognised company shall within one month or within such further period as the Commission in special circumstances allows after the change or alteration lodge with the Commission particulars
35 of the change or alteration.

Companies (Further Amendment).

5 343E. (1) Except with the consent of the Minister, a recognised company shall not establish a place of business or commence to carry on business within the State unless the Commission has approved of its name. Name of recognised company to be approved.

(2) Subsection (1) does not apply in respect of a recognised company establishing a place of business within the State if it has already established such a place of business.

10 (3) Except with the consent of the Minister, a recognised company which had established a place of business or had commenced to carry on business within the State at the time it became a recognised company and which
15 immediately before that time was not a registered foreign company shall not continue to carry on business in the State unless the Commission has approved of its name.

20 (4) A recognised company shall not use as its name a name which has not been approved under subsection (1) or (3), but nothing in this subsection prevents a recognised company which, immediately before it became a recognised company, was a registered foreign company from
25 using as its name the name under which it was registered as a foreign company.

(5) Nothing in subsection (4) prevents a recognised company whose name has been approved under this section or a recognised
30 company which immediately before it became a recognised company was a registered foreign company from using a name under which it is registered under any other Act.

35 (6) The Commission shall not under subsection (1) or (3) refuse to approve of a name unless—

- (a) the name is undesirable by reason that it is likely to be confused with or mistaken for the name of a company, a foreign company

Companies (Further Amendment).

5 company, a recognised company, a society registered under the Co-operation Act, 1923, or the Permanent Building Societies Act, 1967, a credit union or association of credit unions or a union of associations of credit unions registered under the Credit Union Act, 1969, a registered business name or a name that has been reserved pursuant to section 22; or

10 (b) the name is a name, or a name of a kind, that the Minister has directed the Commission not to accept for registration under section 22.

15 (7) If default is made in complying with subsection (1), (3) or (4), the recognised company and every officer of the recognised company who is in default shall be guilty of an offence against this Act.

Penalty : Two hundred dollars. Default penalty.

20 343F. (1) A recognised company shall— Exhibition
of name,
etc.

(a) except in the case of a banking corporation, conspicuously exhibit outside every place of business established by it in the State its name and the place where it is incorporated; and

25 (b) except in the case of a banking corporation, cause its name and the place where it is incorporated to be stated in legible characters in all its bill-heads and letter paper and in all its notices, prospectuses and other official publications.

30 (2) If a recognised company is under official management in its place of incorporation under any declared law corresponding to Part IX or is being wound up, every invoice, order for goods or business letter issued by or on behalf of the

35 company,

Companies (Further Amendment).

5 company, or an official manager or liquidator of the company or a receiver or manager of the property of the company being a document on or in which the name of the company appears shall have the words "under official management", or "in liquidation" (whichever is appropriate) immediately following the name of the company where it first appears therein.

10 (3) If default is made in complying with subsection (2), the recognised company and every officer of the recognised company who knowingly and wilfully authorises or permits the default shall be guilty of an offence against this Act.

Penalty : Forty dollars.

15 343G. (1) If a recognised company ceases to have a place of business or to carry on business in the State, it shall within seven days after so ceasing lodge with the Commission notice of that fact. Recognised company ceasing to carry on business.

20 (2) If a recognised company goes into liquidation or is dissolved in its place of incorporation the liquidator shall, until a liquidator for the State is duly appointed by the Court, have the powers and functions of a liquidator for the State.

25 (3) A liquidator of a recognised company appointed for the State by the Court or a person exercising the powers and functions of such a liquidator—

30 (a) shall, before any distribution of the recognised company's assets is made, by advertisement in a newspaper circulating generally in each State or Territory of the Commonwealth where the recognised company had been carrying on business prior to the liquidation if no liquidator has been appointed for that place, invite all creditors
35 to

Companies (Further Amendment).

to make their claims against the recognised company within a reasonable time before the distribution;

5 (b) shall not, without obtaining an order of the Court, pay out any creditor to the exclusion of any other creditor of the recognised company; or

10 (c) shall, unless otherwise ordered by the Court, only recover and realise the assets of the recognised company in the State and shall pay the net amount so recovered and realised to the liquidator of that recognised company for the place where it was incorporated.

15 (4) Where a recognised company has been wound up so far as its assets in the State are concerned and there is no liquidator for the place of its incorporation the liquidator may apply to the Court for directions as to the disposal of the net
20 amount recovered in pursuance of subsection (3).

343H. Any document required to be served on a recognised company shall be sufficiently served if addressed to the recognised company and left at or sent by post to the address specified in the notice lodged with the Commission as being its principal office in the State. Service of notices on recognised company.

25

343I. (1) Subject to this section, a recognised company which has a share capital and has any member who is resident in the State, shall keep at its principal office in the State or at some other place in the State a branch register for the purpose of registering shares of members resident in the State who apply to have the shares registered therein. Branch register.

30

(2)

Companies (Further Amendment).

5 (2) The company shall not be obliged to keep a branch register pursuant to subsection (1) until after the expiration of one month from the receipt by it of an application in writing by a member resident in the State for registration in its branch register in the State of the shares held by the member.

10 (3) If default is made in complying with subsection (1), the recognised company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : One hundred dollars. Default penalty.

15 (4) This section shall not apply to any recognised company which by its constitution prohibits any invitation to the public to subscribe for shares in the company.

20 (5) Every such register shall be kept in the manner provided by Division 4 of Part V as though the register were the register of a company and transfers shall be effected on such register in the same manner and at the same charges as on the principal register of the company and transfers lodged at its principal office in the State shall be binding on the company and the Court shall have the same powers in relation to rectification of the register as it has in respect of the register of a company incorporated in the State.

30 (6) Where a recognised company opens a branch register in the State it shall within fourteen days after the opening thereof lodge with the Commission notice of that fact specifying the address where the register is kept.

35 (7) Where any change is made in the place where the register is kept or where the register is discontinued the company shall, within fourteen days of the change or discontinuance lodge notice of the change or discontinuance with the Commission.

(8)

Companies (Further Amendment).

5 (8) Where a company or corporation is entitled pursuant to a declared law of the place of incorporation of a recognised company that corresponds to section 180x or 185 to give notice to a dissenting offeree or to a dissenting shareholder in that recognised company that it desires to acquire any of his shares registered on a branch register kept in the State, this section shall cease to apply to that recognised company until—

- 10 (a) the shares have been acquired; or
(b) the company or corporation has ceased to be entitled to acquire the shares.

15 343J. Subject to this Act, on application in that behalf by a member resident in the State the recognised company shall register in the branch register of the company the shares held by a member which are registered in any other register kept by the company. Registration of shares in branch register.

20 343K. Subject to this Act, on application in that behalf by a member holding shares registered in the branch register, the recognised company shall remove the shares from the branch register and register them in such other register as is specified in the application. Removal of shares from branch register.

25 343L. Sections 151, 152 and 153 shall, with such adaptations as are necessary, apply respectively to the index of persons holding shares in a branch register and to the inspection and the closing of the register. Index of members, inspection and closing of branch registers.

30 343M. Sections 95 and 96, subsection (1) of section 97, subsections (1) and (3) of section 99 and section 155 shall apply with necessary adaptations with respect to the transfer of shares on and the rectification of the branch register of a recognised company. Application of provisions of Act relating to transfer.

35

343N.

Companies (Further Amendment).

343N. A branch register shall be prima facie evidence of any matters by this Division directed or authorised to be inserted therein.

Branch register to be prima facie evidence.

343O. A certificate under the seal of a recognised company specifying any shares held by any member of that company and registered in the branch register shall be prima facie evidence of the title of the member to the shares and the registration of the shares in the branch register.

Certificate re share-holding.

343P. A branch register kept by a recognised company which immediately before it became a recognised company was a foreign company shall thereupon become the branch register of that recognised company.

Branch register of former foreign company.

343Q. If default is made by any recognised company in complying with any provision of this Division other than a provision in which a penalty or punishment is expressly mentioned the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalties.

Penalty : One hundred dollars. Default penalty.

(y) (i) by inserting in the Second Schedule after paragraph 17 the following paragraphs :—

Second Schedule.

17A. For approval of the name of a recognised company under subsection (1) of section 343E where the name of the recognised company has previously been reserved

4.00

17B. For approval of the name of a recognised company under subsection (1) of section 343E where the name of the recognised company has not previously been reserved

100.00

17C.

Companies (Further Amendment).

- 17c. For approval of the name
of a recognised company
under subsection (3) of sec-
tion 343E 100.00
- 5 (ii) by inserting in the Second Schedule after
paragraph 22 the following paragraphs :—
23. On an application for the
reservation of a name .. 6.00
- 23A. For sending a notification
under subsection (7B) or
10 subsection (8B) of section
22 to a corresponding inter-
state officer—for each noti-
fication 100.00
- 15 (iii) by omitting paragraph 34;
- (z) (i) by inserting in Part I of the Eighth Schedule ^{Eighth} after paragraph 1 the following paragraph :— ^{Schedule.}
- 1A. The address of the principal office of
the company (if any) in each participating
20 State.
- (ii) by inserting in Part II of the Eighth Schedule
after the words "The address of the registered
office of the company is" the following
paragraph :—
- 25 The address of the principal office of the
company (if any) in each participating State
is
- (2) All acts, matters or things which before a State
is declared to be a participating State were done or com-
30 menced in relation to a foreign company which as a result
of that declaration becomes a recognised company shall be
deemed to have been done or commenced in relation to it
as a recognised company and may be continued and
completed in relation to it as a recognised company.

SCHEDULE.

Companies (Further Amendment).

SCHEDULE.

Sec. 3.

AGREEMENT.

AN AGREEMENT (to be called the "Interstate Corporate Affairs Agreement") made this 18th day of February 1974 between the State of
5 New South Wales of the first part, the State of Victoria of the second part and the State of Queensland of the third part.

WHEREAS it is generally acknowledged that in the interests of the public generally and of persons and authorities concerned with the administration of the law relating to companies and the regulation
10 of the securities industry and trading in securities that there should be substantial uniformity in that law in the States and Territories of the Commonwealth of Australia:

AND WHEREAS the Governments of the Commonwealth and of the States of the Commonwealth of Australia have been concerned to
15 achieve such uniformity:

AND WHEREAS as a result of conferences between Attorneys-General and Ministers of Justice of the Commonwealth and the States particularly since 1960 considerable uniformity has been achieved:

AND WHEREAS it is the intention of the Governments of the States
20 of New South Wales Victoria and Queensland—

to achieve greater uniformity in the law relating to companies and the regulation of the securities industry and trading in securities;

25 to establish reciprocal arrangements and common standards and procedures in the administration of that law;

to co-ordinate administration and avoid unnecessary duplication for the greater convenience of the public and greater efficiency in the overall administration; and

to increase the protection the law affords to the investing public:

30 AND WHEREAS the Governments of New South Wales, Victoria and Queensland have agreed that it is desirable for those purposes to establish an Interstate Corporate Affairs Commission.

NOW IT IS HEREBY AGREED AS FOLLOWS :—

1. In this Agreement unless the contrary intention appears—

35 "Attorney-General" in relation to a State means the Minister responsible for the administration of the law relating to companies in that State and in relation to a Territory means a Minister of the Crown in right of the Commonwealth nominated by the Government of the Commonwealth of
40 Australia as being responsible for the administration of the law relating to companies in that Territory.

"Clause"

Companies (Further Amendment).

"Clause" means clause of this Agreement.

"Commission" means the Interstate Corporate Affairs Commission established under clause 4.

5 "Ministerial Council" means the Ministerial Council provided for by clause 3.

10 "Participating State" means each of the States of New South Wales Victoria and Queensland and any other State or Territory of the Commonwealth of Australia on behalf of which this Agreement is signed pursuant to sub-clause (3) of clause 10.

2. (1) The Government of each of the participating States agrees that there shall be uniformity in administration and reciprocal arrangements within those States with respect to the following matters :—

- (a) Incorporation of companies;
- 15 (b) the regulation of the securities industry and trading in securities;
- (c) Registration of prospectuses;
- (d) Approval of trust deeds and trustees in relation to interests;
- (e) Requirements relating to accounts and audit;
- 20 (f) Proclamation of companies as investment companies;
- (g) Class and individual exemption powers relating to fund raising, &c. and to takeovers—

and such other matters relating to corporate affairs as the Ministerial Council from time to time designates.

25 (2) The Government of each of the participating States agrees to submit legislation to the Parliament of that State or to take such other action as is necessary—

- (a) to enable the Commission to exercise a supervisory role with respect to the above matters and such other matters as the Ministerial Council from time to time considers should be under the supervision of the Commission;
- 30 (b) to authorize reciprocal arrangements with respect to the above matters; and
- 35 (c) to implement recommendations made by the Ministerial Council from time to time in order to achieve the objects set out in the preamble to this Agreement.

3. (1) For the purposes of this Agreement there shall be a Ministerial Council consisting of the Attorneys-General for the time being
40 of the States of New South Wales Victoria and Queensland and the Attorney-General for the time being of any other participating State.

(2)

Companies (Further Amendment).

- (2) In sub-clause (1) of this clause a reference to the Attorney-General of a State includes such other Minister of the Crown who for the time being is acting for or on behalf of the Attorney-General of the State.
- 5 (3) The Ministerial Council shall meet at such times as it sees fit and shall subject to this Agreement determine its own procedure.
- (4) A resolution before the Ministerial Council will be carried by a majority of votes of the members thereof.
4. (1) For the purposes of this Agreement there shall be an
10 Interstate Corporate Affairs Commission appointed by the Ministerial Council.
- (2) The Attorney-General of each participating State shall nominate two persons to be members of the Commission.
- (3) One of the persons to be nominated by the Attorney-General
15 of each participating State shall be the person responsible under the Attorney-General for the administration of the law relating to companies in that State.
- (4) Each of the members of the Commission, other than the
20 members referred to in sub-clause (3), shall hold office for such period as is specified in the instrument of his appointment unless his nomination to the Commission is sooner withdrawn by the Attorney-General by whom he was nominated.
- (5) A person, not being a person referred to in sub-clause (3),
25 shall cease to be a member of the Commission if his nomination is withdrawn by the Attorney-General by whom he was nominated.
- (6) A member of the Commission shall be eligible to be re-appointed.
- (7) In the event of a member being unable to attend a meeting
30 of the Commission the Attorney-General by whom that member was nominated may appoint a suitable person to be the deputy of that member.
- (8) A deputy of a member of the Commission shall have, while acting in the place of a member of the Commission, the powers, authorities, duties and functions of that member.
- 35 (9) Members shall be appointed subject to such terms and conditions as are determined from time to time by the Ministerial Council.
- (10) A quorum of the Commission shall be constituted by a majority of the total number of members for the time being in office.
- (11) The Ministerial Council shall from time to time appoint one
40 of the members of the Commission to be chairman and one to be deputy chairman.
- (12) The Chairman, or in his absence the deputy chairman, shall preside at meetings of the Commission.

Companies (Further Amendment).

- (13) Questions arising at a meeting of the Commission will be determined by a majority of votes of the members present and voting.
- (14) Where there is an equality of votes the chairman or presiding deputy chairman (as the case may be) shall have a casting vote as well as a deliberative vote.
- (15) Subject to this Agreement the Commission shall regulate its own proceedings.
- (16) The Commission shall exercise its functions and powers subject to the direction and control of the Ministerial Council.
- 5 10 5. (1) The Commission may employ such officers and employés as are approved by the Ministerial Council on such terms and conditions as are specified by the Ministerial Council.
- (2) The Commission may arrange with the Government of a participating State for the performance by a person employed in the public service of such State of any work or services for the Commission and for any matters which may be required to be adjusted with regard to the performance or payment for such work or services by such person.
- 20 6. All expenses of the Commission shall be borne by the participating States in equal shares.
7. (1) The Commission shall cause to be kept proper accounts and records of its affairs in accordance with appropriate accounting principles.
- (2) The Ministerial Council may from time to time request the Auditor-General of a participating State to audit the accounts of the Commission.
- (3) Where an audit of the accounts of the Commission is carried out by the Auditor-General of a State the Commission shall pay to the Treasurer of that State the expenses of the audit.
- 30 8. The Government of a participating State shall at the request of the Commission furnish to the Commission all such information and particulars as the Commission may require for the purposes of this Agreement and as such Government is able to furnish.
9. (1) For the purposes of this Agreement there may be a Consultative Committee constituted as determined from time to time by the Ministerial Council.
- 35 (2) One member of the Consultative Committee shall be appointed by the Ministerial Council to be chairman.
- (3) Members of the Consultative Committee shall be appointed for such period as the Ministerial Council thinks fit.
- 40

Companies (Further Amendment).

