

NATIONAL COMPANIES AND SECURITIES COMMISSION (STATE PROVISIONS) ACT, 1981, No. 60

New South Wales



ANNO TRICESIMO

ELIZABETHÆ II REGINÆ

Act No. 60, 1981.

An Act to make provision for the operation of the National Companies and Securities Commission in the State. [Assented to, 28th May, 1981.]

See also Securities Industry (Application of Laws) Act, 1981; Companies (Acquisition of Shares) (Application of Laws) Act, 1981; Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981; Corporate Affairs Commission Act, 1981; Crimes (Securities Industry) Amendment Act, 1981.

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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 "National Companies and Securities Commission (State Provisions) 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, unless the contrary intention appears—

"Agreement" means the agreement made on 22nd December, 1978, between the Commonwealth and the States a copy of which is set out in Schedule 1 or, if that agreement is or has been amended or affected by another agreement, that agreement as so amended or affected;

"Commission" means the National Companies and Securities Commission established by the National Companies and Securities Commission Act 1979 of the Commonwealth;

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

"deal" has the same meaning as in the Commission Act;

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“functions” includes duties;

“investment contract” has the same meaning as in the Commission Act;

“Ministerial Council” means the body known as the Ministerial Council for Companies and Securities that is established by the Agreement;

“power” includes an authority;

“regulations” means regulations under this Act;

“securities” has the same meaning as in the Commission Act.

(2) In this Act—

- (a) a reference to an Act includes a reference to this Act and includes a reference to a regulation or other instrument made under, or by virtue of, an Act;
- (b) a reference to a Commonwealth Act includes a reference to a regulation or other instrument made under, or by virtue of, a Commonwealth Act; and
- (c) a reference to an Act of another State includes a reference to—
 - (i) a regulation or other instrument made under, or by virtue of, an Act of another State;
 - (ii) an enactment of the Australian Capital Territory, the Northern Territory or an external Territory to which the operation of the Agreement extends; and
 - (iii) a regulation or other instrument made under, or by virtue of, an enactment referred to in subparagraph (ii).

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(3) A reference in this Act to a member of the staff of the Commission shall be read as a reference to—

- (a) an employee of the Commission;
- (b) a person whose services are available to the Commission by virtue of arrangements made under section 24 (1) or (2) of the Commission Act; or
- (c) a person engaged under section 25 (1) of the Commission Act.

(4) In this Act, unless the contrary intention appears, where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

(5) This Act, other than sections 1, 2, 3, 4, 20, 21 and 22, is a relevant Code within the meaning of the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981.

Commission acting under State Act represents Crown.

4. (1) In the performance of a function or the exercise of a power under an Act, the Commission represents the Crown in right of the State of New South Wales.

(2) The Commission shall perform the functions and exercise the powers conferred or expressed to be conferred on it by or under an Act in accordance with the Agreement and shall comply in all respects with the provisions of the Agreement that are applicable to it in the performance of such functions and the exercise of such powers.

(3) Anything done by the Commission which could have been validly done by the Commission if it were a body established by the law of the State with the powers and functions conferred or expressed to be conferred on the Commission by laws of the State, or if it were a delegate of such a body, shall be valid and effective for the purposes of the law of the State.

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(4) No proceedings lie against the Commission to restrain it from acting beyond its capacity or powers if the act or proposed act to which the proceedings relate is one to which subsection (3) applies or would apply.

Judicial notice.

5. (1) Every court shall take judicial notice of the common seal of the Commission affixed to a document and, unless the contrary is established, shall presume that it was duly affixed.

(2) Every court shall take judicial notice of—

(a) the official signature of any person who holds or has held, or is acting or has acted in, the office of Chairman, Deputy Chairman or other member of the Commission; and

(b) the fact that that person holds or has held or is acting or has acted in that office,

if a signature purporting to be the signature of that person appears on any official document.

(3) In this section, a reference to a court shall be construed as including a reference to—

(a) a judge of a court; and

(b) any other person authorized by law or by consent or parties to receive evidence,

and, in relation to a person referred to in paragraph (b), the reference to taking judicial notice shall be construed as a reference to taking the like notice as would be taken by a court.

Protection of members, &c.

6. (1) A member or an acting member of the Commission has, in the performance of his functions or the exercise of his powers as such a member or acting member in relation to a

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hearing before the Commission held for the purposes of the performance of a function or the exercise of a power conferred or expressed to be conferred on it by or under an Act, the same protection and immunity as a Justice of the High Court of Australia.

(2) A barrister, solicitor or other person appearing on behalf of a person at a hearing referred to in subsection (1) has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court of Australia.

(3) Subject to this Act, a person summoned to attend, or appearing before, the Commission at a hearing referred to in subsection (1) as a witness has the same protection as a witness in proceedings in the High Court of Australia.

(4) The Commission, a person appointed for the purposes of a prescribed Act, the Commission Act, or any Commonwealth Act that is a prescribed Act for the purposes of section 41 (4) of the Commission Act, a member of the staff of the Commission or a person authorized to perform or exercise any function or power of the Commission or any function or power on behalf of the Commission is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power conferred or expressed to be conferred by or under an Act.

(5) A member of the Ministerial Council is not liable to an action, suit or proceeding for or in relation to an act done or omitted to be done by the Ministerial Council in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power, conferred on that Council by or under an Act.

(6) A member of the Ministerial Council is not liable to an action, suit or proceeding for or in relation to an act done or omitted to be done by the member in the exercise of a discretion under an Act that the Ministerial Council has, pursuant to clause 25 of the Agreement, authorized him to exercise.

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Hearings before Commission.

