

CORPORATE AFFAIRS COMMISSION ACT, 1981,
No. 64

New South Wales



ANNO TRICESIMO

ELIZABETHÆ II REGINÆ

Act No. 64, 1981.

An Act to reconstitute the Corporate Affairs Commission and, in connection therewith, to repeal Part XII of the Securities Industry Act, 1975, and certain other enactments; and for related matters. [Assented to, 28th May, 1981.]

Corporate Affairs Commission.

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 "Corporate Affairs Commission Act, 1981".

Commencement.

2. (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), this Act 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.

Interpretation.

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Commission" means the Corporate Affairs Commission constituted by this Act;

"Commissioner" means a person who is for the time being a member of the Commission;

"Commonwealth Act" means the National Companies and Securities Commission Act 1979 of the Commonwealth as amended and in force for the time being;

"functions" includes duties;

"power" includes an authority;

"securities" has the same meaning as in the Commonwealth Act;

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(2) A reference in this Act to an officer or employee of the Commission is a reference to—

- (a) an officer or employee referred to in section 8 (1);
- (b) an officer, employee or servant referred to in section 8 (2) whose services are being made use of under that subsection; or
- (c) an officer referred to in section 8 (3).

Constitution of Commission.

4. (1) There is hereby constituted a corporation with the corporate name "Corporate Affairs Commission" consisting of 3 Commissioners appointed by the Governor.

(2) One of the Commissioners shall, by the instrument of his appointment or by another instrument, be appointed by the Governor as Chairman of the Commission and another of the Commissioners shall be so appointed as Deputy Chairman of the Commission.

(3) On the occurrence of a vacancy in the office of a Commissioner, the Governor may appoint a person to the vacancy so that the Commission is constituted as provided by this section.

(4) The Commission is, for the purposes of any Act, a statutory body representing the Crown.

Terms, etc., of appointment of Commissioner.

5. (1) A Commissioner shall be appointed for a term, not exceeding 7 years, specified in the instrument of his appointment and shall, if otherwise qualified, be eligible for re-appointment from time to time for a term, not exceeding 7 years, specified in the instrument of his re-appointment.

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(2) A person who is of or above the age of 65 years shall not be appointed as Commissioner or continue in that office.

(3) A Commissioner shall not, during his term of office, engage in any paid employment outside the duties of his office except with the approval of the Governor and is entitled to be paid—

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of him.

(4) The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment by the Governor of a Commissioner and a Commissioner is not subject to the provisions of that Act during his term of office as Commissioner.

(5) A Commissioner shall be deemed to have vacated his office—

- (a) if he dies;
- (b) if without the approval of the Governor he engages during his term of office in any paid employment outside the duties of his office;
- (c) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts his resignation;
- (d) if he becomes a bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes any assignment of his estate for their benefit;
- (e) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (f) if he absents himself from duty for a period exceeding 14 consecutive days except—
 - (i) on leave granted by the Minister;
 - (ii) through illness or other unavoidable cause; or

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- (iii) pursuant to a right preserved by section 6;
- (g) if he is convicted in the State of a felony or a misdemeanour that is punishable by imprisonment for 12 months or upwards or if he is convicted elsewhere than in the State of an offence that, if committed in the State, would be a felony or misdemeanour so punishable;
- (h) if he is removed from office by the Governor under subsection (6);
- (i) on the day on which he attains the age of 65 years; or
- (j) if he is retired from office by the Governor under subsection (7).

(6) The Governor may remove a Commissioner from office on the ground of misbehaviour or incompetence.

(7) A Commissioner may be retired from office by the Governor after he attains the age of 60 years and before he attains the age of 65 years and, if he is so retired, he is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

(8) Where a Commissioner who, immediately before his appointment as Commissioner, was an officer of the Public Service, ceases to be a Commissioner otherwise than pursuant to subsection (5) (paragraph (c) excepted), he shall, if he has not attained the age of 60 years, be appointed to some position in the Public Service not lower in classification and salary than that which he held immediately before his appointment as Commissioner.

Preservation of certain rights.

6. (1) In this section, "superannuation scheme" means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

(2) Subject to subsection (3) and to the terms of his appointment, where a Commissioner was, immediately before his appointment as Commissioner—

- (a) an officer of the Public Service;

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- (b) a contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or
- (d) a person in respect of whom provision was made by an Act that he retain any rights accrued or accruing to him as an officer or employee,

he—

- (e) shall retain any rights accrued or accruing to him as such an officer, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as Commissioner; and
- (g) shall be entitled to receive any deferred or extended leave or any payment, pension or gratuity,

as if he had continued to be such an officer, contributor or person during his service as Commissioner, and—

- (h) his service as Commissioner shall be deemed to be service as an officer or employee for the purpose of any law under which he continues to contribute or by which that entitlement is conferred; and
- (i) he shall be deemed to be an officer or employee of the Crown, and the Crown shall be deemed to be his employer, for the purposes of the superannuation scheme to which he is entitled to contribute under this section.

(3) Where a Commissioner—

- (a) would, but for this subsection, be entitled under subsection (2) to contribute to a superannuation scheme, or to receive any payment, pension or gratuity under a superannuation scheme; and
- (b) becomes a contributor to another superannuation scheme (whether upon his appointment as Commissioner or at any later time while he holds office as Commissioner),

he ceases to be so entitled and the provisions of subsection (2) (i) cease to apply to or in respect of him.

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(4) Subsection (3) does not operate to prevent the payment to a Commissioner upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him if he had ceased by reason of his resignation to be an officer or employee for the purposes of that scheme.

(5) A Commissioner shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

Meetings of Commission.

7. (1) Meetings of the Commission may be convened by any Commissioner as the business of the Commission requires.

(2) The number of members which constitutes a quorum at any meeting of the Commission is 2.

(3) The Chairman or, in his absence, the Deputy Chairman of the Commission shall preside at a meeting of the Commission.

(4) Questions arising at a meeting of the Commission shall be determined by a majority of votes of the members present and voting and, in the event of an equality of votes, the Commissioner presiding shall have a casting vote in addition to his deliberative vote.

(5) The procedure for the calling of, and for the conduct of business at, a meeting of the Commission shall be as determined by the Commission.

(6) The Commission shall cause full and accurate minutes to be kept of its proceedings at meetings.

Officers and employees of the Commission.

8. (1) Except as provided by this section, such officers and employees as may be necessary for the performance or exercise by the Commission of its functions and powers shall be appointed and employed under and subject to the Public Service Act, 1979.

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(2) For the purposes of the performance or exercise by the Commission of its functions and powers, the Commission may, with the approval of the Minister and of the body or person concerned and on such terms and conditions as may be approved by the Public Service Board, make use of the services of any of the officers, employees or servants of the body or person.

(3) The Commission may, with the approval of the Public Service Board and on such terms and conditions as may be approved by that Board, appoint persons to be officers of the Commission for the purpose of conducting or assisting in the conduct of investigations or inspections pursuant to any law relating to the regulation of companies or the securities industry.