(4) It shall be the function of the Consultative Committee to consult with the Commission with respect to the exercise by the Commission of its duties functions and powers.

10. (1) The Governments of New South Wales Victoria and
5 Queensland will submit this Agreement for approval to their respective Parliaments as soon as practicable after the date of this Agreement.

(2) It is the intention of the Governments of the States of New South Wales Victoria and Queensland that any other State and Territory of the Commonwealth of Australia may become a participating
10 State for the purposes of this Agreement.

(3) This Agreement shall remain open for signature on behalf of any such other State or Territory.

IN WITNESS WHEREOF this Agreement has been executed on the day and year first above written.

<p>15 SIGNED BY THE HONORABLE KENNETH MALCOLM McCaw, Attorney-General for New South Wales, in the presence of— M. L. VINCENT.</p>	}	K. M. McCaw.
<p>20 SIGNED BY THE HONORABLE VERNON FRANCIS WILCOX, Attorney-General for Victoria, in the presence of— J. C. FINEMORE.</p>	}	V. F. WILCOX.
<p>25 SIGNED BY THE HONORABLE WILLIAM EDWARD KNOX, Attorney-General for Queensland, in the presence of— J. C. FINEMORE.</p>	}	WILLIAM E. KNOX.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1974
[30c]

THE STATE OF NEW YORK

IN SENATE

January 11, 1911

REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE

IN RESPONSE TO A RESOLUTION

PASSED BY THE SENATE

ON JANUARY 11, 1911

ALBANY:

THE STATE OF NEW YORK

1911

THE STATE OF NEW YORK

1911

THE STATE OF NEW YORK

1911

THE STATE OF NEW YORK

1911

No. , 1974.

A BILL

To approve the Interstate Corporate Affairs Agreement; to make further provisions with respect to companies incorporated in certain other States and in certain Territories of the Commonwealth which carry on business in New South Wales; to validate certain matters; for these and other purposes to amend the Companies Act, 1961; and for purposes connected therewith.

[Mr McCaw—2 April, 1974.]

BE

Companies (Further Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Companies (Further Amendment) Act, 1974". Short title.

2. (1) Except as provided in subsection (2), this Act shall commence on the date of assent to this Act. Commence-
ment.

10 (2) Section 4 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. The Interstate Corporate Affairs Agreement, a copy of which is set out in the Schedule, is approved. Approval
of Interstate
Corporate
Affairs
Agreement.

15 4. (1) The Companies Act, 1961, is amended— Amendment
of Act No.
71, 1961.

(a) by inserting in section 3 after the matter relating to Division 2 of Part XI the following matter :— Sec. 3.
(Division
into Parts.)

DIVISION 2A.—*Recognised Companies.*—ss.
343A–343Q.

20 (b) (i) by omitting from the definition of "Branch register" in section 5 (1) the matter "section 354." and by inserting instead the following matter :— Sec. 5.
(Inter-
pretation.)

section 354;

25 (c) in relation to a recognised company—
a branch register of members of the
company kept in pursuance of section
343I.

(ii)

Companies (Further Amendment).

- (ii) by inserting in the definition of "Corporation" in section 5 (1) after the words "foreign company" wherever occurring the words "or recognised company";
- 5 (iii) by inserting after the definition of "Debenture" in section 5 (1) the following definition :—
- "Declared law" means a law of a participating State, being a law in respect of which a declaration referred to in paragraph (b) of subsection (1A) is in force and if that law is amended, that law as amended from time to time.
- 10
- (iv) by inserting in paragraph (a) of the definition of "Foreign company" in section 5 (1) after the words "not being" the words "a recognised company,";
- 15
- (v) by inserting after the definition of "Guarantor corporation" in section 5 (1) the following definition :—
- 20
- "Interstate Corporate Affairs Agreement" means the agreement between the States of New South Wales, Victoria and Queensland relating to the establishment of an Interstate Corporate Affairs Commission executed on 18th February, 1974, a copy of which is set out in the Schedule to the Companies (Further Amendment) Act, 1974.
- 25
- (vi) by inserting after the definition of "Part" in section 5 (1) the following definition :—
- 30
- "Participating State" means a State or Territory of the Commonwealth in respect of which a declaration referred to in paragraph (a) of subsection (1A) is in force.
- 35

(vii)

(vii) by inserting after the definition of "Public company" in section 5 (1) the following definition :—

"Recognised company" means a corporation incorporated under a declared law of a participating State or under a corresponding previous law of that State.

(viii) by inserting after section 5 (1) the following subsections :—

(1A) The Governor may by order—

(a) declare a State or Territory of the Commonwealth to be a participating State for the purposes of this Act if—

(i) the Interstate Corporate Affairs Agreement has been signed on behalf of that State or Territory; and

(ii) there are in force in that State or Territory laws relating to companies which in the opinion of the Governor enable that State or Territory to have uniformity in administration, and to enter into reciprocal arrangements, as a participating State in accordance with the provisions of subclause (1) of clause 2 of that Agreement; and

(b) declare a law of that State or Territory to be a declared law for the purposes of this Act.

(1B) A reference in any provision of this Act to a corresponding interstate officer, in relation to a participating State, is a reference to a person who, under a provision of the declared

Companies (Further Amendment).

declared law of that participating State that corresponds to that provision, exercises functions similar to functions exercised by the Commission under that provision.

5 (ix) by omitting section 5 (8) (a) and by inserting instead the following paragraph :—

(a) a reference in that subsection to a public company shall be construed as including a reference to—

10 (i) a foreign company other than a foreign company that (whether or not Division 3 of Part XI applies to it) is a foreign company of a kind
15 referred to in subsection (5) of section 348; and

(ii) a recognised company that is not an exempt proprietary company under a declared law;

20 (c) (i) by inserting after section 7 (1) the following subsection :—

(1A) In the exercise or performance of its powers, authorities, duties and functions under this Act in relation to any of the matters referred to in subclause (1) of clause 2 of the Interstate Corporate Affairs Agreement, the Commission shall have regard to any determinations made by the Interstate Corporate Affairs Commission constituted under that Agreement.

Sec. 7.
(Adminis-
tration
of Act.)

30 (ii) by inserting after section 7 (7) the following subsection :—

35 (7A) Where under a provision of a declared law corresponding to subsection (6) a person is authorised to inspect any books,
minute

Companies (Further Amendment).

5 minute book, register or record required by or under that declared law to be kept by a corporation, the person shall have the same powers in New South Wales in relation to that corporation as he would have had if he had been authorised under subsection (6).

(iii) by inserting in section 7 (8) (a) after the matter "subsection (6)" the matter "or subsection (7A)";

10 (iv) by inserting in section 7 (8) (a) after the matter "subsection (7)" the words "or a declaration referred to in a corresponding provision of the declared law of the participating State concerned";

15 (d) (i) by inserting after section 22 (1) the following subsection :— Sec. 22.
(Name of
companies.)

20 (1A) A direction under subsection (1) may distinguish between companies on the basis of whether or not an application under subsection (8A) in relation to the company specifies that the company intends to carry on, or carries on, business in a participating State.

25 (ii) by inserting after section 22 (7) the following subsections :—

30 (7A) A company shall not be registered under subsection (1) of section 16 and the Commission shall not approve the change of name of the company under subsection (1) of section 23 unless the name under which it is proposed to be registered or the proposed new name (as the case may be) has been reserved under this section.

(7B)

Companies (Further Amendment).

(7B) Within twelve months after the commencement of section 4 of the Companies (Further Amendment) Act, 1974, or such longer period as is prescribed (whether before or after the expiry of that twelve months) a person may apply in the prescribed form for a notification of the name of a company to be sent to the corresponding interstate officer in one or more participating States in which that company (being a company which was incorporated before that commencement) intends to carry on business, and the Commission shall, unless the name would not be available under subsection (1) if the application were an application for the reservation of a name, so notify that officer.

(iii) by inserting after section 22 (8) the following subsections :—

(8A) A person applying for the reservation of a name in respect of an intended company or company shall specify any participating State in which the intended company or company intends to carry on or carries on business.

(8B) Where the Commission reserves a name in respect of an intended company or company and the applicant has specified that the intended company or company intends to carry on or carries on business in a participating State the Commission shall notify the corresponding interstate officer of that State of the reservation of the name.

(8C) Where the Commission has notified a corresponding interstate officer of a participating State pursuant to the provisions of subsection (8B) of the reservation of a name and—

(a) that name subsequently ceases to be reserved; and

(b)

Companies (Further Amendment).

5 (b) the intended company is not incorporated, the intended company is incorporated under a name other than the name so notified or the company has not changed its name to the name so notified (as the case may be),

the Commission shall so notify that officer.

10 (8D) Where the Commission has notified a corresponding interstate officer of a participating State—

(a) pursuant to the provisions of subsection (7B), that a company intends to carry on business in that State; or

15 (b) pursuant to the provisions of subsection (8B), of the reservation of a name,

and the company concerned—

(c) is dissolved; or

20 (d) changes its name to a name other than the name which was so notified,

the Commission shall notify that officer of the dissolution of the company or that the company has so changed its name.

25 (8E) Where, under a provision of a declared law corresponding to subsection (7B) or subsection (8B), the Commission is notified by a corresponding interstate officer, it shall reserve the name concerned and the name shall continue to be reserved until it receives
30 a notification from that officer under a provision of that declared law corresponding to subsection (8C) or subsection (8D).

(8F)

Companies (Further Amendment).

5 (8F) Where the name of a recognised
company would not be available under sub-
section (1) as a name under which a company
could be registered but the name of the
recognised company has been reserved
(whether through inadvertence or otherwise
and whether originally or on change of name)
as a result of the Commission receiving a notifi-
cation under a provision of a declared law
10 corresponding to subsection (7B) or sub-
section (8B), the Commission shall inform the
corresponding interstate officer that the name
is unavailable and the name shall thereupon
cease to be reserved.

15 (8G) Where the Commission receives a
notification under a provision of a declared
law corresponding to subsection (8F) it shall
thereupon notify the company concerned that
the name is unavailable and that the name has
20 ceased to be reserved in the participating
State from which the notice was received and
the fee paid to the Commission in respect of
the reservation of that name in that
participating State shall be refunded to the
25 company.

(iv) by inserting in section 22 (11) after the words
“intended company, company,” wherever
occurring the words “recognised company,”;

30 (e) (i) by inserting in section 39 (1) (c) before the word “shall” where firstly occurring the words
“except in the case of a prospectus, registered
in a participating State, of a recognised
company”;

Sec. 39.
(Contents
of pros-
pectuses.)

35 (ii) by omitting from section 39 (1) (h) the word
“and” where secondly occurring;

(iii)

Companies (Further Amendment).

(iii) by omitting from section 39 (1) (i) (v) the words "principal office in the State." and by inserting instead the following matter :—

principal office in the State; and

5 (j) shall specify each participating State (if any) in which it is proposed to issue, circulate or distribute the prospectus.

10 (f) (i) by omitting section 42 (2) (b) and by inserting instead the following paragraph :—

(b) the prospectus appears to comply with the requirements of this Act;

(ii) by omitting section 42 (2) (d) and by inserting instead the following paragraph :—

15 (d) the Commission is of the opinion that the prospectus does not contain any statement or matter which is misleading in the form or context in which it is included; and;

20 (iii) by inserting after section 42 (2) the following subsection :—

(2A) Nothing in paragraphs (b) and (d) of subsection (2) prevents the Commission from registering a copy of a prospectus in respect of a foreign company incorporated in another State or Territory of the Commonwealth if the Commission is satisfied that—

25 (a) the prospectus has been registered or is acceptable for registration under a law corresponding to this section in that other State or Territory; and

(b)

Companies (Further Amendment).

5 (b) the prospectus complies with such of the requirements of paragraph (i) of subsection (1) of section 39 as apply to a prospectus issued by that foreign company.

(g) by inserting after section 47 the following section :—

10 47A. Where a prospectus in respect of a recognised company has been registered in the State in which that company is incorporated under a declared law corresponding to this Division, it shall for the purposes of this Division be deemed to have been registered by the Commission and anything required to be done before that registration in relation thereto shall be deemed to have been done.

(h) by inserting after section 74I the following section :—

20 74J. Notwithstanding anything in this Division, in the case of a borrowing corporation which is a recognised company or a guarantor corporation of such a borrowing corporation it shall be sufficient compliance with this Division if the corporation has complied with the laws corresponding to this Division in the State in which the borrowing corporation is incorporated.

(i) by omitting from section 76 (1) the definition of "Company" and by inserting instead the following definition :—

30 "Company" means a public company and includes—

(a) a corporation that is a public company under the law of a proclaimed State and is registered as a foreign company in this State; and

35 (b) a corporation that is a public company under a declared law.

(j)

Companies (Further Amendment).

- (j) by inserting at the end of section 77 the following subsection :—

Sec. 77.

(Approved deeds.)

(2) In the case of a management company which is a recognised company, a deed shall be an approved deed for the purposes of this Division if the deed and the company acting as trustee or representative for the purposes of the deed have been approved under a provision of a declared law which corresponds to this Division in the participating State in which that recognised company is incorporated.

- (k) by inserting after section 80 (1) the following subsections :—

Sec. 80.

(Covenants to be included in deeds.)

(1A) The Commission may by notice published in the Gazette declare that, subject to such terms and conditions as are specified in the notice, a specified deed that makes provision for the appointment of a specified company as trustee for or representative of the holders of interests issued or proposed to be issued by the management company is not required to contain covenants to the effect of such of the matters referred to in subsection (1) as are specified in the notice.

(1B) Any provisions contained in a notice purporting to have been published under subsection (1) of section 88 before the commencement of section 4 of the Companies (Further Amendment) Act, 1974, that, had subsection (1A) been in force when the notice was published, could have been contained in a notice under subsection (1A) shall be and be deemed always to have been as valid and effectual as those provisions would have been had the publication of the notice been authorised under subsection (1) of section 88.

- (l) by inserting at the end of section 82 the following subsection :—

Sec. 82.

(Statement to be issued.)

(4)

Companies (Further Amendment).

5 (4) Where a statement in respect of a recognised company has been registered, under a provision of a declared law corresponding to Division 1 of Part IV, in the State in which the company is incorporated that statement shall, for the purposes of this Division, be deemed to have been registered by the Commission under Division 1 of Part IV and anything required to be done before that registration shall be deemed to have been done.

10 (m) by inserting in section 83 (2) after the word "Division" the words "or under a provision of a declared law which corresponds to this Division";

Sec. 83.
(No issue without approved deed.)

15 (n) (i) by inserting in section 85 (1) after the words "approved deed" the words "under subsection (1) of section 77";

Sec. 85.
(Returns, information, etc. relating to interests.)

(ii) by inserting at the end of section 85 the following subsection :—

20 (4) Subsection (1) does not apply to a management company which is a recognised company and which has complied with a provision of a declared law corresponding to subsection (1) in the State or Territory in which it was incorporated.

25 (o) by inserting at the end of section 100 the following subsection :—

Sec. 100.
(Registration of charges.)

30 (11) The declaration under subsection (1A) of section 5 of a State as a participating State that results in a foreign company becoming a recognised company does not affect any obligation under this section with which that foreign company was liable to comply immediately before it became a recognised company.

(p)

Companies (Further Amendment).

(p) by inserting after section 102 the following Sec. 102A.
section :—

102A. (1) Where a recognised company estab-
lishes a place of business or commences to carry
on business in the State and has prior to such
establishment or commencement—

Duty of
recognised
company to
register
charges on
property
acquired.

(a) created a charge which if it had been
created by the recognised company while it
was carrying on business in the State would
have been required to be registered under
this Division; or

(b) acquired property which is subject to a
charge of any such kind as would, if it had
been created by the company after the
acquisition and while it was carrying on
business in the State, have been required to
be registered under this Division,

the company shall cause a statement of the pre-
scribed particulars and the instrument by which the
charge was created or is evidenced or a copy
thereof accompanied by a statutory declaration
containing such particulars as are prescribed, and
where a copy is lodged also verifying it as a true
copy thereof, to be lodged with the Commission
for registration within thirty days after the date
on which the acquisition is completed or the date
of establishment of the place of business or the
commencement of carrying on business (as the case
may be).