7. (1) The Commission may hold hearings for the purpose of the performance of a function or the exercise of a power conferred or expressed to be conferred on it by or under an Act.

(2) Subject to this section, where the Commission is required or decides to hold a hearing, the Commission may either direct that the hearing take place in public or direct that the hearing take place in private.

(3) Subject to subsections (4) and (6), if a person who is entitled under an Act to be afforded the opportunity by the Commission to appear at a hearing before the Commission requests that the hearing take place in public, the Commission shall direct that the hearing take place in public.

(4) Where the Commission holds a hearing under a provision of an Act that requires the hearing to take place in private, the Commission shall direct that the hearing take place in private.

(5) Where the Commission directs that a hearing to be held by it take place in private, the Commission may give directions as to the persons who may be present at the hearing.

(6) Where, at a hearing by the Commission that is held in public, the Commission is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, the Commission may—

(a) direct that the hearing or a part of the hearing take place in private and give directions as to the persons who may be present; or

(b) give directions preventing or restricting the publication of evidence given before the Commission or of matters contained in documents lodged with the Commission.

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(7) Nothing in any direction given by the Commission under subsection (5) or paragraph (a) of subsection (6) prevents the presence at a hearing of—

- (a) a person who is entitled under an Act to be afforded the opportunity to appear at that hearing;
- (b) a person representing, pursuant to section 9 (2), a person referred to in paragraph (a); or
- (c) a person representing, pursuant to section 9 (2), a person who, by reason of a direction given by the Commission under subsection (5) or paragraph (a) of subsection (6), is entitled to be present at the hearing.

(8) Where the Commission directs that a hearing or part of a hearing before the Commission take place in private, a person (other than a member or an acting member of the Commission, or a member of the staff of the Commission approved by the Commission) shall not be present at the hearing unless he is entitled to be present by virtue of the direction or by virtue of subsection (7).

Penalty: \$1,000 or imprisonment for 3 months.

(9) Where the Commission is required by an Act to afford a person an opportunity to appear at a hearing before the Commission and to make submissions and give evidence to the Commission, the Commission shall appoint a date, time and place for the hearing and cause notice in writing of the date, time and place to be given to the person.

(10) Where a person referred to in subsection (9) does not wish to appear before the Commission, he may, before the date of the hearing, lodge with the Commission in writing any submissions that he wishes the Commission to take into account in relation to the matter.

(11) The Commission shall take into account any submission made or lodged or evidence given to the Commission when making any decision on the matter to which the submission or evidence relates.

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Power to summon witnesses and take evidence.

8. (1) A member or an acting member of the Commission may summon a person to appear before the Commission at a hearing held for the purpose of the performance of a function or the exercise of a power conferred on it by or under an Act to give evidence and to produce such documents (if any) as are referred to in the summons.

(2) The Commission may, at a hearing referred to in subsection (1), take evidence on oath or affirmation and for that purpose a member or an acting member of the Commission may—

- (a) require a person appearing at the hearing to give evidence either to take an oath or make an affirmation; and
- (b) administer an oath or affirmation to a person so appearing at the hearing.

(3) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers he will give to the questions asked him will be true.

(4) The preceding provisions of this section have effect notwithstanding anything to the contrary in the Evidence Act, 1898, or the Oaths Act, 1900.

Proceedings at hearings.

9. (1) At a hearing before the Commission held for the purpose of the performance of a function or the exercise of a power conferred on it by or under an Act—

- (a) the proceedings shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of that Act and a proper consideration of the matters before the Commission permit;
- (b) the Commission is not bound by the rules of evidence;
- (c) the Commission may, upon such conditions as it thinks fit, permit a person to intervene in the proceedings;

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- (d) the Commission shall observe the rules of natural justice; and
- (e) the proceedings shall so far as applicable be conducted as if the hearing were a meeting of the Commission.

(2) At a hearing before the Commission referred to in subsection (1)—

- (a) a natural person may appear in person or may be represented by an employee of the person approved by the Commission;
- (b) a body corporate may be represented by an employee, or by a director or other officer, of the body corporate approved by the Commission;
- (c) an unincorporated association of persons or a member of an unincorporated association of persons may be represented by a member or officer of the association approved by the Commission; and
- (d) any person may be represented by a barrister or solicitor of the Supreme Court or of the Supreme Court of another State or of a Territory or of the High Court.

(3) A person who attends at a hearing before the Commission pursuant to a summons issued under section 8 is entitled to be paid—

- (a) in the case where the summons was issued at the request of a person—by that person; or
- (b) in any other case—by the Commission,

such allowances and expenses as are provided for by the regulations.

(4) The Commission may permit a person appearing as a witness before the Commission to give evidence by tendering and, if the Commission thinks fit, verifying by oath or affirmation, a written statement.

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Failure of witnesses to attend and answer questions.

10. (1) A person served, as prescribed, with a summons to appear as a witness at a hearing before the Commission held for the purpose of the performance of a function or the exercise of a power conferred on it by or under an Act shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to attend from day to day unless excused, or released from further attendance, by a member or an acting member of the Commission.

(2) A person appearing as a witness at a hearing referred to in subsection (1) shall not, without reasonable excuse—

- (a) when required pursuant to section 8 either to take an oath or make an affirmation—refuse or fail to comply with the requirement;
- (b) refuse or fail to answer a question that he is required to answer by the member or acting member of the Commission presiding at the hearing; or
- (c) refuse or fail to produce a document that he was required to produce by a summons served on him as prescribed.

(3) A person shall not, at a hearing referred to in subsection (1), give evidence that is false or misleading.