(4) The maximum term for which a person may be appointed by the Commission under subsection (2) is 3 years, but he is, if otherwise qualified, eligible for further appointment under that subsection.

(5) An officer referred to in subsection (3) is not, in his capacity as such, an officer within the meaning of the Public Service Act, 1979, but, if the terms and conditions on which he is appointed so provide, any specified provisions of that Act or the regulations thereunder, whether with or without specified modifications, apply to and in respect of him as if he were a temporary employee within the meaning of that Act.

Authority of officers to act.

9. (1) The common seal of the Commission may be affixed to an instrument or writing by a Commissioner or by an officer or employee of the Commission authorised so to do either generally or in a particular case or class of cases and the Commissioner or other person so authorised shall attest by his signature the fact and date of the seal being so affixed.

(2) Section 38 (II) of the Interpretation Act, 1897, does not apply to or in respect of the Commission.

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(3) A Commissioner authorised to do so by the Commission may execute any document on behalf of the Commission.

(4) Where a Commissioner has been authorised, as referred to in subsection (3), to execute any document on behalf of the Commission, that document may be executed in the name and on behalf of that Commissioner by any person authorised in writing by that Commissioner to do so.

(5) A document purporting to be executed as referred to in subsection (3) or (4) shall be deemed to have been duly executed by the Commission unless it is proved that the person who executed it was not duly authorised as referred to in subsection (3) or (4), as the case may be, and shall be admissible in evidence in any proceedings in the same way as it would be if it had been executed by the Commission.

Powers, etc., of Commission.

10. (1) The Commission shall have and may perform and exercise such functions and powers as may be conferred or imposed upon it by or under this or any other Act or any law of the Commonwealth, a Territory of the Commonwealth or another State.

(2) The Commission shall, as and when directed by the Minister so to do, report to the Minister with respect to the policy the Commission is pursuing or proposes to pursue in the performance or exercise of its functions and powers or such of them as are specified by the Minister when giving the direction.

(3) Except as to the contents of a report or recommendation by the Commission or a Commissioner, the Commission and the Commissioners are, in the performance or exercise of functions and powers under this Act or any other Act or law (other than those performed or exercised as an inspector pursuant to any law relating to the regulation of companies or the securities industry) subject to the control and direction of the Minister.

(4) The provisions of this section do not have effect or operation to the extent of any inconsistency with the Agreement.

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(5) In this section, "Agreement" means the agreement made on 22nd December, 1978, between the Commonwealth and the States in relation to a proposed scheme for the co-operative regulation of companies and the securities industry or, if that agreement is or has been amended or affected by another agreement, that agreement as so amended or affected.

Disposal of money by Commission.

11. (1) Except where otherwise expressly provided by or under this or any other Act or law, all money payable to the Commission shall be collected and received by the Commission on account of, and shall be paid into, the Consolidated Revenue Fund.

(2) The accounts of the Commission shall be audited by the Auditor-General who shall have, in respect thereof, all the powers conferred on the Auditor-General by any law for the time being in force relating to the audit of public accounts, and the Audit Act, 1902, shall apply to a Commissioner, the Commission and the officers and employees of the Commission in the same manner as it applies to accounting officers of public departments.

Annual report of Commission.

12. (1) As soon as practicable after 30th June, but on or before 31st December, in any year, the Commission shall prepare and forward to the Minister a report on the performance and exercise by the Commission, during the year ended on that 30th June, of the functions and powers conferred or imposed upon the Commission by or under this or any other Act or law.

(2) The Minister shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after the receipt by him of the report.

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Delegation by Commission.

13. (1) Except as otherwise expressly provided by this or any other Act, the Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to any person any functions or powers that are conferred on the Commission by or under any Act (other than functions or powers the delegation of which is prohibited by the Act) or otherwise conferred on the Commission.

(2) The Commission may, by writing under its common seal, revoke, wholly or in part, any delegation under subsection (1).

(3) A delegation under subsection (1) may be to—

- (a) a specified person (whether a natural person or a body corporate); or
- (b) the person for the time being holding a specified office under an Act.

(4) Except in so far as the instrument of delegation otherwise provides, a person to whom a function or power has been delegated under subsection (1) may—

- (a) in the case of a natural person—by writing under his hand; or
- (b) in the case of a body corporate—by writing under its common or official seal,

authorise another person to perform the function or exercise the power so delegated and may, in like manner, revoke, wholly or in part, any such authority.

(5) An authority under subsection (4) may be given to—

- (a) a specified person; or
- (b) a person for the time being holding a specified office under an Act.

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(6) Any act or thing done in the performance of a function or the exercise of a power by a person to whom that function or that power has been delegated by the Commission under subsection (1) or by a person authorised by a delegate of the Commission under subsection (4) to perform that function or exercise that power has the same force and effect as if it had been done by the Commission.

(7) Where, under any Act that confers functions or powers on the Commission, the performance of a function or the exercise of a power by the Commission is dependent upon the opinion, belief or state of mind of the Commission in relation to a matter and that function or power has been delegated under subsection (1), that function or power may be performed or exercised by the delegate or by a person authorised by the delegate under subsection (4) upon the opinion, belief or state of mind of the delegate or of the authorised person, as the case may be, in relation to that matter.

(8) A delegation under subsection (1) does not prevent the performance of a function or the exercise of a power by the Commission.

(9) The giving of an authority under subsection (4) does not prevent the performance of a function or the exercise of a power by the person by whom the authority was given.

(10) Where a person purports to perform a function or exercise a power conferred on the Commission by or under an Act, it shall be presumed, unless the contrary is established, that the person is duly authorised as a delegate of the Commission or as a person duly authorised by such a delegate to perform the function or exercise the power.

(11) A document purporting to be signed by a person as a delegate of the Commission shall be deemed, unless the contrary is established, to have been signed by such a delegate and to have been so signed pursuant to the performance of a function or the exercise of a power duly delegated to the person by the Commission.

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(12) A document purporting to be signed by a person authorised by a delegate of the Commission to sign the document shall be deemed, unless the contrary is established, to have been signed by a person so authorised and to have been so signed pursuant to the performance of a function or the exercise of a power that he is duly authorised by such a delegate to perform or exercise.

(13) A delegation or authority under this section may be made or given subject to such conditions or such limitations as to the performance or exercise of any of the functions or powers delegated, or as to time or circumstances, as may be specified in the instrument of delegation or authority.

(14) Nothing in this section applies to a function or power that the Commission has by virtue of a delegation from the National Companies and Securities Commission.

Directions by Commission.

14. Where the Commission has delegated a function or power to a person under section 13—

- (a) the Commission may give directions to the delegate with respect to the performance of that function or the exercise of that power; and
- (b) if the delegate has, under section 13 (4), authorised another person to perform that function or exercise that power, the delegate—
 - (i) shall, if the Commission has given a direction to the delegate under paragraph (a) with respect to the performance of that function or the exercise of that power, give a corresponding direction to the other person; and
 - (ii) may, subject to any direction given to the delegate by the Commission under paragraph (a), give directions to the other person with respect to the performance of that function or the exercise of that power.