(2) If default is made in complying with
subsection (1), the recognised company and every
officer of the company who is in default shall be
guilty of an offence against this Act.

Penalty : One hundred dollars. Default penalty.

(3)

Companies (Further Amendment).

- 5 (3) The declaration under subsection (1A) of section 5 of a State as a participating State that results in a foreign company becoming a recognised company does not affect any obligation under section 102 with which that foreign company was liable to comply immediately before it became a recognised company.
- 10 (q) by omitting from section 110 the words “, but nothing in this Division applies to a charge on property outside the State of a foreign company.” and by inserting instead the words “and to a recognised company which has a place of business or is carrying on business within the State, but nothing in this Division applies to a charge on property outside the State of a foreign company or a recognised company.”; Sec. 110 (Application of Division.)
- 15 (r) by inserting after section 159 (2) (b) the following paragraph :— Sec. 159. (Annual return by company not having a share capital.)
- 20 (b1) the address of the principal office of the company (if any) in each participating State;
- (s) by inserting in section 161B (1), (2) and (3) after the words “foreign company” wherever occurring the words “or a recognised company”; Sec. 161B. (Financial years of grouped companies.)
- 25 (t) by inserting after paragraph (a) of the definition of “company” in section 168 (1) the following paragraph :— Sec. 168. (Interpretation and application.)
- (a1) a recognised company carrying on business in the State; and;
- 30 (u) (i) by omitting from section 180 (1) the words “in respect of a company or foreign company”; Sec. 180. (Application for winding up.)
- (ii) by inserting in section 180 (1) (a) after the word “company” where firstly occurring the words “the subject of the report”;
- 35 (iii)

Companies (Further Amendment).

- 5 (iii) by omitting from section 180 (1) (b) the words "is a foreign company" and by inserting instead the words "the subject of the report is a foreign company or a recognised company";
- (iv) by inserting in section 180 (2) and (3) after the words "foreign company" wherever occurring the words "or a recognised company";
- 10 (v) by omitting from section 203B (2) the words Sec. 203B. "incorporated in any other State or Territory of the Commonwealth is registered in New South Wales and is placed" and by inserting instead the words (Stay of proceedings.) "which is incorporated in a State or Territory of the Commonwealth and which is registered in New South Wales or a recognised company is";
- 15 (w) by inserting in section 314 (1) after the words Sec. 314. "foreign company" the words ("Unregistered company.") ", a recognised company";
- 20 (x) by inserting after Division 2 of Part XI the following Division :— Division 2A.

DIVISION 2A.—Recognised Companies.

- 25 343A. (1) Except as provided in section 343E Recognised companies to which this Division applies. and section 343G, this Division applies to a recognised company only if it has a place of business or is carrying on business within the State.

- 30 (2) A reference in this Act to a recognised company carrying on business includes a reference to that company establishing or using a share transfer or share registration office or administering, managing or otherwise dealing with property situated in the State as an agent, legal personal representative or trustee, whether by servants or agents or otherwise.

(3)

Companies (Further Amendment).

(3) Notwithstanding subsection (2), a recognised company shall not be regarded as carrying on business within the State for the reason only that within the State it—

- 5 (a) is or becomes a party to any action or suit or any administrative or arbitration proceeding or effects settlement of an action suit or proceeding or of any claim or dispute;
- 10 (b) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;
- (c) maintains any bank account;
- 15 (d) effects any sale through an independent contractor;
- (e) solicits or procures any order which becomes a binding contract only if such order is accepted outside the State;
- 20 (f) creates evidence of any debt, or creates a charge on real or personal property;
- (g) secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts;
- 25 (h) conducts an isolated transaction that is completed within a period of thirty-one days, but not being one of a number of similar transactions repeated from time to time; or
- 30 (i) invests any of its funds or holds any property.

343B. A recognised company shall have power to hold land in the State. Power of recognised companies to hold land.

35 343C. (1) A recognised company which has established a place of business or commenced to carry on business within the State shall have a Principal office of recognised company.

Companies (Further Amendment).

principal office within the State to which all communications and notices may be addressed and which shall be open and accessible to the public for not less than three hours between the hours of
5 nine o'clock in the forenoon and five o'clock in the afternoon each day, Saturdays, Sundays and holidays excepted.

(2) A recognised company which has established a place of business or commenced to carry on business within the State shall within one month after doing so lodge with the Commission notice of the situation of its principal office in the State.

(3) Where a recognised company, immediately before it became a recognised company, had as a foreign company a registered office in the State notice of the situation of which had been lodged with the Commission, that registered office shall be deemed to be the principal office in the State of that recognised company until it lodges under section 343D with the Commission notice of any change or alteration in the situation of its principal office.

343D. Where any change or alteration is made in—
25

Altered
particulars
to be
notified.

(a) the situation of the principal office of the recognised company in the State or of the days or hours during which it is open and accessible to the public; or

(b) the name of the recognised company,
30 the recognised company shall within one month or within such further period as the Commission in special circumstances allows after the change or alteration lodge with the Commission particulars
35 of the change or alteration.

343E.

Companies (Further Amendment).

5 343E. (1) Except with the consent of the Minister, a recognised company shall not establish a place of business or commence to carry on business within the State unless the Commission has approved of its name.

Name of
recognised
company
to be
approved.

(2) Subsection (1) does not apply in respect of a recognised company establishing a place of business within the State if it has already established such a place of business.

10 (3) Except with the consent of the Minister, a recognised company which had established a place of business or had commenced to carry on business within the State at the time it became a recognised company and which
15 immediately before that time was not a registered foreign company shall not continue to carry on business in the State unless the Commission has approved of its name.

20 (4) A recognised company shall not use as its name a name which has not been approved under subsection (1) or (3), but nothing in this subsection prevents a recognised company which,
25 immediately before it became a recognised company, was a registered foreign company from using as its name the name under which it was registered as a foreign company.

30 (5) Nothing in subsection (4) prevents a recognised company whose name has been approved under this section or a recognised company which immediately before it became a recognised company was a registered foreign company from using a name under which it is registered under any other Act.

35 (6) The Commission shall not under subsection (1) or (3) refuse to approve of a name unless—

- (a) the name is undesirable by reason that it is likely to be confused with or mistaken for the name of a company, a foreign company

Companies (Further Amendment).

5 company, a recognised company, a society registered under the Co-operation Act, 1923, or the Permanent Building Societies Act, 1967, a credit union or association of credit unions or a union of associations of credit unions registered under the Credit Union Act, 1969, a registered business name or a name that has been reserved pursuant to section 22; or

10 (b) the name is a name, or a name of a kind, that the Minister has directed the Commission not to accept for registration under section 22.

15 (7) If default is made in complying with subsection (1), (3) or (4), the recognised company and every officer of the recognised company who is in default shall be guilty of an offence against this Act.

Penalty : Two hundred dollars. Default penalty.

20 343F. (1) A recognised company shall—

(a) except in the case of a banking corporation, conspicuously exhibit outside every place of business established by it in the State its name and the place where it is incorporated; and

Exhibition
of name,
etc.

25 (b) except in the case of a banking corporation, cause its name and the place where it is incorporated to be stated in legible characters in all its bill-heads and letter paper and in all its notices, prospectuses and other official publications.

30 (2) If a recognised company is under official management in its place of incorporation under any declared law corresponding to Part IX or is being wound up, every invoice, order for goods or business letter issued by or on behalf of the
35 company,

Companies (Further Amendment).

5 company, or an official manager or liquidator of the company or a receiver or manager of the property of the company being a document on or in which the name of the company appears shall have the words "under official management", or "in liquidation" (whichever is appropriate) immediately following the name of the company where it first appears therein.

10 (3) If default is made in complying with subsection (2), the recognised company and every officer of the recognised company who knowingly and wilfully authorises or permits the default shall be guilty of an offence against this Act.

Penalty : Forty dollars.

15 343G. (1) If a recognised company ceases to have a place of business or to carry on business in the State, it shall within seven days after so ceasing lodge with the Commission notice of that fact. Recognised company ceasing to carry on business.

20 (2) If a recognised company goes into liquidation or is dissolved in its place of incorporation the liquidator shall, until a liquidator for the State is duly appointed by the Court, have the powers and functions of a liquidator for the State.

25 (3) A liquidator of a recognised company appointed for the State by the Court or a person exercising the powers and functions of such a liquidator—

30 (a) shall, before any distribution of the recognised company's assets is made, by advertisement in a newspaper circulating generally in each State or Territory of the Commonwealth where the recognised company had been carrying on business prior to the liquidation if no liquidator has been
35 appointed for that place, invite all creditors to

Companies (Further Amendment).

to make their claims against the recognised company within a reasonable time before the distribution;

5 (b) shall not, without obtaining an order of the Court, pay out any creditor to the exclusion of any other creditor of the recognised company; or

10 (c) shall, unless otherwise ordered by the Court, only recover and realise the assets of the recognised company in the State and shall pay the net amount so recovered and realised to the liquidator of that recognised company for the place where it was incorporated.

15 (4) Where a recognised company has been wound up so far as its assets in the State are concerned and there is no liquidator for the place of its incorporation the liquidator may apply to the Court for directions as to the disposal of the net
20 amount recovered in pursuance of subsection (3).

343H. Any document required to be served on a recognised company shall be sufficiently served if addressed to the recognised company and left at or sent by post to the address specified in the notice lodged with the Commission as being its principal office in the State.
25

343I. (1) Subject to this section, a recognised company which has a share capital and has any member who is resident in the State, shall keep at its principal office in the State or at some other place in the State a branch register for the purpose of registering shares of members resident in the State who apply to have the shares registered therein.
30

(2)

Companies (Further Amendment).

5 (2) The company shall not be obliged to keep a branch register pursuant to subsection (1) until after the expiration of one month from the receipt by it of an application in writing by a member resident in the State for registration in its branch register in the State of the shares held by the member.

10 (3) If default is made in complying with subsection (1), the recognised company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : One hundred dollars. Default penalty.

15 (4) This section shall not apply to any recognised company which by its constitution prohibits any invitation to the public to subscribe for shares in the company.

20 (5) Every such register shall be kept in the manner provided by Division 4 of Part V as though the register were the register of a company and transfers shall be effected on such register in the same manner and at the same charges as on the principal register of the company and transfers lodged at its principal office in the State shall be binding on the company and the Court shall have the same powers in relation to rectification of the register as it has in respect of the register of a company incorporated in the State.

30 (6) Where a recognised company opens a branch register in the State it shall within fourteen days after the opening thereof lodge with the Commission notice of that fact specifying the address where the register is kept.

35 (7) Where any change is made in the place where the register is kept or where the register is discontinued the company shall, within fourteen days of the change or discontinuance lodge notice of the change or discontinuance with the Commission.

(8)

Companies (Further Amendment).

5 (8) Where a company or corporation is entitled pursuant to a declared law of the place of incorporation of a recognised company that corresponds to section 180x or 185 to give notice to a dissenting offeree or to a dissenting shareholder in that recognised company that it desires to acquire any of his shares registered on a branch register kept in the State, this section shall cease to apply to that recognised company until—

- 10 (a) the shares have been acquired; or
(b) the company or corporation has ceased to be entitled to acquire the shares.

15 343J. Subject to this Act, on application in that behalf by a member resident in the State the recognised company shall register in the branch register of the company the shares held by a member which are registered in any other register kept by the company. Registration of shares in branch register.

20 343K. Subject to this Act, on application in that behalf by a member holding shares registered in the branch register, the recognised company shall remove the shares from the branch register and register them in such other register as is specified in the application. Removal of shares from branch register.

25 343L. Sections 151, 152 and 153 shall, with such adaptations as are necessary, apply respectively to the index of persons holding shares in a branch register and to the inspection and the closing of the register. Index of members, inspection and closing of branch registers.

30 343M. Sections 95 and 96, subsection (1) of section 97, subsections (1) and (3) of section 99 and section 155 shall apply with necessary adaptations with respect to the transfer of shares on and the rectification of the branch register of a recognised company. Application of provisions of Act relating to transfer.

35

343N.

Companies (Further Amendment).

343N. A branch register shall be prima facie evidence of any matters by this Division directed or authorised to be inserted therein.

Branch register to be prima facie evidence.

5 343O. A certificate under the seal of a recognised company specifying any shares held by any member of that company and registered in the branch register shall be prima facie evidence of the title of the member to the shares and the registration of the shares in the branch register.

Certificate re share-holding.

10 343P. A branch register kept by a recognised company which immediately before it became a recognised company was a foreign company shall thereupon become the branch register of that recognised company.

Branch register of former foreign company.

15 343Q. If default is made by any recognised company in complying with any provision of this Division other than a provision in which a penalty or punishment is expressly mentioned the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalties.

20 Penalty : One hundred dollars. Default penalty.

(y) (i) by inserting in the Second Schedule after paragraph 17 the following paragraphs :—

Second Schedule.

25 17A. For approval of the name of a recognised company under subsection (1) of section 343E where the name of the recognised company has previously been reserved 4.00

30 17B. For approval of the name of a recognised company under subsection (1) of section 343E where the name of the recognised company has not previously been reserved 100.00

17c.

Companies (Further Amendment).

- 17c. For approval of the name
of a recognised company
under subsection (3) of sec-
tion 343E 100.00
- 5 (ii) by inserting in the Second Schedule after
paragraph 22 the following paragraphs :—
23. On an application for the
reservation of a name .. 6.00
- 10 23A. For sending a notification
under subsection (7B) or
subsection (8B) of section
22 to a corresponding inter-
state officer—for each noti-
fication 100.00
- 15 (iii) by omitting paragraph 34;
- (z) (i) by inserting in Part I of the Eighth Schedule ^{Eighth}
after paragraph 1 the following paragraph :— ^{Schedule.}
- 20 1A. The address of the principal office of
the company (if any) in each participating
State.
- (ii) by inserting in Part II of the Eighth Schedule
after the words "The address of the registered
office of the company is" the following
paragraph :—
- 25 The address of the principal office of the
company (if any) in each participating State
is
- 30 (2) All acts, matters or things which before a State
is declared to be a participating State were done or com-
menced in relation to a foreign company which as a result
of that declaration becomes a recognised company shall be
deemed to have been done or commenced in relation to it
as a recognised company and may be continued and
completed in relation to it as a recognised company.

SCHEDULE.

Companies (Further Amendment).

SCHEDULE.

Sec. 3.

AGREEMENT.

AN AGREEMENT (to be called the "Interstate Corporate Affairs Agreement") made this 18th day of February 1974 between the State of
5 New South Wales of the first part, the State of Victoria of the second part and the State of Queensland of the third part.

WHEREAS it is generally acknowledged that in the interests of the public generally and of persons and authorities concerned with the administration of the law relating to companies and the regulation
10 of the securities industry and trading in securities that there should be substantial uniformity in that law in the States and Territories of the Commonwealth of Australia:

AND WHEREAS the Governments of the Commonwealth and of the States of the Commonwealth of Australia have been concerned to
15 achieve such uniformity:

AND WHEREAS as a result of conferences between Attorneys-General and Ministers of Justice of the Commonwealth and the States particularly since 1960 considerable uniformity has been achieved:

AND WHEREAS it is the intention of the Governments of the States
20 of New South Wales Victoria and Queensland—

to achieve greater uniformity in the law relating to companies and the regulation of the securities industry and trading in securities;

25 to establish reciprocal arrangements and common standards and procedures in the administration of that law;

to co-ordinate administration and avoid unnecessary duplication for the greater convenience of the public and greater efficiency in the overall administration; and

to increase the protection the law affords to the investing public:

30 AND WHEREAS the Governments of New South Wales, Victoria and Queensland have agreed that it is desirable for those purposes to establish an Interstate Corporate Affairs Commission.

NOW IT IS HEREBY AGREED AS FOLLOWS :—

1. In this Agreement unless the contrary intention appears—

35 "Attorney-General" in relation to a State means the Minister responsible for the administration of the law relating to companies in that State and in relation to a Territory means a Minister of the Crown in right of the Commonwealth nominated by the Government of the Commonwealth of
40 Australia as being responsible for the administration of the law relating to companies in that Territory.

"Clause"

Companies (Further Amendment).

"Clause" means clause of this Agreement.

"Commission" means the Interstate Corporate Affairs Commission established under clause 4.

5 "Ministerial Council" means the Ministerial Council provided for by clause 3.

10 "Participating State" means each of the States of New South Wales Victoria and Queensland and any other State or Territory of the Commonwealth of Australia on behalf of which this Agreement is signed pursuant to sub-clause (3) of clause 10.