(4) Where—

- (a) a duly qualified legal practitioner is required to answer a question or produce a document at a hearing referred to in subsection (1); and
- (b) the answer to the question would disclose, or the document contains, a privileged communication made by or to the legal practitioner in his capacity as a legal practitioner,

the legal practitioner is entitled to refuse to comply with the requirement unless the person to whom or by whom the communication was made agrees to the legal practitioner

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complying with the requirement but, where the legal practitioner refuses to comply with the requirement, he shall, if so required by the member or acting member of the Commission presiding at the hearing, and if he knows the name and address of the person to whom or by whom the communication was made, forthwith furnish that name and address in writing to the Commission.

(5) It is not a reasonable excuse for the purposes of subsection (2) for a person to refuse or fail to answer a question put to him that the answer might tend to incriminate him but, where the person claims, before answering the question, that the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings for a contravention of subsection (3) or proceedings in relation to a charge of perjury in respect of the answer.

(6) A person who contravenes subsection (1), (2), (3) or (4) is guilty of an offence and is punishable, upon conviction, by a fine not exceeding \$1,000, or imprisonment for a period not exceeding 3 months.

(7) Where the Commission is satisfied that—

(a) a person served, as prescribed, with a summons to appear as a witness at a hearing referred to in subsection (1) has, without reasonable excuse, failed to attend as required by paragraph (a) or (b) of subsection (1); or

(b) a person appearing as a witness at a hearing referred to in subsection (1) has, without reasonable excuse—

(i) when required pursuant to section 8 either to take an oath or make an affirmation;

(ii) when required by the member or acting member of the Commission presiding at the hearing to answer a question; or

(iii) when required to produce a document by a summons served on him as prescribed,

refused or failed to comply with the requirement,

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a member or acting member of the Commission may, by instrument in writing, certify the failure to attend or the refusal or failure to comply with the requirement, as the case may be, to the Supreme Court.

(8) Where a certificate is given under subsection (7), the Supreme Court may inquire into the case and, if it is satisfied that the person to whom the certificate relates has, without reasonable excuse, failed to attend or refused or failed to comply with a requirement as mentioned in the certificate—

- (a) may order the person to attend, or to comply with the requirement, at a hearing before the Commission to be held at a time and place specified in the order; or
- (b) may punish the person in the same manner as if he had been guilty of contempt of the Court and, if it thinks fit, also make an order under paragraph (a).

Contempt of Commission.

11. A person shall not—

- (a) insult a member or an acting member of the Commission in the performance of his functions or the exercise of his powers as such a member or acting member at a hearing before the Commission held for the purposes of the performance of a function or the exercise of a power conferred on it by or under an Act;
- (b) interrupt such a hearing;
- (c) create a disturbance or take part in creating or continuing a disturbance, in or near a place where the Commission is holding such a hearing; or
- (d) do any other act that would, if the Commission were a court of record, constitute contempt of that court.

Penalty : \$1,000 or imprisonment for 3 months.

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Delegation by Commission.

12. (1) The Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to any person, being an authority of any State, the Australian Capital Territory, the Northern Territory or an external Territory to which the operation of the Agreement extends or an officer of any State, the Australian Capital Territory, the Northern Territory or such an external Territory or of such an authority, any functions or powers that are conferred or expressed to be conferred on the Commission by or under any Act (other than functions or powers the delegation of which is prohibited by the Act).

(2) The Commission may delegate under subsection (1) a function or power of the Ministerial Council that the Commission is authorized by that Council to perform or exercise other than a function or power that the Ministerial Council has directed the Commission not to delegate.

(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, an Act of another State or a Commonwealth Act.

(4) 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,

authorize another person to perform the function or exercise the power so delegated.

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

- (a) a specified person; or

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- (b) a person for the time being holding a specified office under an Act, an Act of another State or a Commonwealth Act.
- (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 authorized 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 or is expressed to confer 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 authorized by the delegate under subsection (4) upon the opinion, belief or state of mind of the delegate or of the authorized 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 or expressed to be conferred on the Commission by or under an Act, an Act of another State or a Commonwealth Act, it shall be presumed, unless the contrary is established, that the person is duly authorized as a delegate of the Commission or as a person duly authorized by such a delegate to perform the function or exercise the power.

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(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.

(12) A document purporting to be signed by a person authorized 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 authorized and to have been so signed pursuant to the performance of a function or the exercise of a power that he is duly authorized by such a delegate to perform or exercise.

(13) Where a function or power of the Commission is, or is to be, performed or exercised by a person to whom the Commission has delegated the function or power under subsection (1) or by a person authorized by such a delegate under subsection (4) to perform the function or exercise the power—

(a) the provisions of sections 6 to 11 (other than section 9 (1) (e)) apply for the purpose of the performance of the function or the exercise of the power by the person in like manner as they would apply if the function were being performed or the power were being exercised by the Commission; and

(b) for the purpose of the application of the provisions of those sections in accordance with paragraph (a), references in those provisions to the Commission or to a member or acting member other than—

(i) the references to the Commission first and second occurring in section 7 (3) and first, second and third occurring in section 7 (9); and

(ii) the reference to the Commission in section 9 (3) (b),

shall be construed as references to the person.

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Authority, &c., of State may act as delegate.

13. A person, being an authority of the State or an officer of the State or of such an authority, may perform or exercise any functions or powers that are conferred or expressed to be conferred on the Commission by or under any Act, an Act of another State or a Commonwealth Act, being functions or powers—

- (a) that are delegated to that person pursuant to this Act, an Act of another State or the Commission Act; or
- (b) which, pursuant to this Act, an Act of another State or the Commission Act, he is authorized by a delegate to perform or exercise,

and may perform or exercise those functions or powers in addition to carrying out his duties as an authority of the State or as an officer of the State or of such an authority.