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Secrecy.

15. (1) Subject to this section, a person who is, or has at any time been, a Commissioner or a person appointed for the purposes of this Act or of any other Act that confers functions or powers on the Commission or authorised to perform or exercise any function or power of the Commission under this or any other Act or any such function or power on behalf of the Commission shall not, except to the extent necessary to perform his official duties, or to perform or exercise such a function or power, either directly or indirectly, make a record of, or divulge or communicate to any person, any information that is or was acquired by him by reason of his being or having been so appointed or authorised, or make use of any such information, for any purpose other than the performance of his official duties or the performance or exercise of that function or power.

Penalty: \$5,000 or imprisonment for 1 year, or both.

(2) Nothing in subsection (1) precludes a person from—

- (a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under any prescribed Act;
- (b) divulging or communicating to a court in the course of any proceedings referred to in paragraph (a) any matter or thing coming under his notice in the performance of his official duties or in the performance of a function or the exercise of a power referred to in that subsection;
- (c) producing a document or divulging or communicating information to a person to whom, in the opinion of the Commission, it is in the public interest that the document be produced or the information be divulged or communicated; or
- (d) producing a document or divulging or communicating information that is required or permitted by any Act, or any Act of the Commonwealth or of another State, to be produced, divulged or communicated, as the case may be.

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(3) This section does not apply in circumstances where section 15 of the National Companies and Securities Commission (State Provisions) Act, 1981, applies.

Restrictions on dealings in securities.

16. (1) A person who is, or has at any time been, a Commissioner or a person appointed for the purposes of this Act or any other Act that confers functions or powers on the Commission or authorised to perform or exercise any function or power of the Commission or a Commissioner under this or any other Act or any such function or power on behalf of the Commission or a Commissioner and has, by reason that he is, or has at any time been, a Commissioner or so appointed or authorised, information that is not generally available but, if it were, would be likely materially to affect the price of any securities, shall not deal in, or cause or procure any other person to deal in, those securities.

Penalty: \$20,000 or imprisonment for 5 years.

(2) Where a person to whom subsection (1) applies has information as mentioned in that subsection and deals in any securities in contravention of that subsection, he is liable to compensate any other party to the transaction for any loss sustained by that party by reason of any difference between the price at which the securities were dealt in in that transaction and the price at which they would be likely to have been dealt in in such a transaction at the time the first-mentioned transaction took place if the information had been generally available.

(3) The amount of compensation for which a person is liable under subsection (2) is—

(a) in a case to which paragraph (b) does not apply—the amount of the loss sustained by the person claiming the compensation; or

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(b) if the first-mentioned person has been found by a court to be liable to pay an amount or amounts to any other person or persons under subsection (2) or under any other Act by reason of the same act or transaction—the amount of that loss less the amount or the sum of the amounts that the first-mentioned person has been so found to be liable to pay.

(4) For the purposes of subsection (3), the onus of proving that the liability of a person to pay an amount to another person arose from the same act or transaction from which another liability arose lies on the person liable to pay the amount.

(5) An action under this section for recovery of compensation for a loss shall not be commenced after the expiration of 2 years after the date of completion of the transaction in which the loss occurred.

(6) The Commission may, if the Commission considers it to be in the public interest to do so, bring an action in the name of and for the benefit of a person for recovery of compensation for a loss referred to in subsection (2).

(7) Nothing in subsection (2) affects any liability that a person may incur under any other law.

(8) This section does not apply in circumstances where section 16 of the National Companies and Securities Commission (State Provisions) Act, 1981, applies.

Notification of interests.

17. (1) A Commissioner or a person who is appointed for the purposes of this Act or of any other Act that confers functions or powers on the Commission or is authorised to perform or exercise

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any function or power of the Commission conferred on the Commission by an Act or any such function or power on behalf of the Commission and who, in the course of his official duties or the performance or exercise of the function or power, is required to consider any matter relating to—

- (a) a body corporate in securities of which he has a relevant interest;
- (b) securities in which he has a relevant interest;
- (c) securities of the same class as securities in which he has a relevant interest;
- (d) a person or body—
 - (i) by whom or by which he is employed or has been employed at any time during the immediately preceding 3 years; or
 - (ii) with whom or with which he is associated; or
- (e) a body corporate that is related to a body corporate by which he is employed or has been employed at any time during the immediately preceding 3 years,

shall forthwith in writing so inform the Commission or, if he is a Commissioner, the Minister.

(2) It is a defence to a prosecution for an offence against this section in respect of a failure by a person to inform the Commission or the Minister that he is required to consider a matter relating to a particular body corporate, a particular person or particular securities if the person establishes that, at the time when he was required to consider the matter, he was not aware of a fact or matter the existence of which obliged him to inform the Commission or the Minister that he was required to consider the first-mentioned matter.

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(3) The questions whether a person has a relevant interest in securities, whether a person is associated with a person or body and whether 2 bodies corporate are related to each other for the purposes of this section shall be determined as prescribed under the Commonwealth Act for the purposes of section 49 (4) of that Act.

Penalty : \$5,000 or imprisonment for 1 year, or both.

References in other Acts, etc.

18. On and from the day appointed and notified under section 2 (2), a reference (however expressed) in any Act, by-law, regulation, ordinance, statutory instrument or other instrument to—

- (a) the Registrar, as defined by the Companies Act, 1961, immediately before the commencement of section 13 of the Securities Industry (Amendment) Act, 1971;
- (b) the Corporate Affairs Commission constituted by the Securities Industry Act, 1970;
- (c) the Commissioner for Corporate Affairs appointed under, or the Corporate Affairs Commission constituted by, the Securities Industry Act, 1975, before the commencement of the Securities Industry (Corporate Affairs Commission) Amendment Act, 1979; or
- (d) the Corporate Affairs Commission constituted by the Securities Industry Act, 1975, or by Part XII of that Act,

shall be construed as a reference to the Corporate Affairs Commission constituted by this Act.

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Proceedings for offences.

19. (1) Proceedings for an offence against a provision of this Act may be taken before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

(2) Proceedings for an offence against a provision of this Act may be taken by the Commission or, with the consent of the Minister, by any other person.

(3) Notwithstanding anything in any Act, proceedings for an offence against a provision of this Act may be instituted within a period of 5 years after the act or omission alleged to constitute the offence or, with the consent of the Minister, at any later time.

Repeals.

20. Each Act specified in Column 1 of Schedule 1 is, to the extent specified opposite that Act in Column 2 of Schedule 1, repealed.

Savings and transitional provisions.

21. Schedule 2 has effect.

Regulations.

22. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Act No. 64, 1981.

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SCHEDULE 1.

(Sec. 20.)

REPEALS.