2. (1) The Government of each of the participating States agrees that there shall be uniformity in administration and reciprocal arrangements within those States with respect to the following matters:—

- (a) Incorporation of companies;
- 15 (b) the regulation of the securities industry and trading in securities;
- (c) Registration of prospectuses;
- (d) Approval of trust deeds and trustees in relation to interests;
- (e) Requirements relating to accounts and audit;
- 20 (f) Proclamation of companies as investment companies;
- (g) Class and individual exemption powers relating to fund raising, &c. and to takeovers—

and such other matters relating to corporate affairs as the Ministerial Council from time to time designates.

25 (2) The Government of each of the participating States agrees to submit legislation to the Parliament of that State or to take such other action as is necessary—

- (a) to enable the Commission to exercise a supervisory role with respect to the above matters and such other matters as the Ministerial Council from time to time considers should be under the supervision of the Commission;
- 30 (b) to authorize reciprocal arrangements with respect to the above matters; and
- 35 (c) to implement recommendations made by the Ministerial Council from time to time in order to achieve the objects set out in the preamble to this Agreement.

3. (1) For the purposes of this Agreement there shall be a Ministerial Council consisting of the Attorneys-General for the time being of the States of New South Wales Victoria and Queensland and the Attorney-General for the time being of any other participating State.

(2)

Companies (Further Amendment).

(2) In sub-clause (1) of this clause a reference to the Attorney-General of a State includes such other Minister of the Crown who for the time being is acting for or on behalf of the Attorney-General of the State.

5 (3) The Ministerial Council shall meet at such times as it sees fit and shall subject to this Agreement determine its own procedure.

(4) A resolution before the Ministerial Council will be carried by a majority of votes of the members thereof.

4. (1) For the purposes of this Agreement there shall be an
10 Interstate Corporate Affairs Commission appointed by the Ministerial Council.

(2) The Attorney-General of each participating State shall nominate two persons to be members of the Commission.

(3) One of the persons to be nominated by the Attorney-General
15 of each participating State shall be the person responsible under the Attorney-General for the administration of the law relating to companies in that State.

(4) Each of the members of the Commission, other than the members referred to in sub-clause (3), shall hold office for such
20 period as is specified in the instrument of his appointment unless his nomination to the Commission is sooner withdrawn by the Attorney-General by whom he was nominated.

(5) A person, not being a person referred to in sub-clause (3), shall cease to be a member of the Commission if his nomination is
25 withdrawn by the Attorney-General by whom he was nominated.

(6) A member of the Commission shall be eligible to be re-appointed.

(7) In the event of a member being unable to attend a meeting of the Commission the Attorney-General by whom that member was
30 nominated may appoint a suitable person to be the deputy of that member.

(8) A deputy of a member of the Commission shall have, while acting in the place of a member of the Commission, the powers, authorities, duties and functions of that member.

35 (9) Members shall be appointed subject to such terms and conditions as are determined from time to time by the Ministerial Council.

(10) A quorum of the Commission shall be constituted by a majority of the total number of members for the time being in office.

(11) The Ministerial Council shall from time to time appoint one
40 of the members of the Commission to be chairman and one to be deputy chairman.

(12) The Chairman, or in his absence the deputy chairman, shall preside at meetings of the Commission.

Companies (Further Amendment).

- (13) Questions arising at a meeting of the Commission will be determined by a majority of votes of the members present and voting.
- (14) Where there is an equality of votes the chairman or presiding deputy chairman (as the case may be) shall have a casting vote as well as a deliberative vote.
- (15) Subject to this Agreement the Commission shall regulate its own proceedings.
- (16) The Commission shall exercise its functions and powers subject to the direction and control of the Ministerial Council.
- 5 (1) The Commission may employ such officers and employés as are approved by the Ministerial Council on such terms and conditions as are specified by the Ministerial Council.
- (2) The Commission may arrange with the Government of a participating State for the performance by a person employed in the public service of such State of any work or services for the Commission and for any matters which may be required to be adjusted with regard to the performance or payment for such work or services by such person.
- 15 6. All expenses of the Commission shall be borne by the participating States in equal shares.
- 20 (1) The Commission shall cause to be kept proper accounts and records of its affairs in accordance with appropriate accounting principles.
- (2) The Ministerial Council may from time to time request the Auditor-General of a participating State to audit the accounts of the Commission.
- 25 (3) Where an audit of the accounts of the Commission is carried out by the Auditor-General of a State the Commission shall pay to the Treasurer of that State the expenses of the audit.
- 30 8. The Government of a participating State shall at the request of the Commission furnish to the Commission all such information and particulars as the Commission may require for the purposes of this Agreement and as such Government is able to furnish.
9. (1) For the purposes of this Agreement there may be a Consultative Committee constituted as determined from time to time by the Ministerial Council.
- 35 (2) One member of the Consultative Committee shall be appointed by the Ministerial Council to be chairman.
- (3) Members of the Consultative Committee shall be appointed for such period as the Ministerial Council thinks fit.
- 40

(4)

Companies (Further Amendment).

(4) It shall be the function of the Consultative Committee to consult with the Commission with respect to the exercise by the Commission of its duties functions and powers.

10. (1) The Governments of New South Wales Victoria and
5 Queensland will submit this Agreement for approval to their respective Parliaments as soon as practicable after the date of this Agreement.

(2) It is the intention of the Governments of the States of New South Wales Victoria and Queensland that any other State and Territory of the Commonwealth of Australia may become a participating
10 State for the purposes of this Agreement.

(3) This Agreement shall remain open for signature on behalf of any such other State or Territory.

IN WITNESS WHEREOF this Agreement has been executed on the day and year first above written.

15 SIGNED BY THE HONORABLE KENNETH MALCOLM MCCAW, Attorney-General for New South Wales, in the presence of— M. L. VINCENT.	}	K. M. McCAW.
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20 SIGNED BY THE HONORABLE VERNON FRANCIS WILCOX, Attorney-General for Victoria, in the presence of— J. C. FINEMORE.	}	V. F. WILCOX.
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25 SIGNED BY THE HONORABLE WILLIAM EDWARD KNOX, Attorney-General for Queensland, in the presence of— J. C. FINEMORE.	}	WILLIAM E. KNOX.
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COMPANIES (FURTHER AMENDMENT) BILL, 1974

EXPLANATORY NOTE

THE objects of this Bill are—

- (a) to approve the Interstate Corporate Affairs Agreement, a copy of which is set out in the Schedule to the Bill;
- (b) to require the Corporate Affairs Commission in the exercise or performance of certain of its powers, authorities, duties and functions to have regard to determinations made by the Interstate Corporate Affairs Commission constituted under that Agreement;
- (c) to amend the Companies Act, 1961, to give effect to that Agreement so that companies incorporated in participating States will be relieved of certain obligations under the Companies Act, 1961, with which they are presently obliged to comply as foreign companies, including provisions relating to—
 - (i) the reservation of the name of a company;
 - (ii) the issue of prospectuses;
 - (iii) the issue of debentures;
 - (iv) approved deeds of management companies by or on behalf of which interests as defined in section 76 (1) of the Companies Act, 1961, are issued;
 - (v) the registration of charges on property acquired; and
 - (vi) the investigation of companies by inspectors and their winding up following the making of a report of an investigation;
- (d) to make provision with respect to the obligations of companies incorporated in participating States;
- (e) to make other provisions of a minor or ancillary character.

PROOF

No. , 1974.

A BILL

To approve the Interstate Corporate Affairs Agreement; to make further provisions with respect to companies incorporated in certain other States and in certain Territories of the Commonwealth which carry on business in New South Wales; to validate certain matters; for these and other purposes to amend the Companies Act, 1961; and for purposes connected therewith.

[MR McCaw—2 April, 1974.]

BE

Companies (Further Amendment).

5 **BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Companies (Further Short title. Amendment) Act, 1974".

2. (1) Except as provided in subsection (2), this Act Commence- shall commence on the date of assent to this Act. ment.

10 (2) Section 4 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. The Interstate Corporate Affairs Agreement, a copy Approval of Interstate Corporate Affairs Agreement. of which is set out in the Schedule, is approved.

15 4. (1) The Companies Act, 1961, is amended— Amendment of Act No. 71, 1961.

(a) by inserting in section 3 after the matter relating to Sec. 3. Division 2 of Part XI the following matter :— (Division into Parts.)

DIVISION 2A.—*Recognised Companies.*—ss. 343A—343Q.

20 (b) (i) by omitting from the definition of "Branch Sec. 5. register" in section 5 (1) the matter "section (Inter-pretation.) 354." and by inserting instead the following matter :—

section 354;

25 (c) in relation to a recognised company— a branch register of members of the company kept in pursuance of section 343I.

(ii)

Companies (Further Amendment).

- (ii) by inserting in the definition of "Corporation" in section 5 (1) after the words "foreign company" wherever occurring the words "or recognised company";
- 5 (iii) by inserting after the definition of "Debenture" in section 5 (1) the following definition :—
- "Declared law" means a law of a participating State, being a law in respect of which a declaration referred to in paragraph (b) of subsection (1A) is in force and if that law is amended, that law as amended from time to time.
- 10
- (iv) by inserting in paragraph (a) of the definition of "Foreign company" in section 5 (1) after the words "not being" the words "a recognised company,";
- 15
- (v) by inserting after the definition of "Guarantor corporation" in section 5 (1) the following definition :—
- 20
- "Interstate Corporate Affairs Agreement" means the agreement between the States of New South Wales, Victoria and Queensland relating to the establishment of an Interstate Corporate Affairs Commission executed on 18th February, 1974, a copy of which is set out in the Schedule to the Companies (Further Amendment) Act, 1974.
- 25
- (vi) by inserting after the definition of "Part" in section 5 (1) the following definition :—
- 30
- "Participating State" means a State or Territory of the Commonwealth in respect of which a declaration referred to in paragraph (a) of subsection (1A) is in force.
- 35
- (vii)

Companies (Further Amendment).

(vii) by inserting after the definition of "Public company" in section 5 (1) the following definition :—

5 "Recognised company" means a corporation incorporated under a declared law of a participating State or under a corresponding previous law of that State. "Recognised company."

10 (viii) by inserting after section 5 (1) the following subsections :—

(1A) The Governor may by order—

(a) declare a State or Territory of the Commonwealth to be a participating State for the purposes of this Act if—

15 (i) the Interstate Corporate Affairs Agreement has been signed on behalf of that State or Territory; and

20 (ii) there are in force in that State or Territory laws relating to companies which in the opinion of the Governor enable that State or Territory to have uniformity in administration, and to enter into reciprocal arrangements, as a participating State in accordance with the provisions of subclause (1) of clause 2 of that Agreement; and

(b) declare a law of that State or Territory to be a declared law for the purposes of this Act.

35 (1B) A reference in any provision of this Act to a corresponding interstate officer, in relation to a participating State, is a reference to a person who, under a provision of the declared

Companies (Further Amendment).

declared law of that participating State that corresponds to that provision, exercises functions similar to functions exercised by the Commission under that provision.

5 (ix) by omitting section 5 (8) (a) and by inserting instead the following paragraph :—

(a) a reference in that subsection to a public company shall be construed as including a reference to—

10 (i) a foreign company other than a foreign company that (whether or not Division 3 of Part XI applies to it) is a foreign company of a kind
15 referred to in subsection (5) of section 348; and

(ii) a recognised company that is not an exempt proprietary company under a declared law;

20 (c) (i) by inserting after section 7 (1) the following subsection :—

(1A) In the exercise or performance of its powers, authorities, duties and functions under this Act in relation to any of the matters referred to in subclause (1) of clause 2 of the Interstate Corporate Affairs Agreement, the Commission shall have regard to any determinations made by the Interstate Corporate Affairs Commission constituted under that Agreement.

Sec. 7.
(Adminis-
tration
of Act.)

(ii) by inserting after section 7 (7) the following subsection :—

(7A) Where under a provision of a declared law corresponding to subsection (6) a person is authorised to inspect any books,
minute

35

Companies (Further Amendment).

5 minute book, register or record required by or under that declared law to be kept by a corporation, the person shall have the same powers in New South Wales in relation to that corporation as he would have had if he had been authorised under subsection (6).

(iii) by inserting in section 7 (8) (a) after the matter "subsection (6)" the matter "or subsection (7A)";

10 (iv) by inserting in section 7 (8) (a) after the matter "subsection (7)" the words "or a declaration referred to in a corresponding provision of the declared law of the participating State concerned";

15 (d) (i) by inserting after section 22 (1) the following subsection :— Sec. 22.
(Name of
companies.)

20 (1A) A direction under subsection (1) may distinguish between companies on the basis of whether or not an application under subsection (8A) in relation to the company specifies that the company intends to carry on, or carries on, business in a participating State.

25 (ii) by inserting after section 22 (7) the following subsections :—

30 (7A) A company shall not be registered under subsection (1) of section 16 and the Commission shall not approve the change of name of the company under subsection (1) of section 23 unless the name under which it is proposed to be registered or the proposed new name (as the case may be) has been reserved under this section.

(7B)

Companies (Further Amendment).

(7B) Within twelve months after the commencement of section 4 of the Companies (Further Amendment) Act, 1974, or such longer period as is prescribed (whether before or after the expiry of that twelve months) a person may apply in the prescribed form for a notification of the name of a company to be sent to the corresponding interstate officer in one or more participating States in which that company (being a company which was incorporated before that commencement) intends to carry on business, and the Commission shall, unless the name would not be available under subsection (1) if the application were an application for the reservation of a name, so notify that officer.

(iii) by inserting after section 22 (8) the following subsections :—

(8A) A person applying for the reservation of a name in respect of an intended company or company shall specify any participating State in which the intended company or company intends to carry on or carries on business.

(8B) Where the Commission reserves a name in respect of an intended company or company and the applicant has specified that the intended company or company intends to carry on or carries on business in a participating State the Commission shall notify the corresponding interstate officer of that State of the reservation of the name.

(8C) Where the Commission has notified a corresponding interstate officer of a participating State pursuant to the provisions of subsection (8B) of the reservation of a name and—

(a) that name subsequently ceases to be reserved; and

(b)

Companies (Further Amendment).

5 (b) the intended company is not incorporated, the intended company is incorporated under a name other than the name so notified or the company has not changed its name to the name so notified (as the case may be),

the Commission shall so notify that officer.

10 (8D) Where the Commission has notified a corresponding interstate officer of a participating State—

(a) pursuant to the provisions of subsection (7B), that a company intends to carry on business in that State; or

15 (b) pursuant to the provisions of subsection (8B), of the reservation of a name,

and the company concerned—

(c) is dissolved; or

20 (d) changes its name to a name other than the name which was so notified,

the Commission shall notify that officer of the dissolution of the company or that the company has so changed its name.

25 (8E) Where, under a provision of a declared law corresponding to subsection (7B) or subsection (8B), the Commission is notified by a corresponding interstate officer, it shall reserve the name concerned and the name shall continue to be reserved until it receives
30 a notification from that officer under a provision of that declared law corresponding to subsection (8C) or subsection (8D).

(8F)

Companies (Further Amendment).

5 (8F) Where the name of a recognised
company would not be available under sub-
section (1) as a name under which a company
could be registered but the name of the
recognised company has been reserved
(whether through inadvertence or otherwise
and whether originally or on change of name)
10 as a result of the Commission receiving a notifi-
cation under a provision of a declared law
corresponding to subsection (7B) or sub-
section (8B), the Commission shall inform the
corresponding interstate officer that the name
is unavailable and the name shall thereupon
cease to be reserved.

15 (8G) Where the Commission receives a
notification under a provision of a declared
law corresponding to subsection (8F) it shall
thereupon notify the company concerned that
the name is unavailable and that the name has
20 ceased to be reserved in the participating
State from which the notice was received and
the fee paid to the Commission in respect of
the reservation of that name in that
participating State shall be refunded to the
25 company.

(iv) by inserting in section 22 (11) after the words
“intended company, company,” wherever
occurring the words “recognised company,”;

30 (e) (i) by inserting in section 39 (1) (c) before the word “shall” where firstly occurring the words (Contents
“except in the case of a prospectus, registered of pros-
in a participating State, of a recognised pectuses.)
company”;

35 (ii) by omitting from section 39 (1) (h) the word
“and” where secondly occurring;

(iii)

Companies (Further Amendment).