Directions by Commission.

14. Where the Commission has delegated a function or power to a person under section 12—

- (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 12 (4), authorized 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, appointed for the purposes of a prescribed Act or authorized to perform or exercise any function or power of the Commission conferred or expressed to be conferred on the Commission by an Act or a relevant 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 authorized, 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 or relevant 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, Commonwealth Act or Act of another State to be produced, divulged or communicated, as the case may be.

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(3) In this section, "relevant Act" means the Commission Act, any Commonwealth Act that is a prescribed Act for the purposes of section 47 (2) of the Commission Act, or any Act of another State that is a prescribed Act for the purposes of a provision of an Act or enactment of the relevant State or Territory that corresponds to this section.

Restrictions on dealings in securities.

16. (1) A person who is, or has at any time been, appointed for the purposes of a prescribed Act or authorized to perform or exercise any function or power of the Commission conferred or expressed to be conferred on the Commission by an Act, the Commission Act, any Commonwealth Act that is a prescribed Act for the purposes of section 47 (2) of the Commission Act, or any Act of another State that is a prescribed Act for the purposes of a provision of an Act or enactment of the relevant State or Territory that corresponds to section 15 of this Act or any such function or power on behalf of the Commission and has, by reason that he is, or has at any time been, so appointed or authorized, 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 when 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 or an Act of another State or a Commonwealth 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.

Notification of interests.

17. (1) A person who is appointed for the purposes of a prescribed Act or is authorized to perform or exercise any function or power of the Commission conferred or expressed to be conferred on the Commission by an Act, the Commission Act, any Commonwealth Act that is a prescribed Act for the purposes of section 47 (2) of the Commission Act, or any Act of another State that is a prescribed Act for the purposes of a provision of an Act or enactment of the relevant State or Territory that corresponds to section 15 of this Act or any such function or power on behalf of

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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 so inform the Commission in writing.

(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 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 that he was required to consider the first-mentioned matter.

(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 Commission Act for the purposes of section 49 (4) of that Act.

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

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Provisions relating to Ministerial Council.

18. (1) A certificate purporting to be signed by a member of the Ministerial Council, or by a person authorized by the Ministerial Council to sign certificates for the purposes of section 51 (1) of the Commission Act or of this subsection, stating that the Ministerial Council has made any nomination, appointment or recommendation, given any consent or direction, passed any resolution, done any other act or formed any opinion is, upon mere production, receivable as prima facie evidence of that fact.

(2) A certificate purporting to be signed by a member of the Ministerial Council stating that a specified person is authorized by the Ministerial Council to sign certificates for the purposes of section 51 (1) of the Commission Act or of subsection (1) is, upon mere production, receivable as prima facie evidence that the person is so authorized.

(3) A function or power conferred by an Act on the Ministerial Council may, if the Ministerial Council has authorized a member of the Ministerial Council, or has authorized the Commission, to perform or exercise that function or power, be performed or exercised by that member or by the Commission, as the case may be.

Annual report and financial statements of Commission to be tabled in Parliament.

19. (1) The Minister shall cause—

- (a) copies of the report and financial statements of the Commission prepared by the Commission in each year pursuant to section 52 (1) of the Commission Act; and
- (b) a copy of the report of the Auditor-General for the Commonwealth on those financial statements,

submitted to the Minister by the Commission pursuant to section 52 (3) of the Commission Act, to be laid before each House of Parliament within 15 sitting days of that House after their receipt by him.

National Companies and Securities Commission (State Provisions).

(2) For the purposes of subsection (1), sitting days shall be counted, whether or not they occur during the same session.

Supreme Court may make rules relating to contempt proceedings.

20. (1) Rules of court may be made under the Supreme Court Act, 1970, for or with respect to inquiries held by the Court under section 10 (8) of this Act or under section 39 (8) of the Commission Act.

(2) Subsection (1) does not limit the rule-making powers conferred by the Supreme Court Act, 1970.

Regulations.

21. (1) The Governor may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations providing for allowances and expenses for the purposes of section 9 (3) may provide for those allowances and expenses by reference to a scale of expenses as in force for the time being for witnesses who attend before a court specified in the regulations, being a federal court or the Supreme Court or the Supreme Court of another State or of a Territory.

(3) The regulations may be of general or specially limited application or may differ according to differences in time, place or circumstance.

(4) Regulations prescribing matters for the purposes of this Act may prescribe those matters by reference to regulations for the time being in force under the Commission Act.

(5) The power of the Governor to make regulations shall be exercised only in accordance with advice that is consistent with resolutions of the Ministerial Council.

National Companies and Securities Commission (State Provisions).

Rights of public servants who become members or employees of Commission.

22. (1) The Governor may, by instrument in writing, declare that the provisions of subsection (2) or (3), or both, apply to a person specified in the instrument, and a declaration under this subsection may be made unconditionally or subject to conditions.

(2) Where—

(a) a person, in respect of whom a declaration under subsection (1) is in force in relation to this subsection, ceases to be engaged in a period of service—

(i) during the whole of which he held office as a full-time member or employee of the Commission (or both successively); or

(ii) during any part or parts of which he held office as such a full-time member or employee (or both successively) and during the remainder of which he held office as a full-time member of the Corporate Affairs Commission; and

(b) he was, immediately before the commencement of that period, an officer of the Public Service,

he is, if he has not attained the age of 60 years, entitled to be appointed to some position in the Public Service not lower in classification and salary than that which he held immediately before the commencement of that period.