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Extent of repeal.
1976, No. 3 ..	Securities Industry Act, 1975 ..	So much of section 2 as relates to Part XII. Sections 7 (1) and (2), 13, 14 and 15. Part XII.
1978, No. 40 ..	Securities Industry (Amendment) Act, 1978.	Schedule 1 (3).
1979, No. 108 ..	Securities Industry (Corporate Affairs Commission) Amendment Act, 1979.	Schedule 1 (2), (5)-(7) and (11)-(16).
1979, No. 176 ..	Futures Markets Act, 1979 ..	Section 8.
1979, No. 181 ..	Securities Industry (Fidelity Funds) Amendment Act, 1979.	Schedule 1 (1), (6) and (7).
1980, No. 187 ..	Miscellaneous Acts (Retirement of Statutory Officers) Amendment Act, 1980.	So much of Schedule 1 as relates to the Securities Industry Act, 1975.

SCHEDULE 2.

(Sec. 21.)

SAVINGS AND TRANSITIONAL PROVISIONS.

1. In this Schedule, "appointed day" means the day appointed and notified under section 2 (2).

2. Notwithstanding the enactment of this Act—

- (a) the corporation constituted by this Act is the same legal entity as the corporation continued by clause 5 of Schedule 2 to the Securities Industry (Corporate Affairs Commission) Amendment Act, 1979; and
- (b) the corporation so continued further continues as the corporation constituted by this Act,

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SCHEDULE 2—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

and a reference in any Act, by-law, regulation, order, statutory instrument or other instrument to the Corporate Affairs Commission continued in existence by this Act shall accordingly be construed as a reference to the Corporate Affairs Commission constituted by this Act.

3. A person who, immediately before the appointed day, held office under the Securities Industry Act, 1975, as the Chairman, Deputy Chairman or other Commissioner of the Corporate Affairs Commission—

(a) shall be deemed to have been duly appointed on that day as the Chairman, Deputy Chairman or other Commissioner of the Commission constituted by this Act;

(b) shall be deemed to have been so appointed—

(i) upon the same terms and conditions as those applicable to him immediately before that day; and

(ii) for the residue of the term of office for which he was appointed; and

(c) is eligible for appointment under this Act with effect from the expiration of that term of office or from any subsequent time.

4. For the purposes of any Act, service under the Securities Industry Act, 1975, as the Chairman, Deputy Chairman or other Commissioner of the Corporate Affairs Commission shall be deemed to be service under this Act as the Chairman, Deputy Chairman or other Commissioner, as the case may require, of the Commission constituted by this Act.

5. A reference in section 5 or 6 to an appointment as Commissioner includes a reference to an appointment under section 133 of the Securities Industry Act, 1975, whether before or after amendments made by the Securities Industry (Corporate Affairs Commission) Amendment Act, 1979.

6. A person who, immediately before the appointed day, held office under section 137 (3) of the Securities Industry Act, 1975—

(a) shall be deemed to have been duly appointed on that day under section 8 (3);

(b) shall be deemed to have been so appointed—

(i) upon the same terms and conditions as those applicable to him immediately before that day; and

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SCHEDULE 2—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

- (ii) for the residue of the term of office for which he was appointed; and
- (c) is eligible for appointment under section 8 (3) with effect from the expiration of that term of office or from any subsequent time.

7. The amendments made by sections 143 and 144 of the Securities Industry Act, 1975, continue to have force and effect as if those sections had not been repealed by this Act.

8. (1) In this clause, "report" means a report on the performance and exercise by the Commission (including the Corporate Affairs Commission as constituted before the appointed day) functions and powers conferred or imposed on the Commission (including the Corporate Affairs Commission as so constituted) by or under this or any other Act or law.

(2) Where, at the appointed day, the report in respect of the year ended on the preceding 31st December had not been submitted as required by section 141 of the Securities Industry Act, 1975, the Commission shall, as soon as practicable after, but within 6 months after, the appointed day, prepare and forward that report to the Minister.

(3) If the appointed day occurs during the 6 months ended on 30th June in any year—

- (a) the Commission shall, as soon as practicable after, but within 6 months after, that 30th June, prepare and forward to the Minister a report in respect of that period of 6 months; and
- (b) section 12 does not operate so as to require a report to be forwarded to the Minister in respect of any period ended on or before that 30th June.

(4) If the appointed day occurs during the 6 months ended on 31st December in any year—

- (a) the Commission shall, as soon as practicable after, but within 6 months after, that 31st December, prepare and forward to the Minister a report in respect of the year ended on that date;
- (b) the Commission shall, as soon as practicable after, but within 6 months after, the next following 30th June, prepare and forward to the Minister a report in respect of the period of 6 months ended on that 30th June; and

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SCHEDULE 2—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

- (c) section 12 does not operate so as to require any report to be forwarded to the Minister in respect of any period ended on or before that 30th June.

(5) The Minister shall lay each report forwarded to him under this clause or cause it to be laid before both Houses of Parliament as soon as practicable after the receipt by him of the report.

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

J. A. ROWLAND,
Governor.

*Government House,
Sydney, 28th May, 1981.*

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1981

APR 1967 64-1981

COMMISSION ON THE STATUS OF WOMEN

ARTICLE 2 - PURPOSE

2-1. PURPOSE AND SCOPE OF THE COMMISSION

The Commission is established to study and report on the status of women in the United States. It shall hold public hearings and receive testimony from interested persons. It shall submit reports to the President and the Congress. It shall also conduct such investigations and studies as it may deem necessary.

The Commission shall be composed of not more than fifteen members, to be appointed by the President, by and with the advice and consent of the Senate. The President shall designate one member to serve as Chairman.

1. A ROWLAND

The Commission shall submit its first report to the President and the Congress within six months of its organization. Thereafter, it shall submit reports at such intervals as the President may direct.

The Commission shall have such powers and privileges as may be necessary to carry out its duties.

BY AUTHORITY OF THE PRESIDENT, I hereby certify that the foregoing is a true and correct copy of the report of the Commission on the Status of Women.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Executive Office of the President of the United States at Washington, D.C., this 12th day of April, 1967.

JOHN F. KENNEDY, President of the United States

(a) The Commission shall, as soon as practicable after its organization, submit a report to the President and the Congress on the status of women in the United States.

(b) The Commission shall, as soon as practicable after the first report, submit a report to the President and the Congress on the progress made in the implementation of the recommendations of the first report.

CORPORATE AFFAIRS COMMISSION BILL, 1981

EXPLANATORY NOTE

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

This Bill is cognate with the National Companies and Securities Commission (State Provisions) Bill, 1981.