- (iii) by omitting from section 39 (1) (i) (v) the words "principal office in the State." and by inserting instead the following matter :—

principal office in the State; and

- 5 (j) shall specify each participating State (if any) in which it is proposed to issue, circulate or distribute the prospectus.

- 10 (f) (i) by omitting section 42 (2) (b) and by inserting instead the following paragraph :—
(b) the prospectus appears to comply with the requirements of this Act;

Sec. 42.
(Registra-
tion of
pros-
pectus.)

- (ii) by omitting section 42 (2) (d) and by inserting instead the following paragraph :—
15 (d) the Commission is of the opinion that the prospectus does not contain any statement or matter which is misleading in the form or context in which it is included; and;

- 20 (iii) by inserting after section 42 (2) the following subsection :—

(2A) Nothing in paragraphs (b) and (d) of subsection (2) prevents the Commission from registering a copy of a prospectus in respect of a foreign company incorporated in another State or Territory of the Commonwealth if the Commission is satisfied that—
25

- (a) the prospectus has been registered or is acceptable for registration under a law corresponding to this section in that other State or Territory; and
30

(b)

Companies (Further Amendment).

5 (b) the prospectus complies with such of the requirements of paragraph (i) of subsection (1) of section 39 as apply to a prospectus issued by that foreign company.

(g) by inserting after section 47 the following section :—

10 47A. Where a prospectus in respect of a recognised company has been registered in the State in which that company is incorporated under a declared law corresponding to this Division, it shall for the purposes of this Division be deemed to have been registered by the Commission and anything required to be done before that registration in relation thereto shall be deemed to have been done.

15 (h) by inserting after section 74I the following section :—

20 74J. Notwithstanding anything in this Division, in the case of a borrowing corporation which is a recognised company or a guarantor corporation of such a borrowing corporation it shall be sufficient compliance with this Division if the corporation has complied with the laws corresponding to this Division in the State in which the borrowing corporation is incorporated.

25 (i) by omitting from section 76 (1) the definition of "Company" and by inserting instead the following definition :—

30 "Company" means a public company and includes—

(a) a corporation that is a public company under the law of a proclaimed State and is registered as a foreign company in this State; and

35 (b) a corporation that is a public company under a declared law.

(j)

Companies (Further Amendment).

- (j) by inserting at the end of section 77 the following subsection :—

Sec. 77.
(Approved
deeds.)

5 (2) In the case of a management company
which is a recognised company, a deed shall be an
approved deed for the purposes of this Division if
the deed and the company acting as trustee or
representative for the purposes of the deed have
been approved under a provision of a declared law
10 which corresponds to this Division in the partici-
pating State in which that recognised company is
incorporated.

- (k) by inserting after section 80 (1) the following subsections :—

Sec. 80.
(Covenants
to be
included
in deeds.)

15 (1A) The Commission may by notice published
in the Gazette declare that, subject to such terms
and conditions as are specified in the notice, a
specified deed that makes provision for the
appointment of a specified company as trustee for
or representative of the holders of interests issued
20 or proposed to be issued by the management
company is not required to contain covenants to
the effect of such of the matters referred to in
subsection (1) as are specified in the notice.

25 (1B) Any provisions contained in a notice
purporting to have been published under sub-
section (1) of section 88 before the commencement
of section 4 of the Companies (Further Amend-
ment) Act, 1974, that, had subsection (1A) been
in force when the notice was published, could have
30 been contained in a notice under subsection (1A)
shall be and be deemed always to have been as
valid and effectual as those provisions would have
been had the publication of the notice been
authorised under subsection (1) of section 88.

- 35 (1) by inserting at the end of section 82 the following subsection :—

Sec. 82.
(State-
ment
to be
issued.)
(4)

Companies (Further Amendment).

- 5 (4) Where a statement in respect of a recognised company has been registered, under a provision of a declared law corresponding to Division 1 of Part IV, in the State in which the company is incorporated that statement shall, for the purposes of this Division, be deemed to have been registered by the Commission under Division 1 of Part IV and anything required to be done before that registration shall be deemed to have been done.
- 10 (m) by inserting in section 83 (2) after the word "Division" the words "or under a provision of a declared law which corresponds to this Division";
- 15 (n) (i) by inserting in section 85 (1) after the words "approved deed" the words "under subsection (1) of section 77";
- (ii) by inserting at the end of section 85 the following subsection :—
- 20 (4) Subsection (1) does not apply to a management company which is a recognised company and which has complied with a provision of a declared law corresponding to subsection (1) in the State or Territory in which it was incorporated.
- 25 (o) by inserting at the end of section 100 the following subsection :—
- 30 (11) The declaration under subsection (1A) of section 5 of a State as a participating State that results in a foreign company becoming a recognised company does not affect any obligation under this section with which that foreign company was liable to comply immediately before it became a recognised company.

(p)

Companies (Further Amendment).

(p) by inserting after section 102 the following Sec. 102A.
section :—

102A. (1) Where a recognised company estab-
lishes a place of business or commences to carry
on business in the State and has prior to such
establishment or commencement—

Duty of
recognised
company to
register
charges on
property
acquired.

(a) created a charge which if it had been
created by the recognised company while it
was carrying on business in the State would
have been required to be registered under
this Division; or

(b) acquired property which is subject to a
charge of any such kind as would, if it had
been created by the company after the
acquisition and while it was carrying on
business in the State, have been required to
be registered under this Division,

the company shall cause a statement of the pre-
scribed particulars and the instrument by which the
charge was created or is evidenced or a copy
thereof accompanied by a statutory declaration
containing such particulars as are prescribed, and
where a copy is lodged also verifying it as a true
copy thereof, to be lodged with the Commission
for registration within thirty days after the date
on which the acquisition is completed or the date
of establishment of the place of business or the
commencement of carrying on business (as the case
may be).

(2) If default is made in complying with
subsection (1), the recognised company and every
officer of the company who is in default shall be
guilty of an offence against this Act.

Penalty : One hundred dollars. Default penalty.

(3)

Companies (Further Amendment).

- (3) The declaration under subsection (1A) of section 5 of a State as a participating State that results in a foreign company becoming a recognised company does not affect any obligation under section 102 with which that foreign company was liable to comply immediately before it became a recognised company.
- 5
- (q) by omitting from section 110 the words “, but nothing in this Division applies to a charge on property outside the State of a foreign company.” and by inserting instead the words “and to a recognised company which has a place of business or is carrying on business within the State, but nothing in this Division applies to a charge on property outside the State of a foreign company or a recognised company.”;
- 10
- 15
- (r) by inserting after section 159 (2) (b) the following paragraph :—
- 20
- (b1) the address of the principal office of the company (if any) in each participating State;
- (s) by inserting in section 161B (1), (2) and (3) after the words “foreign company” wherever occurring the words “or a recognised company”;
- 25
- (t) by inserting after paragraph (a) of the definition of “company” in section 168 (1) the following paragraph :—
- (a1) a recognised company carrying on business in the State; and;
- 30
- (u) (i) by omitting from section 180 (1) the words “in respect of a company or foreign company”;
- 35
- (ii) by inserting in section 180 (1) (a) after the word “company” where firstly occurring the words “the subject of the report”;
- (iii)

Sec. 110
(Application
of
Division.)

Sec. 159.
(Annual
return by
company
not having
a share
capital.)

Sec. 161B.
(Financial
years of
grouped
companies.)

Sec. 168.
(Interpre-
tation
and applica-
tion.)

Sec. 180.
(Application
for winding
up.)

Companies (Further Amendment).

- 5 (iii) by omitting from section 180 (1) (b) the words "is a foreign company" and by inserting instead the words "the subject of the report is a foreign company or a recognised company";
- (iv) by inserting in section 180 (2) and (3) after the words "foreign company" wherever occurring the words "or a recognised company";
- 10 (v) by omitting from section 203B (2) the words Sec. 203B. "incorporated in any other State or Territory of the Commonwealth is registered in New South Wales and is placed" and by inserting instead the words "which is incorporated in a State or Territory of the Commonwealth and which is registered in New South Wales or a recognised company is";
- 15 (w) by inserting in section 314 (1) after the words Sec. 314. "foreign company" the words ", a recognised company"; ("Unregistered company.")
- 20 (x) by inserting after Division 2 of Part XI the Division 2A. following Division :—

DIVISION 2A.—Recognised Companies.

- 25 343A. (1) Except as provided in section 343E and section 343G, this Division applies to a recognised company only if it has a place of business or is carrying on business within the State. Recognised companies to which this Division applies.

- 30 (2) A reference in this Act to a recognised company carrying on business includes a reference to that company establishing or using a share transfer or share registration office or administering, managing or otherwise dealing with property situated in the State as an agent, legal personal representative or trustee, whether by servants or agents or otherwise.

(3)

Companies (Further Amendment).

(3) Notwithstanding subsection (2), a recognised company shall not be regarded as carrying on business within the State for the reason only that within the State it—

- 5 (a) is or becomes a party to any action or suit or any administrative or arbitration proceeding or effects settlement of an action suit or proceeding or of any claim or dispute;
- 10 (b) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;
- (c) maintains any bank account;
- 15 (d) effects any sale through an independent contractor;
- (e) solicits or procures any order which becomes a binding contract only if such order is accepted outside the State;
- 20 (f) creates evidence of any debt, or creates a charge on real or personal property;
- (g) secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts;
- 25 (h) conducts an isolated transaction that is completed within a period of thirty-one days, but not being one of a number of similar transactions repeated from time to time; or
- 30 (i) invests any of its funds or holds any property.

343B. A recognised company shall have power to hold land in the State.

Power of recognised companies to hold land.

343C. (1) A recognised company which has established a place of business or commenced to carry on business within the State shall have a

Principal office of recognised company.

Companies (Further Amendment).

5 principal office within the State to which all communications and notices may be addressed and which shall be open and accessible to the public for not less than three hours between the hours of nine o'clock in the forenoon and five o'clock in the afternoon each day, Saturdays, Sundays and holidays excepted.

10 (2) A recognised company which has established a place of business or commenced to carry on business within the State shall within one month after doing so lodge with the Commission notice of the situation of its principal office in the State.

15 (3) Where a recognised company, immediately before it became a recognised company, had as a foreign company a registered office in the State notice of the situation of which had been lodged with the Commission, that registered office shall be deemed to be the principal office in the State of that recognised company until
20 it lodges under section 343D with the Commission notice of any change or alteration in the situation of its principal office.

25 343D. Where any change or alteration is made in— Altered particulars to be notified.

(a) the situation of the principal office of the recognised company in the State or of the days or hours during which it is open and accessible to the public; or

30 (b) the name of the recognised company, the recognised company shall within one month or within such further period as the Commission in special circumstances allows after the change or alteration lodge with the Commission particulars
35 of the change or alteration.

343E.

Companies (Further Amendment).

343E. (1) Except with the consent of the Minister, a recognised company shall not establish a place of business or commence to carry on business within the State unless the Commission has approved of its name.

Name of
recognised
company
to be
approved.

(2) Subsection (1) does not apply in respect of a recognised company establishing a place of business within the State if it has already established such a place of business.

(3) Except with the consent of the Minister, a recognised company which had established a place of business or had commenced to carry on business within the State at the time it became a recognised company and which immediately before that time was not a registered foreign company shall not continue to carry on business in the State unless the Commission has approved of its name.

(4) A recognised company shall not use as its name a name which has not been approved under subsection (1) or (3), but nothing in this subsection prevents a recognised company which, immediately before it became a recognised company, was a registered foreign company from using as its name the name under which it was registered as a foreign company.

(5) Nothing in subsection (4) prevents a recognised company whose name has been approved under this section or a recognised company which immediately before it became a recognised company was a registered foreign company from using a name under which it is registered under any other Act.

(6) The Commission shall not under subsection (1) or (3) refuse to approve of a name unless—

- (a) the name is undesirable by reason that it is likely to be confused with or mistaken for the name of a company, a foreign company

Companies (Further Amendment).

5 company, a recognised company, a society registered under the Co-operation Act, 1923, or the Permanent Building Societies Act, 1967, a credit union or association of credit unions or a union of associations of credit unions registered under the Credit Union Act, 1969, a registered business name or a name that has been reserved pursuant to section 22; or

10 (b) the name is a name, or a name of a kind, that the Minister has directed the Commission not to accept for registration under section 22.

15 (7) If default is made in complying with subsection (1), (3) or (4), the recognised company and every officer of the recognised company who is in default shall be guilty of an offence against this Act.

Penalty : Two hundred dollars. Default penalty.

20 343F. (1) A recognised company shall— Exhibition
of name,
etc.

(a) except in the case of a banking corporation, conspicuously exhibit outside every place of business established by it in the State its name and the place where it is incorporated; and

25 (b) except in the case of a banking corporation, cause its name and the place where it is incorporated to be stated in legible characters in all its bill-heads and letter paper and in all its notices, prospectuses and other official publications.

30 (2) If a recognised company is under official management in its place of incorporation under any declared law corresponding to Part IX or is being wound up, every invoice, order for goods or business letter issued by or on behalf of the

35 company,

Companies (Further Amendment).

5 company, or an official manager or liquidator of the company or a receiver or manager of the property of the company being a document on or in which the name of the company appears shall have the words "under official management", or "in liquidation" (whichever is appropriate) immediately following the name of the company where it first appears therein.

10 (3) If default is made in complying with subsection (2), the recognised company and every officer of the recognised company who knowingly and wilfully authorises or permits the default shall be guilty of an offence against this Act.

Penalty : Forty dollars.

15 343G. (1) If a recognised company ceases to have a place of business or to carry on business in the State, it shall within seven days after so ceasing lodge with the Commission notice of that fact. Recognised company ceasing to carry on business.

20 (2) If a recognised company goes into liquidation or is dissolved in its place of incorporation the liquidator shall, until a liquidator for the State is duly appointed by the Court, have the powers and functions of a liquidator for the State.

25 (3) A liquidator of a recognised company appointed for the State by the Court or a person exercising the powers and functions of such a liquidator—

30 (a) shall, before any distribution of the recognised company's assets is made, by advertisement in a newspaper circulating generally in each State or Territory of the Commonwealth where the recognised company had been carrying on business prior to the liquidation if no liquidator has been
35 appointed for that place, invite all creditors to

Companies (Further Amendment).

to make their claims against the recognised company within a reasonable time before the distribution;

5 (b) shall not, without obtaining an order of the Court, pay out any creditor to the exclusion of any other creditor of the recognised company; or

10 (c) shall, unless otherwise ordered by the Court, only recover and realise the assets of the recognised company in the State and shall pay the net amount so recovered and realised to the liquidator of that recognised company for the place where it was incorporated.

15 (4) Where a recognised company has been wound up so far as its assets in the State are concerned and there is no liquidator for the place of its incorporation the liquidator may apply to the Court for directions as to the disposal of the net
20 amount recovered in pursuance of subsection (3).

343H. Any document required to be served on a recognised company shall be sufficiently served if addressed to the recognised company and left at or sent by post to the address specified in the
25 notice lodged with the Commission as being its principal office in the State.

343I. (1) Subject to this section, a recognised company which has a share capital and has any member who is resident in the State, shall keep at
30 its principal office in the State or at some other place in the State a branch register for the purpose of registering shares of members resident in the State who apply to have the shares registered therein.

(2)

Companies (Further Amendment).

5 (2) The company shall not be obliged to keep a branch register pursuant to subsection (1) until after the expiration of one month from the receipt by it of an application in writing by a member resident in the State for registration in its branch register in the State of the shares held by the member.

10 (3) If default is made in complying with subsection (1), the recognised company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : One hundred dollars. Default penalty.

15 (4) This section shall not apply to any recognised company which by its constitution prohibits any invitation to the public to subscribe for shares in the company.

20 (5) Every such register shall be kept in the manner provided by Division 4 of Part V as though the register were the register of a company and transfers shall be effected on such register in the same manner and at the same charges as on the principal register of the company and transfers lodged at its principal office in the State shall be binding on the company and the Court shall have the same powers in relation to rectification of the register as it has in respect of the register of a company incorporated in the State.

30 (6) Where a recognised company opens a branch register in the State it shall within fourteen days after the opening thereof lodge with the Commission notice of that fact specifying the address where the register is kept.

35 (7) Where any change is made in the place where the register is kept or where the register is discontinued the company shall, within fourteen days of the change or discontinuance lodge notice of the change or discontinuance with the Commission.

(8)

Companies (Further Amendment).