(3) A person, in respect of whom a declaration under subsection (1) is in force in relation to this subsection, shall, for the purposes of the Superannuation Act, 1916, be deemed—

(a) to be on leave of absence from the service of the employer in whose service he was employed immediately before he became a full-time member or employee of the Commission; and

(b) to be in receipt of salary at the rate at which remuneration is payable to him as such a full-time member or employee.

National Companies and Securities Commission (State Provisions).

(4) Subsection (2) does not apply to a person if he ceases to hold office—

- (a) as a full-time member of the Commission—pursuant to section 18 of the Commonwealth Act; or
- (b) as a full-time member of the Corporate Affairs Commission—for any reason, other than the expiration of his term of office or his resignation.

(5) Where, but for this subsection, the operation of subsection (2) in relation to a person would be precluded by reason only of the existence of a period between his holding any of the offices referred to in subsection (2) (a), that period shall, but only if the Governor so directs, be disregarded for the purposes of subsection (2).

SCHEDULE 1.

(Sec. 3 (1).)

AN AGREEMENT made the twenty-second day of December, One thousand nine hundred and seventy-eight, between—

THE COMMONWEALTH OF AUSTRALIA of the first part,
THE STATE OF NEW SOUTH WALES of the second part,
THE STATE OF VICTORIA of the third part,
THE STATE OF QUEENSLAND of the fourth part,
THE STATE OF SOUTH AUSTRALIA of the fifth part,
THE STATE OF WESTERN AUSTRALIA of the sixth part and
THE STATE OF TASMANIA of the seventh part.

WHEREAS—

(A) it is generally acknowledged in the interests of the public and of persons and authorities concerned with the administration of the laws relating to—

- (a) companies; and

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

- (b) the regulation of the securities industry,

that there should be uniformity both in those laws and in their administration in the States and Territories of Australia in order to promote commercial certainty and bring about a reduction in business costs and greater efficiency of the capital markets and that the confidence of investors in the securities market should be maintained through suitable provisions for investor protection;

(B) the Governments of the Commonwealth and of the States of Australia are agreed that such uniformity will be achieved by establishing and implementing a co-operative scheme the objectives of which are to ensure that—

- (a) the legislation relating to the scheme is, and continues to be, uniform throughout Australia at all times;
- (b) the legislation is administered on a uniform basis;
- (c) the Commonwealth and the States are able to co-operate with each other in regard to the matters to be provided in the legislation and the way in which the legislation is administered;
- (d) the legislation is capable of effective administration throughout Australia with the minimum of procedural requirements and is so administered; and
- (e) changes in the legislation are proposed for consideration as appropriate from time to time and amendments made when the need for reform arises;

(C) as the result of conferences between their respective Ministers the Governments have reached agreement on a scheme to achieve those objectives;

(D) the essential element of the scheme is an agreement between the Commonwealth and the States to provide for the introduction of legislation, the establishment and operation of a Ministerial Council and of a National Companies and Securities Commission and for matters relating to the functioning of the scheme as hereinafter appears; and

(E) the funds and other resources required for the administration of each State or Territory to carry out its functions in accordance with the scheme are to be provided by the respective parties to that agreement:

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

NOW IT IS HEREBY AGREED as follows:

PART I—INTERPRETATION

1. In this agreement, except where a contrary intention appears—

- (a) “the Commonwealth” means the Commonwealth of Australia as a party to this agreement;
- (b) “State” means a State of the Commonwealth of Australia that is at the relevant time a party to this agreement;
- (c) “the States” means all the States that are for the time being parties to this agreement; and
- (d) “Territory” includes, in addition to a mainland Territory, an external Territory of the Commonwealth to which the operation of this agreement is at any time and for the time being extended in accordance with clause 50 and “Australia” extends to any such Territory.

2. In this agreement, unless the contrary intention appears or the context otherwise requires—

“financial year” means a period of twelve months ending on a thirtieth day of June and, where the relevant provision of this agreement is applicable during part only of any such period, means the portion of the period during which the provision so applies;

“the Commonwealth Acts” means the legislation of the Parliament of the Commonwealth that is provided for by this agreement as amended from time to time consistently with this agreement;

“the Interstate Corporate Affairs Agreement” means the agreement so named made the 18th February 1974 between the States of New South Wales, Victoria and Queensland to which the State of Western Australia has become a party;

“the Ministerial Council” means the Ministerial Council for Companies and Securities established by Part VII;

“the National Commission” means the National Companies and Securities Commission to be established by the Commonwealth Acts; and

“the State Acts” means legislation of the Parliament of a State that is provided for by this agreement as amended from time to time consistently with this agreement.

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

3. In this agreement, unless a contrary intention appears—
- (a) a reference to a Part is a reference to the relevant Part of this agreement;
 - (b) a reference to a clause is a reference to the relevant clause of this agreement; and
 - (c) a reference to a sub-clause is a reference to the relevant sub-clause of the clause in which the reference appears or of such other clause as the reference indicates.

PART II—OPERATION OF AGREEMENT

4. (1) This agreement shall come into force when it has been executed by all of the parties hereinbefore designated.

(2) This agreement may, after its coming into force, be amended only by the unanimous decision of all parties for the time being with representatives in the Ministerial Council with a right to vote in proceedings of that Council.

5. In the event that a State, including a State which has become a party pursuant to clause 48, ceases to be a party, this agreement shall nevertheless continue in force with respect to the Commonwealth and the States which are parties when the cessation takes effect.

6. A State shall cease to be a party to this agreement if—

- (a) the State, within a period of six months from the passage of the Commonwealth legislation referred to in clause 8, or within such extension or extensions of that period as may be unanimously approved by the Ministerial Council, fails to secure the passage of the legislation of that State provided for by clause 9; or
- (b) the State withdraws from this agreement pursuant to Part XVI.