The objects of this Bill are—

- (a) to re-enact substantially (in the form of a separate Act) the provisions of Part XII of the Securities Industry Act, 1975, which provide for the constitution and general functions of the Corporate Affairs Commission;
 - (b) to ensure that the Corporate Affairs Commission is empowered to act as delegate of the National Companies and Securities Commission (clause 10 (1));
 - (c) to make it clear that the Corporate Affairs Commission is not subject to the control and direction of the Minister where this would be inconsistent with the Agreement between the Commonwealth and States in relation to the scheme for the co-operative regulation of companies and the securities industry, a copy of which is set out in Schedule 1 to the National Companies and Securities Commission (State Provisions) Bill, 1981 (clause 10 (4));
 - (d) to repeal Part XII of the Securities Industry Act, 1975, and certain other enactments;
 - (e) to enact savings and transitional provisions (Schedule 2); and
 - (f) to make other provisions of a minor, consequential or ancillary nature.
-

CORPORATE AFFAIRS COMMISSION BILL, 1981

No. , 1981.

A BILL FOR

An Act to reconstitute the Corporate Affairs Commission and, in connection therewith, to repeal Part XII of the Securities Industry Act, 1975, and certain other enactments; and for related matters.

[MR WALKER—18 March, 1981.]

Corporate Affairs Commission.

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 :—

5 Short title.

1. This Act may be cited as the "Corporate Affairs Commission Act, 1981".

Commencement.

2. (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), this Act 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.

15 Interpretation.

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Commission" means the Corporate Affairs Commission constituted by this Act;

20 "Commissioner" means a person who is for the time being a member of the Commission;

"Commonwealth Act" means the National Companies and Securities Commission Act 1979 of the Commonwealth as amended and in force for the time being;

25 "functions" includes duties;

"power" includes an authority;

"securities" has the same meaning as in the Commonwealth Act;

Corporate Affairs Commission.

(2) A reference in this Act to an officer or employee of the Commission is a reference to—

- (a) an officer or employee referred to in section 8 (1);
- (b) an officer, employee or servant referred to in section 8 (2) whose services are being made use of under that subsection; or
- (c) an officer referred to in section 8 (3).

Constitution of Commission.

4. (1) There is hereby constituted a corporation with the corporate name "Corporate Affairs Commission" consisting of 3 Commissioners appointed by the Governor.

(2) One of the Commissioners shall, by the instrument of his appointment or by another instrument, be appointed by the Governor as Chairman of the Commission and another of the Commissioners shall be so appointed as Deputy Chairman of the Commission.

(3) On the occurrence of a vacancy in the office of a Commissioner, the Governor may appoint a person to the vacancy so that the Commission is constituted as provided by this section.

(4) The Commission is, for the purposes of any Act, a statutory body representing the Crown.

Terms, etc., of appointment of Commissioner.

5. (1) A Commissioner shall be appointed for a term, not exceeding 7 years, specified in the instrument of his appointment and shall, if otherwise qualified, be eligible for re-appointment from time to time for a term, not exceeding 7 years, specified in the instrument of his re-appointment.

Corporate Affairs Commission.

(2) A person who is of or above the age of 65 years shall not be appointed as Commissioner or continue in that office.

(3) A Commissioner shall not, during his term of office, engage in any paid employment outside the duties of his office except with the approval of the Governor and is entitled to be paid—

(a) remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975; and

(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of him.

(4) The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment by the Governor of a Commissioner and a Commissioner is not subject to the provisions of that Act during his term of office as Commissioner.

(5) A Commissioner shall be deemed to have vacated his office—

(a) if he dies;

(b) if without the approval of the Governor he engages during his term of office in any paid employment outside the duties of his office;

(c) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts his resignation;

(d) if he becomes a bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes any assignment of his estate for their benefit;

(e) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;

(f) if he absents himself from duty for a period exceeding 14 consecutive days except—

(i) on leave granted by the Minister;

(ii) through illness or other unavoidable cause; or

Corporate Affairs Commission.

- (iii) pursuant to a right preserved by section 6;
- (g) if he is convicted in the State of a felony or a misdemeanour that is punishable by imprisonment for 12 months or upwards or if he is convicted elsewhere than in the State of an offence that, if committed in the State, would be a felony or misdemeanour so punishable;
- (h) if he is removed from office by the Governor under subsection (6);
- (i) on the day on which he attains the age of 65 years; or
- (j) if he is retired from office by the Governor under subsection (7).

(6) The Governor may remove a Commissioner from office on the ground of misbehaviour or incompetence.

(7) A Commissioner may be retired from office by the Governor after he attains the age of 60 years and before he attains the age of 65 years and, if he is so retired, he is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

(8) Where a Commissioner who, immediately before his appointment as Commissioner, was an officer of the Public Service, ceases to be a Commissioner otherwise than pursuant to subsection (5) (paragraph (c) excepted), he shall, if he has not attained the age of 60 years, be appointed to some position in the Public Service not lower in classification and salary than that which he held immediately before his appointment as Commissioner.

Preservation of certain rights.

6. (1) In this section, "superannuation scheme" means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

(2) Subject to subsection (3) and to the terms of his appointment, where a Commissioner was, immediately before his appointment as Commissioner—

- (a) an officer of the Public Service;

Corporate Affairs Commission.

- (b) a contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or
- (d) a person in respect of whom provision was made by an Act that he retain any rights accrued or accruing to him as an officer or employee,

he—

- (e) shall retain any rights accrued or accruing to him as such an officer, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as Commissioner; and
- (g) shall be entitled to receive any deferred or extended leave or any payment, pension or gratuity,

as if he had continued to be such an officer, contributor or person during his service as Commissioner, and—

- (h) his service as Commissioner shall be deemed to be service as an officer or employee for the purpose of any law under which he continues to contribute or by which that entitlement is conferred; and

- (i) he shall be deemed to be an officer or employee of the Crown, and the Crown shall be deemed to be his employer, for the purposes of the superannuation scheme to which he is entitled to contribute under this section.

(3) Where a Commissioner—

- (a) would, but for this subsection, be entitled under subsection (2) to contribute to a superannuation scheme, or to receive any payment, pension or gratuity under a superannuation scheme; and
- (b) becomes a contributor to another superannuation scheme (whether upon his appointment as Commissioner or at any later time while he holds office as Commissioner),

he ceases to be so entitled and the provisions of subsection (2) (i) cease to apply to or in respect of him.

Corporate Affairs Commission.

(4) Subsection (3) does not operate to prevent the payment to a Commissioner upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him if he had ceased by reason of his resignation to be an officer or employee for the purposes of that scheme.

(5) A Commissioner shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

Meetings of Commission.

10 7. (1) Meetings of the Commission may be convened by any Commissioner as the business of the Commission requires.

(2) The number of members which constitutes a quorum at any meeting of the Commission is 2.

15 (3) The Chairman or, in his absence, the Deputy Chairman of the Commission shall preside at a meeting of the Commission.

(4) Questions arising at a meeting of the Commission shall be determined by a majority of votes of the members present and voting and, in the event of an equality of votes, the Commissioner
20 presiding shall have a casting vote in addition to his deliberative vote.

(5) The procedure for the calling of, and for the conduct of business at, a meeting of the Commission shall be as determined by the Commission.