5 (8) Where a company or corporation is entitled pursuant to a declared law of the place of incorporation of a recognised company that corresponds to section 180X or 185 to give notice to a dissenting offeree or to a dissenting shareholder in that recognised company that it desires to acquire any of his shares registered on a branch register kept in the State, this section shall cease to apply to that recognised company until—

- 10 (a) the shares have been acquired; or
(b) the company or corporation has ceased to be entitled to acquire the shares.

15 343J. Subject to this Act, on application in that behalf by a member resident in the State the recognised company shall register in the branch register of the company the shares held by a member which are registered in any other register kept by the company. Registration of shares in branch register.

20 343K. Subject to this Act, on application in that behalf by a member holding shares registered in the branch register, the recognised company shall remove the shares from the branch register and register them in such other register as is specified in the application. Removal of shares from branch register.

25 343L. Sections 151, 152 and 153 shall, with such adaptations as are necessary, apply respectively to the index of persons holding shares in a branch register and to the inspection and the closing of the register. Index of members, inspection and closing of branch registers.

30 343M. Sections 95 and 96, subsection (1) of section 97, subsections (1) and (3) of section 99 and section 155 shall apply with necessary adaptations with respect to the transfer of shares on and the rectification of the branch register of a recognised company. Application of provisions of Act relating to transfer.

35

343N.

Companies (Further Amendment).

343N. A branch register shall be prima facie evidence of any matters by this Division directed or authorised to be inserted therein.

Branch register to be prima facie evidence.

5 343O. A certificate under the seal of a recognised company specifying any shares held by any member of that company and registered in the branch register shall be prima facie evidence of the title of the member to the shares and the registration of the shares in the branch register.

Certificate re share-holding.

10 343P. A branch register kept by a recognised company which immediately before it became a recognised company was a foreign company shall thereupon become the branch register of that recognised company.

Branch register of former foreign company.

15 343Q. If default is made by any recognised company in complying with any provision of this Division other than a provision in which a penalty or punishment is expressly mentioned the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalties.

20 Penalty : One hundred dollars. Default penalty.

(y) (i) by inserting in the Second Schedule after paragraph 17 the following paragraphs :—

Second Schedule.

25 17A. For approval of the name of a recognised company under subsection (1) of section 343E where the name of the recognised company has previously been reserved 4.00

30 17B. For approval of the name of a recognised company under subsection (1) of section 343E where the name of the recognised company has not previously been reserved 100.00

17c.

Companies (Further Amendment).

- 17c. For approval of the name
of a recognised company
under subsection (3) of sec-
tion 343E 100.00
- 5 (ii) by inserting in the Second Schedule after
paragraph 22 the following paragraphs :—
23. On an application for the
reservation of a name .. 6.00
- 10 23A. For sending a notification
under subsection (7B) or
subsection (8B) of section
22 to a corresponding inter-
state officer—for each noti-
fication 100.00
- 15 (iii) by omitting paragraph 34;
- (z) (i) by inserting in Part I of the Eighth Schedule ^{Eighth}
after paragraph 1 the following paragraph :— ^{Schedule.}
- 20 1A. The address of the principal office of
the company (if any) in each participating
State.
- (ii) by inserting in Part II of the Eighth Schedule
after the words "The address of the registered
office of the company is" the following
paragraph :—
- 25 The address of the principal office of the
company (if any) in each participating State
is
- 30 (2) All acts, matters or things which before a State
is declared to be a participating State were done or com-
menced in relation to a foreign company which as a result
of that declaration becomes a recognised company shall be
deemed to have been done or commenced in relation to it
as a recognised company and may be continued and
completed in relation to it as a recognised company.
-

Companies (Further Amendment).

SCHEDULE.

Sec. 3.

AGREEMENT.

AN AGREEMENT (to be called the "Interstate Corporate Affairs Agreement") made this 18th day of February 1974 between the State of New South Wales of the first part, the State of Victoria of the second part and the State of Queensland of the third part.

WHEREAS it is generally acknowledged that in the interests of the public generally and of persons and authorities concerned with the administration of the law relating to companies and the regulation of the securities industry and trading in securities that there should be substantial uniformity in that law in the States and Territories of the Commonwealth of Australia:

AND WHEREAS the Governments of the Commonwealth and of the States of the Commonwealth of Australia have been concerned to achieve such uniformity:

AND WHEREAS as a result of conferences between Attorneys-General and Ministers of Justice of the Commonwealth and the States particularly since 1960 considerable uniformity has been achieved:

AND WHEREAS it is the intention of the Governments of the States of New South Wales Victoria and Queensland—

to achieve greater uniformity in the law relating to companies and the regulation of the securities industry and trading in securities;

to establish reciprocal arrangements and common standards and procedures in the administration of that law;

to co-ordinate administration and avoid unnecessary duplication for the greater convenience of the public and greater efficiency in the overall administration; and

to increase the protection the law affords to the investing public:

AND WHEREAS the Governments of New South Wales, Victoria and Queensland have agreed that it is desirable for those purposes to establish an Interstate Corporate Affairs Commission.

NOW IT IS HEREBY AGREED AS FOLLOWS :—

1. In this Agreement unless the contrary intention appears—

"Attorney-General" in relation to a State means the Minister responsible for the administration of the law relating to companies in that State and in relation to a Territory means a Minister of the Crown in right of the Commonwealth nominated by the Government of the Commonwealth of Australia as being responsible for the administration of the law relating to companies in that Territory.

"Clause"

Companies (Further Amendment).

- “Clause” means clause of this Agreement.
- “Commission” means the Interstate Corporate Affairs Commission established under clause 4.
- 5 “Ministerial Council” means the Ministerial Council provided for by clause 3.
- 10 “Participating State” means each of the States of New South Wales Victoria and Queensland and any other State or Territory of the Commonwealth of Australia on behalf of which this Agreement is signed pursuant to sub-clause (3) of clause 10.

2. (1) The Government of each of the participating States agrees that there shall be uniformity in administration and reciprocal arrangements within those States with respect to the following matters :—
- 15 (a) Incorporation of companies;
- (b) the regulation of the securities industry and trading in securities;
- (c) Registration of prospectuses;
- (d) Approval of trust deeds and trustees in relation to interests;
- 20 (e) Requirements relating to accounts and audit;
- (f) Proclamation of companies as investment companies;
- (g) Class and individual exemption powers relating to fund raising, &c. and to takeovers—
- and such other matters relating to corporate affairs as the Ministerial Council from time to time designates.
- 25 (2) The Government of each of the participating States agrees to submit legislation to the Parliament of that State or to take such other action as is necessary—
- 30 (a) to enable the Commission to exercise a supervisory role with respect to the above matters and such other matters as the Ministerial Council from time to time considers should be under the supervision of the Commission;
- (b) to authorize reciprocal arrangements with respect to the above matters; and
- 35 (c) to implement recommendations made by the Ministerial Council from time to time in order to achieve the objects set out in the preamble to this Agreement.

3. (1) For the purposes of this Agreement there shall be a Ministerial Council consisting of the Attorneys-General for the time being
40 of the States of New South Wales Victoria and Queensland and the Attorney-General for the time being of any other participating State.
- (2)

Companies (Further Amendment).

(2) In sub-clause (1) of this clause a reference to the Attorney-General of a State includes such other Minister of the Crown who for the time being is acting for or on behalf of the Attorney-General of the State.

5 (3) The Ministerial Council shall meet at such times as it sees fit and shall subject to this Agreement determine its own procedure.

(4) A resolution before the Ministerial Council will be carried by a majority of votes of the members thereof.

4. (1) For the purposes of this Agreement there shall be an
10 Interstate Corporate Affairs Commission appointed by the Ministerial Council.

(2) The Attorney-General of each participating State shall nominate two persons to be members of the Commission.

(3) One of the persons to be nominated by the Attorney-General
15 of each participating State shall be the person responsible under the Attorney-General for the administration of the law relating to companies in that State.

(4) Each of the members of the Commission, other than the members referred to in sub-clause (3), shall hold office for such
20 period as is specified in the instrument of his appointment unless his nomination to the Commission is sooner withdrawn by the Attorney-General by whom he was nominated.

(5) A person, not being a person referred to in sub-clause (3), shall cease to be a member of the Commission if his nomination is
25 withdrawn by the Attorney-General by whom he was nominated.

(6) A member of the Commission shall be eligible to be re-appointed.

(7) In the event of a member being unable to attend a meeting of the Commission the Attorney-General by whom that member was
30 nominated may appoint a suitable person to be the deputy of that member.

(8) A deputy of a member of the Commission shall have, while acting in the place of a member of the Commission, the powers, authorities, duties and functions of that member.

35 (9) Members shall be appointed subject to such terms and conditions as are determined from time to time by the Ministerial Council.

(10) A quorum of the Commission shall be constituted by a majority of the total number of members for the time being in office.

(11) The Ministerial Council shall from time to time appoint one
40 of the members of the Commission to be chairman and one to be deputy chairman.

(12) The Chairman, or in his absence the deputy chairman, shall preside at meetings of the Commission.

(13)

Companies (Further Amendment).

(13) Questions arising at a meeting of the Commission will be determined by a majority of votes of the members present and voting.

5 (14) Where there is an equality of votes the chairman or presiding deputy chairman (as the case may be) shall have a casting vote as well as a deliberative vote.

(15) Subject to this Agreement the Commission shall regulate its own proceedings.

(16) The Commission shall exercise its functions and powers subject to the direction and control of the Ministerial Council.

10 5. (1) The Commission may employ such officers and employés as are approved by the Ministerial Council on such terms and conditions as are specified by the Ministerial Council.

(2) The Commission may arrange with the Government of a participating State for the performance by a person employed in the
15 public service of such State of any work or services for the Commission and for any matters which may be required to be adjusted with regard to the performance or payment for such work or services by such person.

20 6. All expenses of the Commission shall be borne by the participating States in equal shares.

7. (1) The Commission shall cause to be kept proper accounts and records of its affairs in accordance with appropriate accounting principles.

25 (2) The Ministerial Council may from time to time request the Auditor-General of a participating State to audit the accounts of the Commission.

(3) Where an audit of the accounts of the Commission is carried out by the Auditor-General of a State the Commission shall pay to the Treasurer of that State the expenses of the audit.

30 8. The Government of a participating State shall at the request of the Commission furnish to the Commission all such information and particulars as the Commission may require for the purposes of this Agreement and as such Government is able to furnish.

35 9. (1) For the purposes of this Agreement there may be a Consultative Committee constituted as determined from time to time by the Ministerial Council.

(2) One member of the Consultative Committee shall be appointed by the Ministerial Council to be chairman.

40 (3) Members of the Consultative Committee shall be appointed for such period as the Ministerial Council thinks fit.

Companies (Further Amendment).

(4) It shall be the function of the Consultative Committee to consult with the Commission with respect to the exercise by the Commission of its duties functions and powers.

10. (1) The Governments of New South Wales Victoria and Queensland will submit this Agreement for approval to their respective Parliaments as soon as practicable after the date of this Agreement.

(2) It is the intention of the Governments of the States of New South Wales Victoria and Queensland that any other State and Territory of the Commonwealth of Australia may become a participating State for the purposes of this Agreement.

(3) This Agreement shall remain open for signature on behalf of any such other State or Territory.

IN WITNESS WHEREOF this Agreement has been executed on the day and year first above written.

<p>15 SIGNED BY THE HONORABLE KENNETH MALCOLM MCCAW, Attorney-General for New South Wales, in the presence of— M. L. VINCENT.</p>	}	K. M. McCAW.
<p>20 SIGNED BY THE HONORABLE VERNON FRANCIS WILCOX, Attorney-General for Victoria, in the presence of— J. C. FINEMORE.</p>	}	V. F. WILCOX.
<p>25 SIGNED BY THE HONORABLE WILLIAM EDWARD KNOX, Attorney-General for Queensland, in the presence of— J. C. FINEMORE.</p>	}	WILLIAM E. KNOX.

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 4 April, 1974.*

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 45, 1974.

An Act to approve the Interstate Corporate Affairs Agreement; to make further provisions with respect to companies incorporated in certain other States and in certain Territories of the Commonwealth which carry on business in New South Wales; to validate certain matters; for these and other purposes to amend the Companies Act, 1961; and for purposes connected therewith. [Assented to, 24th April, 1974.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

J. H. BROWN,
Chairman of Committees of the Legislative Assembly.

Companies (Further Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title. **1.** This Act may be cited as the "Companies (Further Amendment) Act, 1974".

Commence- **2.** (1) Except as provided in subsection (2), this Act
ment. shall commence on the date of assent to this Act.

(2) Section 4 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Approval **3.** The Interstate Corporate Affairs Agreement, a copy
of Interstate of which is set out in the Schedule, is approved.
Corporate
Affairs
Agreement.

Amendment **4.** (1) The Companies Act, 1961, is amended—
of Act No.
71, 1961.

Sec. 3. (a) by inserting in section 3 after the matter relating to
(Division Division 2 of Part XI the following matter :—
into Parts.)

DIVISION 2A.—*Recognised Companies*.—ss.
343A–343Q.

Sec. 5. (b) (i) by omitting from the definition of "Branch
(Inter- register" in section 5 (1) the matter "section
pretation.) 354." and by inserting instead the following
matter :—

section 354;

(c) in relation to a recognised company—
a branch register of members of the
company kept in pursuance of section
343I.

(ii)

Companies (Further Amendment).

(ii) by inserting in the definition of "Corporation" in section 5 (1) after the words "foreign company" wherever occurring the words "or recognised company";

(iii) by inserting after the definition of "Debenture" in section 5 (1) the following definition :—

"Declared law" means a law of a participating State, being a law in respect of which a declaration referred to in paragraph (b) of subsection (1A) is in force and if that law is amended, that law as amended from time to time. ^{"Declared law."}

(iv) by inserting in paragraph (a) of the definition of "Foreign company" in section 5 (1) after the words "not being" the words "a recognised company,";

(v) by inserting after the definition of "Guarantor corporation" in section 5 (1) the following definition :—

"Interstate Corporate Affairs Agreement" means the agreement between the States of New South Wales, Victoria and Queensland relating to the establishment of an Interstate Corporate Affairs Commission executed on 18th February, 1974, a copy of which is set out in the Schedule to the Companies (Further Amendment) Act, 1974. ^{"Interstate Corporate Affairs Agreement."}

(vi) by inserting after the definition of "Part" in section 5 (1) the following definition :—

"Participating State" means a State or Territory of the Commonwealth in respect of which a declaration referred to in paragraph (a) of subsection (1A) is in force. ^{"Participating State."}

(vii)

Companies (Further Amendment).

"Recognised
company."

- (vii) by inserting after the definition of "Public company" in section 5 (1) the following definition :—

"Recognised company" means a corporation incorporated under a declared law of a participating State or under a corresponding previous law of that State.

- (viii) by inserting after section 5 (1) the following subsections :—

(1A) The Governor may by order—

- (a) declare a State or Territory of the Commonwealth to be a participating State for the purposes of this Act if—

(i) the Interstate Corporate Affairs Agreement has been signed on behalf of that State or Territory; and

(ii) there are in force in that State or Territory laws relating to companies which in the opinion of the Governor enable that State or Territory to have uniformity in administration, and to enter into reciprocal arrangements, as a participating State in accordance with the provisions of subclause (1) of clause 2 of that Agreement; and

- (b) declare a law of that State or Territory to be a declared law for the purposes of this Act.

(1B) A reference in any provision of this Act to a corresponding interstate officer, in relation to a participating State, is a reference to a person who, under a provision of the
declared

Companies (Further Amendment).

declared law of that participating State that corresponds to that provision, exercises functions similar to functions exercised by the Commission under that provision.

(ix) by omitting section 5 (8) (a) and by inserting instead the following paragraph :—

(a) a reference in that subsection to a public company shall be construed as including a reference to—

(i) a foreign company other than a foreign company that (whether or not Division 3 of Part XI applies to it) is a foreign company of a kind referred to in subsection (5) of section 348; and

(ii) a recognised company that is not an exempt proprietary company under a declared law;

(c) (i) by inserting after section 7 (1) the following subsection :—

(1A) In the exercise or performance of its powers, authorities, duties and functions under this Act in relation to any of the matters referred to in subclause (1) of clause 2 of the Interstate Corporate Affairs Agreement, the Commission shall have regard to any determinations made by the Interstate Corporate Affairs Commission constituted under that Agreement.

Sec. 7.
(Adminis-
tration
of Act.)