PART III—ESTABLISHMENT OF SCHEME

7. The Commonwealth and the States will take such action as is provided for by this agreement and is otherwise requisite on their respective parts to achieve the objectives set out in recital (B) by initiating and operating the scheme of legislative and administrative acts and procedures that is contemplated by this agreement.

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

PART IV—INITIAL LEGISLATION

8. (1) The Commonwealth will—

- (a) submit to the Commonwealth Parliament legislation which has been unanimously approved by the Ministerial Council to form the basis of the scheme and take such steps as are appropriate to secure the passage of the legislation; and
- (b) submit to the Federal Executive Council for making by the Governor-General regulations under that legislation which have been unanimously approved by the Ministerial Council.

(2) The legislation and regulations provided for by sub-clause (1) shall—

- (a) constitute the substantive law relating to companies and the regulation of the securities industry that will apply to the Australian Capital Territory and, subject to clause 49 and as contemplated by clause 50, to other Territories;
- (b) except to the extent that amendments are agreed upon by the Ministerial Council or are required to give effect to Parts V and VI, be substantially in conformity with the provisions of the Companies Acts, Securities Industry Acts and Marketable Securities Acts in force at the date of this agreement in the States which are the parties to the Interstate Corporate Affairs Agreement;
- (c) confer on the Ministerial Council such powers as may appropriately be so conferred to give effect to its functions under and in accordance with this agreement;
- (d) establish the National Commission and make provision for and in relation to its members;
- (e) confer on the National Commission such functions and powers as, in conjunction with functions and powers which are conferred on it by the State Acts, will enable it to carry out its functions under and in accordance with this agreement;
- (f) make provision for and in relation to the staff of the National Commission; and

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

- (g) include provisions relating to the financial management, proceedings, reports and records of the National Commission and for matters that are necessary or incidental to the performance of its functions.

9. Each State will as soon as practicable after the passage of the Commonwealth Acts submit to the Parliament of the State and take such steps as are appropriate to secure the passage of legislation which has been unanimously approved by the Ministerial Council and which—

- (a) to the extent necessary for the purposes of this agreement, repeals, amends or modifies the operation of the legislation of the State relating to companies and to the regulation of the securities industry referred to in the Second Schedule and any regulations made under that legislation;
- (b) as from the coming into force of that legislation, applies, in place of the legislation so repealed, amended or modified in operation, the legislation relating to companies and to the regulation of the securities industry enacted by the Parliament of the Commonwealth as provided in paragraph (a) of sub-clause 8 (1) and, as from the respective dates of that coming into force, any legislation from time to time enacted in accordance with this agreement which amends, supplements or is substituted for that legislation;
- (c) applies, as from the coming into force of the legislation, the regulations referred to in paragraph (b) of sub-clause 8 (1) and any further regulations that amend or supplement or are substituted for those regulations;
- (d) authorizes such action as is requisite for the State to take under clause 7; and
- (e) in the case of the States which are parties to the Interstate Corporate Affairs Agreement, terminates the operation of that agreement.

10. (1) As at the date of execution of this agreement, the question of the application, in respect of the scheme contemplated by this agreement, of Commonwealth and State laws relating to the review of administrative decisions, freedom of information and archives has not been resolved.

(2) This question will be the subject of further enquiry and subsequent agreement between the parties.

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

PART V—NAMES AND REGISTRATION

11. The legislation of the Commonwealth and of the States provided for by Part IV (in this Part referred to as “the Commonwealth and State legislation”) shall include provisions under which, except with the consent of the Ministerial Council—

- (a) a company shall not be incorporated in any State or Territory under a name which is undesirable or is a name of a kind which the Ministerial Council has directed to be unacceptable;
- (b) a body formed outside Australia shall not be registered as a foreign company in any State or Territory under a name which is undesirable or is a name or a name of a kind which the Ministerial Council has directed to be unacceptable; and
- (c) a body formed within Australia other than a company shall not be entitled to be registered as a foreign company in any State or Territory under a name which is undesirable or is a name or a name of a kind which the Ministerial Council has directed to be unacceptable.

12. The Commonwealth and State legislation shall include provisions under which—

- (a) a body which immediately before the legislation provided for by clauses 8 and 9 comes into force is—
 - (i) a company incorporated in a State or Territory;
 - (ii) a body formed outside Australia and registered as a foreign company in a State or Territory;
 - (iii) a body formed within Australia other than a company and registered as a foreign company in any State or Territory, may carry on business or establish a place of business under the name by which, and in any State or Territory in which, it is so incorporated or is registered as a foreign company or in which it is a recognised company and has reserved that name;
- (b) a company incorporated in any State or Territory and a body formed outside Australia which is registered as a foreign company in any State or Territory may reserve its name in any other State or Territory if its name is, in that other State or Territory, not undesirable and not a name of a kind which the Ministerial Council has directed to be unacceptable;

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

(c) a company or body which has reserved its name in a State or Territory other than the State or Territory of its incorporation or formation will not be required—

(i) to register in that other State or Territory in order to carry on business or establish a place of business in that other State or Territory; or

(ii) to lodge any documents in that other State or Territory for the purpose of carrying on business or establishing a place of business in that other State or Territory; and

(d) a body formed within Australia other than a company shall not be entitled to carry on business or establish a place of business in any State or Territory other than the State or Territory in which it is formed unless it is registered in that other State or Territory as a foreign company.