25 (6) The Commission shall cause full and accurate minutes to be kept of its proceedings at meetings.

Officers and employees of the Commission.

30 8. (1) Except as provided by this section, such officers and employees as may be necessary for the performance or exercise by the Commission of its functions and powers shall be appointed and employed under and subject to the Public Service Act, 1979.

Corporate Affairs Commission.

(2) For the purposes of the performance or exercise by the Commission of its functions and powers, the Commission may, with the approval of the Minister and of the body or person concerned and on such terms and conditions as may be approved
5 by the Public Service Board, make use of the services of any of the officers, employees or servants of the body or person.

(3) The Commission may, with the approval of the Public Service Board and on such terms and conditions as may be approved by that Board, appoint persons to be officers of the
10 Commission for the purpose of conducting or assisting in the conduct of investigations or inspections pursuant to any law relating to the regulation of companies or the securities industry.

(4) The maximum term for which a person may be appointed by the Commission under subsection (2) is 3 years, but
15 he is, if otherwise qualified, eligible for further appointment under that subsection.

(5) An officer referred to in subsection (3) is not, in his capacity as such, an officer within the meaning of the Public Service Act, 1979, but, if the terms and conditions on which he
20 is appointed so provide, any specified provisions of that Act or the regulations thereunder, whether with or without specified modifications, apply to and in respect of him as if he were a temporary employee within the meaning of that Act.

Authority of officers to act.

25 9. (1) The common seal of the Commission may be affixed to an instrument or writing by a Commissioner or by an officer or employee of the Commission authorised so to do either generally or in a particular case or class of cases and the Commissioner or other person so authorised shall attest by his signature the fact
30 and date of the seal being so affixed.

(2) Section 38 (II) of the Interpretation Act, 1897, does not apply to or in respect of the Commission.

Corporate Affairs Commission.

(3) A Commissioner authorised to do so by the Commission may execute any document on behalf of the Commission.

(4) Where a Commissioner has been authorised, as referred to in subsection (3), to execute any document on behalf of the Commission, that document may be executed in the name and on behalf of that Commissioner by any person authorised in writing by that Commissioner to do so.

(5) A document purporting to be executed as referred to in subsection (3) or (4) shall be deemed to have been duly executed by the Commission unless it is proved that the person who executed it was not duly authorised as referred to in subsection (3) or (4), as the case may be, and shall be admissible in evidence in any proceedings in the same way as it would be if it had been executed by the Commission.

15 Powers, etc., of Commission.

10. (1) The Commission shall have and may perform and exercise such functions and powers as may be conferred or imposed upon it by or under this or any other Act or any law of the Commonwealth, a Territory of the Commonwealth or another State.

(2) The Commission shall, as and when directed by the Minister so to do, report to the Minister with respect to the policy the Commission is pursuing or proposes to pursue in the performance or exercise of its functions and powers or such of them as are specified by the Minister when giving the direction.

(3) Except as to the contents of a report or recommendation by the Commission or a Commissioner, the Commission and the Commissioners are, in the performance or exercise of functions and powers under this Act or any other Act or law (other than those performed or exercised as an inspector pursuant to any law relating to the regulation of companies or the securities industry) subject to the control and direction of the Minister.

(4) The provisions of this section do not have effect or operation to the extent of any inconsistency with the Agreement.

Corporate Affairs Commission.

(5) In this section, "Agreement" means the agreement made on 22nd December, 1978, between the Commonwealth and the States in relation to a proposed scheme for the co-operative regulation of companies and the securities industry or, if that agreement is or has been amended or affected by another agreement, that agreement as so amended or affected.

Disposal of money by Commission.

11. (1) Except where otherwise expressly provided by or under this or any other Act or law, all money payable to the Commission shall be collected and received by the Commission on account of, and shall be paid into, the Consolidated Revenue Fund.

(2) The accounts of the Commission shall be audited by the Auditor-General who shall have, in respect thereof, all the powers conferred on the Auditor-General by any law for the time being in force relating to the audit of public accounts, and the Audit Act, 1902, shall apply to a Commissioner, the Commission and the officers and employees of the Commission in the same manner as it applies to accounting officers of public departments.

Annual report of Commission.

12. (1) As soon as practicable after 30th June, but on or before 31st December, in any year, the Commission shall prepare and forward to the Minister a report on the performance and exercise by the Commission, during the year ended on that 30th June, of the functions and powers conferred or imposed upon the Commission by or under this or any other Act or law.

(2) The Minister shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after the receipt by him of the report.

*Corporate Affairs Commission.***Delegation by Commission.**

13. (1) Except as otherwise expressly provided by this or any other Act, the Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its
5 common seal, delegate to any person any functions or powers that are conferred on the Commission by or under any Act (other than functions or powers the delegation of which is prohibited by the Act) or otherwise conferred on the Commission.

(2) The Commission may, by writing under its common
10 seal, revoke, wholly or in part, any delegation under subsection (1).

(3) A delegation under subsection (1) may be to—

(a) a specified person (whether a natural person or a body corporate); or

15 (b) the person for the time being holding a specified office under an Act.

(4) Except in so far as the instrument of delegation otherwise provides, a person to whom a function or power has been delegated under subsection (1) may—

20 (a) in the case of a natural person—by writing under his hand; or

(b) in the case of a body corporate—by writing under its common or official seal,

authorise another person to perform the function or exercise the
25 power so delegated and may, in like manner, revoke, wholly or in part, any such authority.

(5) An authority under subsection (4) may be given to—

(a) a specified person; or

30 (b) a person for the time being holding a specified office under an Act.

Corporate Affairs Commission.

(6) Any act or thing done in the performance of a function or the exercise of a power by a person to whom that function or that power has been delegated by the Commission under subsection (1) or by a person authorised by a delegate of the Commission under subsection (4) to perform that function or exercise that power has the same force and effect as if it had been done by the Commission.

(7) Where, under any Act that confers functions or powers on the Commission, the performance of a function or the exercise of a power by the Commission is dependent upon the opinion, belief or state of mind of the Commission in relation to a matter and that function or power has been delegated under subsection (1), that function or power may be performed or exercised by the delegate or by a person authorised by the delegate under subsection (4) upon the opinion, belief or state of mind of the delegate or of the authorised person, as the case may be, in relation to that matter.

(8) A delegation under subsection (1) does not prevent the performance of a function or the exercise of a power by the Commission.

(9) The giving of an authority under subsection (4) does not prevent the performance of a function or the exercise of a power by the person by whom the authority was given.

(10) Where a person purports to perform a function or exercise a power conferred on the Commission by or under an Act, it shall be presumed, unless the contrary is established, that the person is duly authorised as a delegate of the Commission or as a person duly authorised by such a delegate to perform the function or exercise the power.

(11) A document purporting to be signed by a person as a delegate of the Commission shall be deemed, unless the contrary is established, to have been signed by such a delegate and to have been so signed pursuant to the performance of a function or the exercise of a power duly delegated to the person by the Commission.