(ii) by inserting after section 7 (7) the following subsection :—

(7A) Where under a provision of a declared law corresponding to subsection (6) a person is authorised to inspect any books,

minute

Companies (Further Amendment).

minute book, register or record required by or under that declared law to be kept by a corporation, the person shall have the same powers in New South Wales in relation to that corporation as he would have had if he had been authorised under subsection (6).

- (iii) by inserting in section 7 (8) (a) after the matter "subsection (6)" the matter "or subsection (7A)";
- (iv) by inserting in section 7 (8) (a) after the matter "subsection (7)" the words "or a declaration referred to in a corresponding provision of the declared law of the participating State concerned";

Sec. 22.
(Name of
companies.)

- (d) (i) by inserting after section 22 (1) the following subsection :—

(1A) A direction under subsection (1) may distinguish between companies on the basis of whether or not an application under subsection (8A) in relation to the company specifies that the company intends to carry on, or carries on, business in a participating State.

- (ii) by inserting after section 22 (7) the following subsections :—

(7A) A company shall not be registered under subsection (1) of section 16 and the Commission shall not approve the change of name of the company under subsection (1) of section 23 unless the name under which it is proposed to be registered or the proposed new name (as the case may be) has been reserved under this section.

(7B)

Companies (Further Amendment).

(7B) Within twelve months after the commencement of section 4 of the Companies (Further Amendment) Act, 1974, or such longer period as is prescribed (whether before or after the expiry of that twelve months) a person may apply in the prescribed form for a notification of the name of a company to be sent to the corresponding interstate officer in one or more participating States in which that company (being a company which was incorporated before that commencement) intends to carry on business, and the Commission shall, unless the name would not be available under subsection (1) if the application were an application for the reservation of a name, so notify that officer.

(iii) by inserting after section 22 (8) the following subsections :—

(8A) A person applying for the reservation of a name in respect of an intended company or company shall specify any participating State in which the intended company or company intends to carry on or carries on business.

(8B) Where the Commission reserves a name in respect of an intended company or company and the applicant has specified that the intended company or company intends to carry on or carries on business in a participating State the Commission shall notify the corresponding interstate officer of that State of the reservation of the name.

(8C) Where the Commission has notified a corresponding interstate officer of a participating State pursuant to the provisions of subsection (8B) of the reservation of a name and—

(a) that name subsequently ceases to be reserved; and

(b)

Companies (Further Amendment).

- (b) the intended company is not incorporated, the intended company is incorporated under a name other than the name so notified or the company has not changed its name to the name so notified (as the case may be),

the Commission shall so notify that officer.

(8D) Where the Commission has notified a corresponding interstate officer of a participating State—

- (a) pursuant to the provisions of subsection (7B), that a company intends to carry on business in that State; or
- (b) pursuant to the provisions of subsection (8B), of the reservation of a name,

and the company concerned—

- (c) is dissolved; or
- (d) changes its name to a name other than the name which was so notified,

the Commission shall notify that officer of the dissolution of the company or that the company has so changed its name.

(8E) Where, under a provision of a declared law corresponding to subsection (7B) or subsection (8B), the Commission is notified by a corresponding interstate officer, it shall reserve the name concerned and the name shall continue to be reserved until it receives a notification from that officer under a provision of that declared law corresponding to subsection (8C) or subsection (8D).

(8F)

Companies (Further Amendment).

(8F) Where the name of a recognised company would not be available under subsection (1) as a name under which a company could be registered but the name of the recognised company has been reserved (whether through inadvertence or otherwise and whether originally or on change of name) as a result of the Commission receiving a notification under a provision of a declared law corresponding to subsection (7B) or subsection (8B), the Commission shall inform the corresponding interstate officer that the name is unavailable and the name shall thereupon cease to be reserved.

(8G) Where the Commission receives a notification under a provision of a declared law corresponding to subsection (8F) it shall thereupon notify the company concerned that the name is unavailable and that the name has ceased to be reserved in the participating State from which the notice was received and the fee paid to the Commission in respect of the reservation of that name in that participating State shall be refunded to the company.

- (iv) by inserting in section 22 (11) after the words "intended company, company," wherever occurring the words "recognised company,";
- (e) (i) by inserting in section 39 (1) (c) before the word "shall" where firstly occurring the words "except in the case of a prospectus, registered in a participating State, of a recognised company"; Sec. 39. (Contents of prospectuses.)
- (ii) by omitting from section 39 (1) (h) the word "and" where secondly occurring;

(iii)

Companies (Further Amendment).

- (iii) by omitting from section 39 (1) (i) (v) the words "principal office in the State." and by inserting instead the following matter :—

principal office in the State; and

- (j) shall specify each participating State (if any) in which it is proposed to issue, circulate or distribute the prospectus.

Sec. 42.
(Registra-
tion of
pros-
pectus.)

- (f) (i) by omitting section 42 (2) (b) and by inserting instead the following paragraph :—

(b) the prospectus appears to comply with the requirements of this Act;

- (ii) by omitting section 42 (2) (d) and by inserting instead the following paragraph :—

(d) the Commission is of the opinion that the prospectus does not contain any statement or matter which is misleading in the form or context in which it is included; and;

- (iii) by inserting after section 42 (2) the following subsection :—

(2A) Nothing in paragraphs (b) and (d) of subsection (2) prevents the Commission from registering a copy of a prospectus in respect of a foreign company incorporated in another State or Territory of the Commonwealth if the Commission is satisfied that—

- (a) the prospectus has been registered or is acceptable for registration under a law corresponding to this section in that other State or Territory; and

(b)

Companies (Further Amendment).

- (b) the prospectus complies with such of the requirements of paragraph (i) of subsection (1) of section 39 as apply to a prospectus issued by that foreign company.
- (g) by inserting after section 47 the following Sec. 47A.
section :—

47A. Where a prospectus in respect of a recognised company has been registered in the State in which that company is incorporated under a declared law corresponding to this Division, it shall for the purposes of this Division be deemed to have been registered by the Commission and anything required to be done before that registration in relation thereto shall be deemed to have been done.

Prospectus for recognised company.
- (h) by inserting after section 74I the following Sec. 74J.
tion :—

74J. Notwithstanding anything in this Division, in the case of a borrowing corporation which is a recognised company or a guarantor corporation of such a borrowing corporation it shall be sufficient compliance with this Division if the corporation has complied with the laws corresponding to this Division in the State in which the borrowing corporation is incorporated.

Exemption from provisions of Division for certain companies.
- (i) by omitting from section 76 (1) the definition of Sec. 76.
“Company” and by inserting instead the following (Interpretation.)
definition :—

“Company” means a public company and includes—

 - (a) a corporation that is a public company under the law of a proclaimed State and is registered as a foreign company in this State; and
 - (b) a corporation that is a public company under a declared law.

(j)

Companies (Further Amendment).

Sec. 77.
(Approved
deeds.)

- (j) by inserting at the end of section 77 the following subsection :—

(2) In the case of a management company which is a recognised company, a deed shall be an approved deed for the purposes of this Division if the deed and the company acting as trustee or representative for the purposes of the deed have been approved under a provision of a declared law which corresponds to this Division in the participating State in which that recognised company is incorporated.

Sec. 80.
(Covenants
to be
included
in deeds.)

- (k) by inserting after section 80 (1) the following subsections :—

(1A) The Commission may by notice published in the Gazette declare that, subject to such terms and conditions as are specified in the notice, a specified deed that makes provision for the appointment of a specified company as trustee for or representative of the holders of interests issued or proposed to be issued by the management company is not required to contain covenants to the effect of such of the matters referred to in subsection (1) as are specified in the notice.

(1B) Any provisions contained in a notice purporting to have been published under subsection (1) of section 88 before the commencement of section 4 of the Companies (Further Amendment) Act, 1974, that, had subsection (1A) been in force when the notice was published, could have been contained in a notice under subsection (1A) shall be and be deemed always to have been as valid and effectual as those provisions would have been had the publication of the notice been authorised under subsection (1) of section 88.

Sec. 82.
(State-
ment
to be
issued.)

- (l) by inserting at the end of section 82 the following subsection :—

(4)

Companies (Further Amendment).

(4) Where a statement in respect of a recognised company has been registered, under a provision of a declared law corresponding to Division 1 of Part IV, in the State in which the company is incorporated that statement shall, for the purposes of this Division, be deemed to have been registered by the Commission under Division 1 of Part IV and anything required to be done before that registration shall be deemed to have been done.

- (m) by inserting in section 83 (2) after the word "Division" the words "or under a provision of a declared law which corresponds to this Division"; Sec. 83.
(No issue without approved deed.)
- (n) (i) by inserting in section 85 (1) after the words "approved deed" the words "under subsection (1) of section 77"; Sec. 85.
(Returns, information, etc. relating to interests.)
- (ii) by inserting at the end of section 85 the following subsection :—

(4) Subsection (1) does not apply to a management company which is a recognised company and which has complied with a provision of a declared law corresponding to subsection (1) in the State or Territory in which it was incorporated.

- (o) by inserting at the end of section 100 the following subsection :— Sec. 100.
(Registration of charges.)

(11) The declaration under subsection (1A) of section 5 of a State as a participating State that results in a foreign company becoming a recognised company does not affect any obligation under this section with which that foreign company was liable to comply immediately before it became a recognised company.

(p)

Companies (Further Amendment).

Sec. 102A.

(p) by inserting after section 102 the following section :—

Duty of
recognised
company to
register
charges on
property
acquired.

102A. (1) Where a recognised company establishes a place of business or commences to carry on business in the State and has prior to such establishment or commencement—

- (a) created a charge which if it had been created by the recognised company while it was carrying on business in the State would have been required to be registered under this Division; or
- (b) acquired property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition and while it was carrying on business in the State, have been required to be registered under this Division,

the company shall cause a statement of the prescribed particulars and the instrument by which the charge was created or is evidenced or a copy thereof accompanied by a statutory declaration containing such particulars as are prescribed, and where a copy is lodged also verifying it as a true copy thereof, to be lodged with the Commission for registration within thirty days after the date on which the acquisition is completed or the date of establishment of the place of business or the commencement of carrying on business (as the case may be).

(2) If default is made in complying with subsection (1), the recognised company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : One hundred dollars. Default penalty.

(3)

Companies (Further Amendment).

(3) The declaration under subsection (1A) of section 5 of a State as a participating State that results in a foreign company becoming a recognised company does not affect any obligation under section 102 with which that foreign company was liable to comply immediately before it became a recognised company.

- (q) by omitting from section 110 the words “, but nothing in this Division applies to a charge on property outside the State of a foreign company.” and by inserting instead the words “and to a recognised company which has a place of business or is carrying on business within the State, but nothing in this Division applies to a charge on property outside the State of a foreign company or a recognised company.”; Sec. 110
(Application of Division.)
- (r) by inserting after section 159 (2) (b) the following paragraph :— Sec. 159.
(Annual return by company not having a share capital.)
- (b1) the address of the principal office of the company (if any) in each participating State;
- (s) by inserting in section 161B (1), (2) and (3) after the words “foreign company” wherever occurring the words “or a recognised company”; Sec. 161B.
(Financial years of grouped companies.)
- (t) by inserting after paragraph (a) of the definition of “company” in section 168 (1) the following paragraph :— Sec. 168.
(Interpretation and application.)
- (a1) a recognised company carrying on business in the State; and;
- (u) (i) by omitting from section 180 (1) the words “in respect of a company or foreign company”; Sec. 180.
(Application for winding up.)
- (ii) by inserting in section 180 (1) (a) after the word “company” where firstly occurring the words “the subject of the report”;
- (iii)

Companies (Further Amendment).

- | | |
|---|--|
| <p>(iii) by omitting from section 180 (1) (b) the words "is a foreign company" and by inserting instead the words "the subject of the report is a foreign company or a recognised company";</p> <p>(iv) by inserting in section 180 (2) and (3) after the words "foreign company" wherever occurring the words "or a recognised company";</p> | |
| <p>Sec. 203B.
(Stay of proceedings.)</p> | <p>(v) by omitting from section 203B (2) the words "incorporated in any other State or Territory of the Commonwealth is registered in New South Wales and is placed" and by inserting instead the words "which is incorporated in a State or Territory of the Commonwealth and which is registered in New South Wales or a recognised company is";</p> |
| <p>Sec. 314.
("Unregistered company.")</p> | <p>(w) by inserting in section 314 (1) after the words "foreign company" the words ", a recognised company";</p> |
| <p>Division 2A.</p> | <p>(x) by inserting after Division 2 of Part XI the following Division :—</p> |

DIVISION 2A.—*Recognised Companies.*

Recognised companies to which this Division applies.

343A. (1) Except as provided in section 343E and section 343G, this Division applies to a recognised company only if it has a place of business or is carrying on business within the State.

(2) A reference in this Act to a recognised company carrying on business includes a reference to that company establishing or using a share transfer or share registration office or administering, managing or otherwise dealing with property situated in the State as an agent, legal personal representative or trustee, whether by servants or agents or otherwise.

(3)

Companies (Further Amendment).

(3) Notwithstanding subsection (2), a recognised company shall not be regarded as carrying on business within the State for the reason only that within the State it—

- (a) is or becomes a party to any action or suit or any administrative or arbitration proceeding or effects settlement of an action suit or proceeding or of any claim or dispute;
- (b) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;
- (c) maintains any bank account;
- (d) effects any sale through an independent contractor;
- (e) solicits or procures any order which becomes a binding contract only if such order is accepted outside the State;
- (f) creates evidence of any debt, or creates a charge on real or personal property;
- (g) secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts;
- (h) conducts an isolated transaction that is completed within a period of thirty-one days, but not being one of a number of similar transactions repeated from time to time; or
- (i) invests any of its funds or holds any property.

343B. A recognised company shall have power to hold land in the State.

Power of
recognised
companies
to hold
land.

343C. (1) A recognised company which has established a place of business or commenced to carry on business within the State shall have a

Principal
office of
recognised
company.

principal

Companies (Further Amendment).

principal office within the State to which all communications and notices may be addressed and which shall be open and accessible to the public for not less than three hours between the hours of nine o'clock in the forenoon and five o'clock in the afternoon each day, Saturdays, Sundays and holidays excepted.

(2) A recognised company which has established a place of business or commenced to carry on business within the State shall within one month after doing so lodge with the Commission notice of the situation of its principal office in the State.

(3) Where a recognised company, immediately before it became a recognised company, had as a foreign company a registered office in the State notice of the situation of which had been lodged with the Commission, that registered office shall be deemed to be the principal office in the State of that recognised company until it lodges under section 343D with the Commission notice of any change or alteration in the situation of its principal office.

Altered
particulars
to be
notified.

343D. Where any change or alteration is made in—

(a) the situation of the principal office of the recognised company in the State or of the days or hours during which it is open and accessible to the public; or

(b) the name of the recognised company, the recognised company shall within one month or within such further period as the Commission in special circumstances allows after the change or alteration lodge with the Commission particulars of the change or alteration.

343E.

Companies (Further Amendment).

343E. (1) Except with the consent of the Minister, a recognised company shall not establish a place of business or commence to carry on business within the State unless the Commission has approved of its name.

Name of
recognised
company
to be
approved.

(2) Subsection (1) does not apply in respect of a recognised company establishing a place of business within the State if it has already established such a place of business.

(3) Except with the consent of the Minister, a recognised company which had established a place of business or had commenced to carry on business within the State at the time it became a recognised company and which immediately before that time was not a registered foreign company shall not continue to carry on business in the State unless the Commission has approved of its name.

(4) A recognised company shall not use as its name a name which has not been approved under subsection (1) or (3), but nothing in this subsection prevents a recognised company which, immediately before it became a recognised company, was a registered foreign company from using as its name the name under which it was registered as a foreign company.

(5) Nothing in subsection (4) prevents a recognised company whose name has been approved under this section or a recognised company which immediately before it became a recognised company was a registered foreign company from using a name under which it is registered under any other Act.

(6) The Commission shall not under subsection (1) or (3) refuse to approve of a name unless—

- (a) the name is undesirable by reason that it is likely to be confused with or mistaken for the name of a company, a foreign company,

Companies (Further Amendment).

company, a recognised company, a society registered under the Co-operation Act, 1923, or the Permanent Building Societies Act, 1967, a credit union or association of credit unions or a union of associations of credit unions registered under the Credit Union Act, 1969, a registered business name or a name that has been reserved pursuant to section 22; or

- (b) the name is a name, or a name of a kind, that the Minister has directed the Commission not to accept for registration under section 22.