13. The Commonwealth and State legislation shall include provisions by virtue of which—

(a) a company incorporated in a State or Territory;

(b) a body formed outside Australia and registered as a foreign company in any State or Territory;

(c) a body formed within Australia other than a company and registered as a foreign company in any State or Territory,

shall not, except with the consent of the Ministerial Council, change its name to a name which, in any State or Territory in which it is incorporated or in which its name is reserved, as a recognised company, is undesirable or is a name or a name of a kind which the Ministerial Council has directed to be unacceptable.

14. (1) The National Commission shall examine proposals that are from time to time made for an alternative version of the provisions of the Commonwealth and State legislation referred to in this Part, whether or not those provisions have been enacted, or which have been included in the Commonwealth and State legislation pursuant to those clauses and furnish a report to the Ministerial Council on the proposals.

(2) A report by the National Commission on any proposal under sub-clause (1) shall be furnished to the Ministerial Council within two years after the proposal was made.

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

(3) The Ministerial Council shall give due consideration to a report by the National Commission under sub-clauses (1) and (2) and may modify any provision of the Commonwealth and State legislation or, if the legislation has been enacted, approve an amendment thereof, having regard to the modification proposed.

15. In this Part—

- (a) “company” means a company incorporated under the Companies Act or Companies Ordinance of a State or Territory and does not include a Co-operative Company to which the Companies (Co-operative) Act 1943–1976 of the State of Western Australia (or that Act as subsequently amended) applies.
- (b) “body” includes a company except where a body other than a company is referred to in which case the reference is to a corporation (other than a company) or unincorporated organization which, if it is or were not formed within a State or Territory, is or would be capable of registration in the State or Territory as a foreign company.

PART VI—SPECIAL INVESTIGATIONS

16. The principles that will be adopted in the legislation of the Commonwealth and of the States with respect to special investigations shall be—

- (a) that the power to order special investigations shall be exercisable exclusively by the members of the Ministerial Council either collectively as the Ministerial Council or individually; and
- (b) that the National Commission shall have responsibility for the appointment of inspectors and for the direction and co-ordination of investigatory activities.

17. The principles in respect of special investigations shall be applied by the legislation to the following effect:

- (a) the Minister responsible for the administration of the State Acts in respect of a State or the Commonwealth Acts in respect of a Territory shall be empowered to order a special investigation where it appears to that Minister in the public interest in respect of the State or the Territory to do so;
- (b) the Minister responsible for the administration of the Commonwealth Acts shall be empowered to order a special investigation where it appears to the Minister to be in the national interest to do so;

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

- (c) the Ministerial Council shall be empowered to order a special investigation where in the circumstances it thinks fit;
- (d) the National Commission, in performing its function as appointing authority either where it will undertake the special investigation or will appoint an inspector to do so, will be required—
- (i) where the special investigation has been ordered by a Minister without any request by the National Commission for the Minister to do so, to act in accordance with the wishes of that Minister as to the identity of the inspector and the terms and conditions of the appointment;
 - (ii) in any other case, to have regard to the views of the individual Minister or of the Ministerial Council, as the authority by which the special investigation was ordered, as to the identity of the inspector and the terms and conditions of the appointment; and
 - (iii) in the event of a disagreement with the Minister or the Ministerial Council on a matter coming within subparagraph (ii), to accept the decision of the Ministerial Council in the relevant respect;
- (e) the National Commission shall be entitled to request an individual Minister or the Ministerial Council, as the appropriate authority, to order a special investigation;
- (f) the power to publish the report of an inspector shall reside—
- (i) in a case where the costs of the investigation are to be met by the National Commission—in the Ministerial Council;
 - (ii) in any other case—in the Minister who ordered the investigation,

but, where an opinion of the relevant Law Officer of the Commonwealth or of a State advising that the publication of the report would be prejudicial to the administration of justice in a Territory or the State has been made available to the Ministerial Council or the Minister having the power to publish the report as the case may be, the power shall not be exercised until a further opinion by the relevant Law Officer is similarly made available to the effect that publication would be no longer prejudicial to that administration of justice;

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

(g) where a special investigation has been ordered by a Minister without any request by the National Commission for the Minister to do so, that Minister, not the National Commission, shall, unless and until the Ministerial Council subsequently approves the investigation, have in relation to that investigation those powers and functions of "the Minister" presently expressed in Part VI of the Companies Act 1961 or Division 2 of Part II of the Securities Industry Act 1975 of the State of New South Wales, whichever is relevant, which are referred to in Part 2 of the First Schedule.

18. (1) The cost and expenses of and in connection with the carrying out of a special investigation shall be borne—

(a) where the investigation was ordered by—

(i) the Ministerial Council;

(ii) an individual Minister at the request of the National Commission; or

(iii) an individual Minister but subsequently approved by the Ministerial Council,

by the National Commission;

(b) in all other cases—by the party to this agreement whose Minister ordered the investigation.

(2) Moneys which are recovered in respect of the costs and expenses of a special investigation shall be paid or credited to the National Commission or to the party to this agreement according to the allocation under sub-clause (1) of responsibility for those costs and expenses.

PART VII—ESTABLISHMENT OF MINISTERIAL COUNCIL

19. For the purposes of the scheme there shall be a Council of Commonwealth and State Ministers to be known as the Ministerial Council for Companies and Securities.

20. (1) The Ministerial Council shall consist of a member representing each party for the time being to this agreement who, subject to sub-clause (2), shall be the Minister of State of that party who is for the time being responsible for administering the law relating to companies and the regulation of the securities industry.

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

(2) A member of the Ministerial Council for the time being representing a party to this agreement—

(a) may appoint a delegate who is another Minister of State of that party to attend a meeting of the Ministerial Council in place of the member; or

(b) shall, while a Minister of State of the party is for the time being acting as the Minister who is referred to in sub-clause (1), be the Minister who is so acting,

and references in this agreement (other than in this clause) to a member of the Ministerial Council shall include a delegate in respect of attendance at any such meeting or a Minister who is so acting.