Corporate Affairs Commission.

(12) A document purporting to be signed by a person authorised by a delegate of the Commission to sign the document shall be deemed, unless the contrary is established, to have been signed by a person so authorised and to have been so signed pursuant to the performance of a function or the exercise of a power that he is duly authorised by such a delegate to perform or exercise.

(13) A delegation or authority under this section may be made or given subject to such conditions or such limitations as to the performance or exercise of any of the functions or powers delegated, or as to time or circumstances, as may be specified in the instrument of delegation or authority.

(14) Nothing in this section applies to a function or power that the Commission has by virtue of a delegation from the National Companies and Securities Commission.

Directions by Commission.

14. Where the Commission has delegated a function or power to a person under section 13—

- 20 (a) the Commission may give directions to the delegate with respect to the performance of that function or the exercise of that power; and
- (b) if the delegate has, under section 13 (4), authorised another person to perform that function or exercise that power, the delegate—
 - 25 (i) shall, if the Commission has given a direction to the delegate under paragraph (a) with respect to the performance of that function or the exercise of that power, give a corresponding direction to the other person; and
 - 30 (ii) may, subject to any direction given to the delegate by the Commission under paragraph (a), give directions to the other person with respect to the performance of that function or the exercise of that power.

*Corporate Affairs Commission.***Secrecy.**

15. (1) Subject to this section, a person who is, or has at any time been, a Commissioner or a person appointed for the purposes of this Act or of any other Act that confers functions or powers on the Commission or authorised to perform or exercise any function or power of the Commission under this or any other Act or any such function or power on behalf of the Commission shall not, except to the extent necessary to perform his official duties, or to perform or exercise such a function or power, either directly or indirectly, make a record of, or divulge or communicate to any person, any information that is or was acquired by him by reason of his being or having been so appointed or authorised, or make use of any such information, for any purpose other than the performance of his official duties or the performance or exercise of that function or power.

Penalty: \$5,000 or imprisonment for 1 year, or both.

(2) Nothing in subsection (1) precludes a person from—

- (a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under any prescribed Act;
- (b) divulging or communicating to a court in the course of any proceedings referred to in paragraph (a) any matter or thing coming under his notice in the performance of his official duties or in the performance of a function or the exercise of a power referred to in that subsection;
- (c) producing a document or divulging or communicating information to a person to whom, in the opinion of the Commission, it is in the public interest that the document be produced or the information be divulged or communicated; or
- (d) producing a document or divulging or communicating information that is required or permitted by any Act, or any Act of the Commonwealth or of another State, to be produced, divulged or communicated, as the case may be.

Corporate Affairs Commission.

(3) This section does not apply in circumstances where section 15 of the National Companies and Securities Commission (State Provisions) Act, 1981, applies.

Restrictions on dealings in securities.

- 5 16. (1) A person who is, or has at any time been, a Commissioner or a person appointed for the purposes of this Act or any other Act that confers functions or powers on the Commission or authorised to perform or exercise any function or power of the Commission or a Commissioner under this or any other Act or any
10 such function or power on behalf of the Commission or a Commissioner and has, by reason that he is, or has at any time been, a Commissioner or so appointed or authorised, information that is not generally available but, if it were, would be likely materially
15 to affect the price of any securities, shall not deal in, or cause or procure any other person to deal in, those securities.

Penalty: \$20,000 or imprisonment for 5 years.

- (2) Where a person to whom subsection (1) applies has information as mentioned in that subsection and deals in any securities in contravention of that subsection, he is liable to com-
20 pensate any other party to the transaction for any loss sustained by that party by reason of any difference between the price at which the securities were dealt in in that transaction and the price at which they would be likely to have been dealt in in such a trans-
25 action at the time the first-mentioned transaction took place if the information had been generally available.

(3) The amount of compensation for which a person is liable under subsection (2) is—

- 30 (a) in a case to which paragraph (b) does not apply—the amount of the loss sustained by the person claiming the compensation; or

Corporate Affairs Commission.

(b) if the first-mentioned person has been found by a court to be liable to pay an amount or amounts to any other person or persons under subsection (2) or under any other Act by reason of the same act or transaction—
5 the amount of that loss less the amount or the sum of the amounts that the first-mentioned person has been so found to be liable to pay.

(4) For the purposes of subsection (3), the onus of proving that the liability of a person to pay an amount to another person
10 arose from the same act or transaction from which another liability arose lies on the person liable to pay the amount.

(5) An action under this section for recovery of compensation for a loss shall not be commenced after the expiration of 2 years after the date of completion of the transaction in which the
15 loss occurred.

(6) The Commission may, if the Commission considers it to be in the public interest to do so, bring an action in the name of and for the benefit of a person for recovery of compensation for a loss referred to in subsection (2).

20 (7) Nothing in subsection (2) affects any liability that a person may incur under any other law.

(8) This section does not apply in circumstances where section 16 of the National Companies and Securities Commission (State Provisions) Act, 1981, applies.

25 Notification of interests.

17. (1) A Commissioner or a person who is appointed for the purposes of this Act or of any other Act that confers functions or powers on the Commission or is authorised to perform or exercise

Corporate Affairs Commission.

any function or power of the Commission conferred on the Commission by an Act or any such function or power on behalf of the Commission and who, in the course of his official duties or the performance or exercise of the function or power, is required to
5 consider any matter relating to—

- (a) a body corporate in securities of which he has a relevant interest;
- (b) securities in which he has a relevant interest;
- (c) securities of the same class as securities in which he has
10 a relevant interest;
- (d) a person or body—
 - (i) by whom or by which he is employed or has been employed at any time during the immediately preceding 3 years; or
 - (ii) with whom or with which he is associated; or
- (e) a body corporate that is related to a body corporate by which he is employed or has been employed at any time during the immediately preceding 3 years,

shall forthwith in writing so inform the Commission or, if he is a
20 Commissioner, the Minister.

- (2) It is a defence to a prosecution for an offence against this section in respect of a failure by a person to inform the Commission or the Minister that he is required to consider a matter relating to a particular body corporate, a particular person or
25 particular securities if the person establishes that, at the time when he was required to consider the matter, he was not aware of a fact or matter the existence of which obliged him to inform the Commission or the Minister that he was required to consider the first-mentioned matter.

Corporate Affairs Commission.

(3) The questions whether a person has a relevant interest in securities, whether a person is associated with a person or body and whether 2 bodies corporate are related to each other for the purposes of this section shall be determined as prescribed under the Commonwealth Act for the purposes of section 49 (4) of that Act.

Penalty : \$5,000 or imprisonment for 1 year, or both.

References in other Acts, etc.