(7) If default is made in complying with subsection (1), (3) or (4), the recognised company and every officer of the recognised company who is in default shall be guilty of an offence against this Act.

Penalty : Two hundred dollars. Default penalty.

Exhibition
of name,
etc.

343F. (1) A recognised company shall—

- (a) except in the case of a banking corporation, conspicuously exhibit outside every place of business established by it in the State its name and the place where it is incorporated; and
- (b) except in the case of a banking corporation, cause its name and the place where it is incorporated to be stated in legible characters in all its bill-heads and letter paper and in all its notices, prospectuses and other official publications.

(2) If a recognised company is under official management in its place of incorporation under any declared law corresponding to Part IX or is being wound up, every invoice, order for goods or business letter issued by or on behalf of the company,

Companies (Further Amendment).

company, or an official manager or liquidator of the company or a receiver or manager of the property of the company being a document on or in which the name of the company appears shall have the words "under official management", or "in liquidation" (whichever is appropriate) immediately following the name of the company where it first appears therein.

(3) If default is made in complying with subsection (2), the recognised company and every officer of the recognised company who knowingly and wilfully authorises or permits the default shall be guilty of an offence against this Act.

Penalty : Forty dollars.

343G. (1) If a recognised company ceases to have a place of business or to carry on business in the State, it shall within seven days after so ceasing lodge with the Commission notice of that fact. Recognised company ceasing to carry on business.

(2) If a recognised company goes into liquidation or is dissolved in its place of incorporation the liquidator shall, until a liquidator for the State is duly appointed by the Court, have the powers and functions of a liquidator for the State.

(3) A liquidator of a recognised company appointed for the State by the Court or a person exercising the powers and functions of such a liquidator—

- (a) shall, before any distribution of the recognised company's assets is made, by advertisement in a newspaper circulating generally in each State or Territory of the Commonwealth where the recognised company had been carrying on business prior to the liquidation if no liquidator has been appointed for that place, invite all creditors to

Companies (Further Amendment).

to make their claims against the recognised company within a reasonable time before the distribution;

- (b) shall not, without obtaining an order of the Court, pay out any creditor to the exclusion of any other creditor of the recognised company; or
- (c) shall, unless otherwise ordered by the Court, only recover and realise the assets of the recognised company in the State and shall pay the net amount so recovered and realised to the liquidator of that recognised company for the place where it was incorporated.

(4) Where a recognised company has been wound up so far as its assets in the State are concerned and there is no liquidator for the place of its incorporation the liquidator may apply to the Court for directions as to the disposal of the net amount recovered in pursuance of subsection (3).

Service of
notices on
recognised
company.

343H. Any document required to be served on a recognised company shall be sufficiently served if addressed to the recognised company and left at or sent by post to the address specified in the notice lodged with the Commission as being its principal office in the State.

Branch
register.

343I. (1) Subject to this section, a recognised company which has a share capital and has any member who is resident in the State, shall keep at its principal office in the State or at some other place in the State a branch register for the purpose of registering shares of members resident in the State who apply to have the shares registered therein.

(2)

Companies (Further Amendment).

(2) The company shall not be obliged to keep a branch register pursuant to subsection (1) until after the expiration of one month from the receipt by it of an application in writing by a member resident in the State for registration in its branch register in the State of the shares held by the member.

(3) If default is made in complying with subsection (1), the recognised company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : One hundred dollars. Default penalty.

(4) This section shall not apply to any recognised company which by its constitution prohibits any invitation to the public to subscribe for shares in the company.

(5) Every such register shall be kept in the manner provided by Division 4 of Part V as though the register were the register of a company and transfers shall be effected on such register in the same manner and at the same charges as on the principal register of the company and transfers lodged at its principal office in the State shall be binding on the company and the Court shall have the same powers in relation to rectification of the register as it has in respect of the register of a company incorporated in the State.

(6) Where a recognised company opens a branch register in the State it shall within fourteen days after the opening thereof lodge with the Commission notice of that fact specifying the address where the register is kept.

(7) Where any change is made in the place where the register is kept or where the register is discontinued the company shall, within fourteen days of the change or discontinuance lodge notice of the change or discontinuance with the Commission.

(8)

Companies (Further Amendment).

(8) Where a company or corporation is entitled pursuant to a declared law of the place of incorporation of a recognised company that corresponds to section 180x or 185 to give notice to a dissenting offeree or to a dissenting shareholder in that recognised company that it desires to acquire any of his shares registered on a branch register kept in the State, this section shall cease to apply to that recognised company until—

- (a) the shares have been acquired; or
- (b) the company or corporation has ceased to be entitled to acquire the shares.

Registra-
tion of
shares
in branch
register.

343J. Subject to this Act, on application in that behalf by a member resident in the State the recognised company shall register in the branch register of the company the shares held by a member which are registered in any other register kept by the company.

Removal
of shares
from
branch
register.

343K. Subject to this Act, on application in that behalf by a member holding shares registered in the branch register, the recognised company shall remove the shares from the branch register and register them in such other register as is specified in the application.

Index of
members,
inspection
and closing
of branch
registers.

343L. Sections 151, 152 and 153 shall, with such adaptations as are necessary, apply respectively to the index of persons holding shares in a branch register and to the inspection and the closing of the register.

Application
of provisions
of Act
relating
to transfer.

343M. Sections 95 and 96, subsection (1) of section 97, subsections (1) and (3) of section 99 and section 155 shall apply with necessary adaptations with respect to the transfer of shares on and the rectification of the branch register of a recognised company.

343N.

Companies (Further Amendment).

343N. A branch register shall be prima facie evidence of any matters by this Division directed or authorised to be inserted therein.

Branch
register
to be
prima
facie
evidence.

343O. A certificate under the seal of a recognised company specifying any shares held by any member of that company and registered in the branch register shall be prima facie evidence of the title of the member to the shares and the registration of the shares in the branch register.

Certificate
re share-
holding.

343P. A branch register kept by a recognised company which immediately before it became a recognised company was a foreign company shall thereupon become the branch register of that recognised company.

Branch
register
of former
foreign
company.

343Q. If default is made by any recognised company in complying with any provision of this Division other than a provision in which a penalty or punishment is expressly mentioned the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalties.

Penalty : One hundred dollars. Default penalty.

(y) (i) by inserting in the Second Schedule after paragraph 17 the following paragraphs :—

Second
Schedule.

17A. For approval of the name of a recognised company under subsection (1) of section 343E where the name of the recognised company has previously been reserved 4.00

17B. For approval of the name of a recognised company under subsection (1) of section 343E where the name of the recognised company has not previously been reserved 100.00

17C.

Companies (Further Amendment).

17c. For approval of the name
of a recognised company
under subsection (3) of sec-
tion 343E 100.00

(ii) by inserting in the Second Schedule after
paragraph 22 the following paragraphs :—

23. On an application for the
reservation of a name .. 6.00

23A. For sending a notification
under subsection (7B) or
subsection (8B) of section
22 to a corresponding inter-
state officer—for each noti-
fication 100.00

(iii) by omitting paragraph 34;

Eighth
Schedule.

(z) (i) by inserting in Part I of the Eighth Schedule
after paragraph 1 the following paragraph :—

1A. The address of the principal office of
the company (if any) in each participating
State.

(ii) by inserting in Part II of the Eighth Schedule
after the words "The address of the registered
office of the company is" the following
paragraph :—

The address of the principal office of the
company (if any) in each participating State
is

(2) All acts, matters or things which before a State
is declared to be a participating State were done or com-
menced in relation to a foreign company which as a result
of that declaration becomes a recognised company shall be
deemed to have been done or commenced in relation to it
as a recognised company and may be continued and
completed in relation to it as a recognised company.

SCHEDULE.

Companies (Further Amendment).

SCHEDULE.

Sec. 3.

AGREEMENT.

AN AGREEMENT (to be called the "Interstate Corporate Affairs Agreement") made this 18th day of February 1974 between the State of New South Wales of the first part, the State of Victoria of the second part and the State of Queensland of the third part.

WHEREAS it is generally acknowledged that in the interests of the public generally and of persons and authorities concerned with the administration of the law relating to companies and the regulation of the securities industry and trading in securities that there should be substantial uniformity in that law in the States and Territories of the Commonwealth of Australia:

AND WHEREAS the Governments of the Commonwealth and of the States of the Commonwealth of Australia have been concerned to achieve such uniformity:

AND WHEREAS as a result of conferences between Attorneys-General and Ministers of Justice of the Commonwealth and the States particularly since 1960 considerable uniformity has been achieved:

AND WHEREAS it is the intention of the Governments of the States of New South Wales Victoria and Queensland—

- to achieve greater uniformity in the law relating to companies and the regulation of the securities industry and trading in securities;
- to establish reciprocal arrangements and common standards and procedures in the administration of that law;
- to co-ordinate administration and avoid unnecessary duplication for the greater convenience of the public and greater efficiency in the overall administration; and
- to increase the protection the law affords to the investing public:

AND WHEREAS the Governments of New South Wales, Victoria and Queensland have agreed that it is desirable for those purposes to establish an Interstate Corporate Affairs Commission.

NOW IT IS HEREBY AGREED AS FOLLOWS :—

1. In this Agreement unless the contrary intention appears—

"Attorney-General" in relation to a State means the Minister responsible for the administration of the law relating to companies in that State and in relation to a Territory means a Minister of the Crown in right of the Commonwealth nominated by the Government of the Commonwealth of Australia as being responsible for the administration of the law relating to companies in that Territory.

"Clause"

Companies (Further Amendment).

"Clause" means clause of this Agreement.

"Commission" means the Interstate Corporate Affairs Commission established under clause 4.

"Ministerial Council" means the Ministerial Council provided for by clause 3.

"Participating State" means each of the States of New South Wales Victoria and Queensland and any other State or Territory of the Commonwealth of Australia on behalf of which this Agreement is signed pursuant to sub-clause (3) of clause 10.

2. (1) The Government of each of the participating States agrees that there shall be uniformity in administration and reciprocal arrangements within those States with respect to the following matters :—

- (a) Incorporation of companies;
- (b) the regulation of the securities industry and trading in securities;
- (c) Registration of prospectuses;
- (d) Approval of trust deeds and trustees in relation to interests;
- (e) Requirements relating to accounts and audit;
- (f) Proclamation of companies as investment companies;
- (g) Class and individual exemption powers relating to fund raising, &c. and to takeovers—

and such other matters relating to corporate affairs as the Ministerial Council from time to time designates.

(2) The Government of each of the participating States agrees to submit legislation to the Parliament of that State or to take such other action as is necessary—

- (a) to enable the Commission to exercise a supervisory role with respect to the above matters and such other matters as the Ministerial Council from time to time considers should be under the supervision of the Commission;
- (b) to authorize reciprocal arrangements with respect to the above matters; and
- (c) to implement recommendations made by the Ministerial Council from time to time in order to achieve the objects set out in the preamble to this Agreement.

3. (1) For the purposes of this Agreement there shall be a Ministerial Council consisting of the Attorneys-General for the time being of the States of New South Wales Victoria and Queensland and the Attorney-General for the time being of any other participating State.

(2)

Companies (Further Amendment).

(2) In sub-clause (1) of this clause a reference to the Attorney-General of a State includes such other Minister of the Crown who for the time being is acting for or on behalf of the Attorney-General of the State.

(3) The Ministerial Council shall meet at such times as it sees fit and shall subject to this Agreement determine its own procedure.

(4) A resolution before the Ministerial Council will be carried by a majority of votes of the members thereof.

4. (1) For the purposes of this Agreement there shall be an Interstate Corporate Affairs Commission appointed by the Ministerial Council.

(2) The Attorney-General of each participating State shall nominate two persons to be members of the Commission.

(3) One of the persons to be nominated by the Attorney-General of each participating State shall be the person responsible under the Attorney-General for the administration of the law relating to companies in that State.

(4) Each of the members of the Commission, other than the members referred to in sub-clause (3), shall hold office for such period as is specified in the instrument of his appointment unless his nomination to the Commission is sooner withdrawn by the Attorney-General by whom he was nominated.

(5) A person, not being a person referred to in sub-clause (3), shall cease to be a member of the Commission if his nomination is withdrawn by the Attorney-General by whom he was nominated.

(6) A member of the Commission shall be eligible to be re-appointed.

(7) In the event of a member being unable to attend a meeting of the Commission the Attorney-General by whom that member was nominated may appoint a suitable person to be the deputy of that member.

(8) A deputy of a member of the Commission shall have, while acting in the place of a member of the Commission, the powers, authorities, duties and functions of that member.

(9) Members shall be appointed subject to such terms and conditions as are determined from time to time by the Ministerial Council.

(10) A quorum of the Commission shall be constituted by a majority of the total number of members for the time being in office.

(11) The Ministerial Council shall from time to time appoint one of the members of the Commission to be chairman and one to be deputy chairman.

(12) The Chairman, or in his absence the deputy chairman, shall preside at meetings of the Commission.

Companies (Further Amendment).

(13) Questions arising at a meeting of the Commission will be determined by a majority of votes of the members present and voting.

(14) Where there is an equality of votes the chairman or presiding deputy chairman (as the case may be) shall have a casting vote as well as a deliberative vote.

(15) Subject to this Agreement the Commission shall regulate its own proceedings.

(16) The Commission shall exercise its functions and powers subject to the direction and control of the Ministerial Council.

5. (1) The Commission may employ such officers and employés as are approved by the Ministerial Council on such terms and conditions as are specified by the Ministerial Council.

(2) The Commission may arrange with the Government of a participating State for the performance by a person employed in the public service of such State of any work or services for the Commission and for any matters which may be required to be adjusted with regard to the performance or payment for such work or services by such person.

6. All expenses of the Commission shall be borne by the participating States in equal shares.

7. (1) The Commission shall cause to be kept proper accounts and records of its affairs in accordance with appropriate accounting principles.

(2) The Ministerial Council may from time to time request the Auditor-General of a participating State to audit the accounts of the Commission.

(3) Where an audit of the accounts of the Commission is carried out by the Auditor-General of a State the Commission shall pay to the Treasurer of that State the expenses of the audit.

8. The Government of a participating State shall at the request of the Commission furnish to the Commission all such information and particulars as the Commission may require for the purposes of this Agreement and as such Government is able to furnish.

9. (1) For the purposes of this Agreement there may be a Consultative Committee constituted as determined from time to time by the Ministerial Council.

(2) One member of the Consultative Committee shall be appointed by the Ministerial Council to be chairman.

(3) Members of the Consultative Committee shall be appointed for such period as the Ministerial Council thinks fit.

(4)

Companies (Further Amendment).

(4) It shall be the function of the Consultative Committee to consult with the Commission with respect to the exercise by the Commission of its duties functions and powers.

10. (1) The Governments of New South Wales Victoria and Queensland will submit this Agreement for approval to their respective Parliaments as soon as practicable after the date of this Agreement.

(2) It is the intention of the Governments of the States of New South Wales Victoria and Queensland that any other State and Territory of the Commonwealth of Australia may become a participating State for the purposes of this Agreement.

(3) This Agreement shall remain open for signature on behalf of any such other State or Territory.

IN WITNESS WHEREOF this Agreement has been executed on the day and year first above written.

SIGNED BY THE HONORABLE KENNETH MALCOLM McCaw, Attorney-General for New South Wales, in the presence of—	}	K. M. McCaw.
M. L. VINCENT.		

SIGNED BY THE HONORABLE VERNON FRANCIS WILCOX, Attorney-General for Victoria, in the presence of—	}	V. F. WILCOX.
J. C. FINEMORE.		

SIGNED BY THE HONORABLE WILLIAM EDWARD KNOX, Attorney-General for Queensland, in the presence of—	}	WILLIAM E. KNOX.
J. C. FINEMORE.		

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

Government House,
Sydney, 24th April, 1974.

April 1974

Agreement (Amended)

1. The purpose of this Agreement is to ensure that the Commission shall be able to carry out its functions in accordance with the provisions of the Act.

2. The Commission shall be composed of three members, one of whom shall be the Chairman. The members shall be appointed by the Council of Ministers for a period of three years, and may be re-appointed.

3. The Commission shall be responsible for the following functions:

(a) to monitor the implementation of the provisions of the Act;

(b) to advise the Council of Ministers on any matters relating to the Act;

(c) to report to the Council of Ministers on the progress of the implementation of the Act.