18. On and from the day appointed and notified under section 10 2 (2), a reference (however expressed) in any Act, by-law, regulation, ordinance, statutory instrument or other instrument to—

(a) the Registrar, as defined by the Companies Act, 1961, immediately before the commencement of section 13 of the Securities Industry (Amendment) Act, 1971;

(b) the Corporate Affairs Commission constituted by the Securities Industry Act, 1970;

(c) the Commissioner for Corporate Affairs appointed under, or the Corporate Affairs Commission constituted by, the Securities Industry Act, 1975, before the commencement of the Securities Industry (Corporate Affairs Commission) Amendment Act, 1979; or

(d) the Corporate Affairs Commission constituted by the Securities Industry Act, 1975, or by Part XII of that Act,

shall be construed as a reference to the Corporate Affairs Commission constituted by this Act.

*Corporate Affairs Commission.***Proceedings for offences.**

19. (1) Proceedings for an offence against a provision of this Act may be taken before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

5 (2) Proceedings for an offence against a provision of this Act may be taken by the Commission or, with the consent of the Minister, by any other person.

(3) Notwithstanding anything in any Act, proceedings for an offence against a provision of this Act may be instituted 10 within a period of 5 years after the act or omission alleged to constitute the offence or, with the consent of the Minister, at any later time.

Repeals.

20. Each Act specified in Column 1 of Schedule 1 is, to the 15 extent specified opposite that Act in Column 2 of Schedule 1, repealed.

Savings and transitional provisions.

21. Schedule 2 has effect.

Regulations.

20 22. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Corporate Affairs Commission.**SCHEDULE 1.**

(Sec. 20.)

REPEALS.

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act. Extent of repeal.
10	1976, No. 3 ..	Securities Industry Act, 1975 .. So much of section 2 as relates to Part XII. Sections 7 (1) and (2), 13, 14 and 15. Part XII.
	1978, No. 40 ..	Securities Industry (Amendment) Act, 1978. Schedule 1 (3).
15	1979, No. 108 ..	Securities Industry (Corporate Affairs Commission) Amendment Act, 1979. Schedule 1 (2), (5)-(7) and (11)-(16).
	1979, No. 176 ..	Futures Markets Act, 1979 .. Section 8.
20	1979, No. 181 ..	Securities Industry (Fidelity Funds) Amendment Act, 1979. Schedule 1 (1), (6) and (7).
	1980, No. 187 ..	Miscellaneous Acts (Retirement of Statutory Officers) Amendment Act, 1980. So much of Schedule 1 as relates to the Securities Industry Act, 1975.

SCHEDULE 2.

(Sec. 21.)

SAVINGS AND TRANSITIONAL PROVISIONS.

1. In this Schedule, "appointed day" means the day appointed and notified under section 2 (2).

2. Notwithstanding the enactment of this Act—

- 30 (a) the corporation constituted by this Act is the same legal entity as the corporation continued by clause 5 of Schedule 2 to the Securities Industry (Corporate Affairs Commission) Amendment Act, 1979; and
- 35 (b) the corporation so continued further continues as the corporation constituted by this Act,

Corporate Affairs Commission.

SCHEDULE 2—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

and a reference in any Act, by-law, regulation, order, statutory instrument or other instrument to the Corporate Affairs Commission continued in
5 existence by this Act shall accordingly be construed as a reference to the Corporate Affairs Commission constituted by this Act.

3. A person who, immediately before the appointed day, held office under the Securities Industry Act, 1975, as the Chairman, Deputy Chairman or other Commissioner of the Corporate Affairs Commission—

- 10 (a) shall be deemed to have been duly appointed on that day as the Chairman, Deputy Chairman or other Commissioner of the Commission constituted by this Act;
- (b) shall be deemed to have been so appointed—
- 15 (i) upon the same terms and conditions as those applicable to him immediately before that day; and
- (ii) for the residue of the term of office for which he was appointed; and
- (c) is eligible for appointment under this Act with effect from the expiration of that term of office or from any subsequent time.

20 4. For the purposes of any Act, service under the Securities Industry Act, 1975, as the Chairman, Deputy Chairman or other Commissioner of the Corporate Affairs Commission shall be deemed to be service under this Act as the Chairman, Deputy Chairman or other Commissioner, as the case may require, of the Commission constituted by this Act.

25 5. A reference in section 5 or 6 to an appointment as Commissioner includes a reference to an appointment under section 133 of the Securities Industry Act, 1975, whether before or after amendments made by the Securities Industry (Corporate Affairs Commission) Amendment Act, 1979.

6. A person who, immediately before the appointed day, held office
30 under section 137 (3) of the Securities Industry Act, 1975—

- (a) shall be deemed to have been duly appointed on that day under section 8 (3);
- (b) shall be deemed to have been so appointed—
- 35 (i) upon the same terms and conditions as those applicable to him immediately before that day; and

*Corporate Affairs Commission.*SCHEDULE 2—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

- (ii) for the residue of the term of office for which he was appointed; and
- 5 (c) is eligible for appointment under section 8 (3) with effect from the expiration of that term of office or from any subsequent time.
7. The amendments made by sections 143 and 144 of the Securities Industry Act, 1975, continue to have force and effect as if those sections had not been repealed by this Act.
- 10 8. (1) In this clause, "report" means a report on the performance and exercise by the Commission (including the Corporate Affairs Commission as constituted before the appointed day) functions and powers conferred or imposed on the Commission (including the Corporate Affairs Commission as so constituted) by or under this or any other Act or law.
- 15 (2) Where, at the appointed day, the report in respect of the year ended on the preceding 31st December had not been submitted as required by section 141 of the Securities Industry Act, 1975, the Commission shall, as soon as practicable after, but within 6 months after, the appointed day, prepare and forward that report to the Minister.
- 20 (3) If the appointed day occurs during the 6 months ended on 30th June in any year—
- (a) the Commission shall, as soon as practicable after, but within 6 months after, that 30th June, prepare and forward to the Minister a report in respect of that period of 6 months; and
- 25 (b) section 12 does not operate so as to require a report to be forwarded to the Minister in respect of any period ended on or before that 30th June.
- (4) If the appointed day occurs during the 6 months ended on 31st December in any year—
- 30 (a) the Commission shall, as soon as practicable after, but within 6 months after, that 31st December, prepare and forward to the Minister a report in respect of the year ended on that date;
- (b) the Commission shall, as soon as practicable after, but within 6 months after, the next following 30th June, prepare and forward
- 35 to the Minister a report in respect of the period of 6 months ended on that 30th June; and

Corporate Affairs Commission.

SCHEDULE 2—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

- (c) section 12 does not operate so as to require any report to be forwarded to the Minister in respect of any period ended on or before that 30th June.

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- (5) The Minister shall lay each report forwarded to him under this clause or cause it to be laid before both Houses of Parliament as soon as practicable after the receipt by him of the report.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1981

(80c)

Corporate Affairs Commission

SCHEDULE 2—continued

Savings and Transitional Provisions—continued

(1) Section 12 does not operate as to require any report to be forwarded to the Minister in respect of any period ended on or before the 30th June.

(2) The Minister shall lay each report forwarded to him under this clause or cause it to be laid before both Houses of Parliament as soon as practicable after the receipt by him of the report.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1981