PART VIII—FUNCTIONS OF MINISTERIAL COUNCIL

21. (1) The functions of the Ministerial Council shall be—

(a) to consider and to keep under review the formulation and operation of the legislation and regulations provided for by this agreement; and

(b) to exercise general oversight and control over the implementation and operation of the scheme.

(2) To assist the Ministerial Council in discharging its functions under paragraph (a) of the previous sub-clause, there shall be a Companies and Securities Law Review Committee—

(a) to carry out research into and advise on law reform in relation to the legislation and regulations referred to in that paragraph;

(b) the number of the members of which is to be determined from time to time by the Ministerial Council;

(c) the members of which are to be appointed and may be removed by the Ministerial Council and will be engaged on terms and conditions determined by the Ministerial Council.

22. (1) Without prejudice to the generality of clause 21, the functions of the Ministerial Council shall include—

(a) consideration and approval of the Bills which will comprise the Commonwealth legislation referred to in clause 8 and of the regulations under that legislation;

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

- (b) consideration and approval of the Bills of each State which will comprise the State legislation referred to in clause 9 and of any regulations under that legislation;
- (c) consideration and approval of any amendments of, or of any legislation proposed to supplement or be substituted for, the Commonwealth Acts and the regulations for the time being in force thereunder;
- (d) consideration and approval of any amendments of, or of any legislation proposed to supplement or be substituted for, the State Acts and any regulations for the time being in force thereunder;
- (e) general oversight, including budgetary control, over the functioning of the National Commission; and
- (f) giving directions to the National Commission in respect of any policy or matter that comes within the functions of the National Commission under the Commonwealth Acts or the State Acts.

(2) Subject to Part VI and clause 39, the functions of the Ministerial Council under paragraph (f) of sub-clause (1) shall be an exclusive function and the National Commission shall not be required to recognize or acknowledge any other person or authority as empowered to give directions to it in that respect.

23. The Ministerial Council shall be entitled to require the National Commission to furnish a report to the Ministerial Council in relation to—

- (a) any policy which the National Commission is pursuing, or proposes to pursue, including a report of the estimated financial effect on State and Territory administrations of any policy or change in policy which the National Commission proposes to pursue; and
- (b) any other matter within the functions of the Ministerial Council or of the National Commission.

24. The functions of the Ministerial Council shall not, except as provided in clause 25, be able to be, and shall not be, delegated to any Minister or to any other person or authority.

25. The Ministerial Council may itself exercise and, without derogation from its power in that respect at any time, may from time to time and for such time as it may determine, authorize any one or more of its members or the National Commission to exercise a discretion arising out of or relating to a matter or to matters specified in, and subject to, Part 1 of the First Schedule to this agreement.

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

PART IX—PROCEEDINGS OF MINISTERIAL COUNCIL

26. (1) Ordinary meetings of the Ministerial Council (in this Part called "Council") shall be held at such times and places as are from time to time decided by Council but not less than four shall be held in each calendar year.

(2) A special meeting of Council may be convened by any member by notice of 14 days or of such other period as may be accepted by all members for the purpose of the meeting.

(3) A special meeting shall not, except with the agreement of all members of Council, consider a matter which has not been specified in or at the time of the notice of the meeting.

27. The quorum for a meeting of Council shall be five members.

28. (1) The Chairman of a meeting of Council shall be decided by Council prior to or, if not previously decided, at the meeting.

(2) At a meeting of Council the Chairman shall have a deliberative but not casting vote.

29. (1) Except as otherwise provided in this clause, in paragraph (a) of clause 6 and in clauses 8, 9 and 30, a resolution will be carried by Council by a simple majority of members present and voting on the resolution.

(2) A unanimous vote of all members of Council shall be required for the passage of a resolution which—

- (a) nominates a person for appointment as a member of the National Commission;
- (b) approves amendments of the Commonwealth Acts which will change the number of members of the National Commission; or
- (c) cancels the approval of any stock exchange in Australia.

30. A resolution which, without being considered at a meeting of Council, is referred to all members of Council and of which a majority of the members, or, if a unanimous vote is required for the passage of the resolution, all the members indicate by telephone, teleprinter message or other mode of communication to the National Commission that they are in favour shall be as valid and effectual as if it had been passed at a meeting of Council duly convened and held.

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

31. Subject to the foregoing provisions of this Part, Council may determine its own procedure and for that purpose may make rules of procedure, including rules relating to notices of meetings and conduct of business at meetings and to voting by members under clause 30, and may from time to time alter such rules.

PART X—NATIONAL COMPANIES AND SECURITIES
COMMISSION

32. (1) Subject to this agreement, the functions of the National Commission to be established by the Commonwealth Acts shall be to have and to exercise, subject only to directions from time to time of the Ministerial Council, responsibility for the entire area of policy and administration with respect to company law and the regulation of the securities industry.

(2) The National Commission shall be required by the Commonwealth Acts to comply with directions that are from time to time given to it by the Ministerial Council in accordance with the agreement or by a Minister pursuant to sub-paragraph (d) (i) of clause 17, and in conformity with the Commonwealth Acts and the State Acts.

(3) Without prejudice to the generality of sub-clause (1), the functions of the National Commission shall, subject to paragraph 17 (g), include the exercise of discretions in respect of the matters specified in Part 2 of the First Schedule for the purposes of the operation of the provisions by which those discretions are conferred.

33. (1) The National Commission shall be a body corporate under the name National Companies and Securities Commission and shall consist of not less than three and not more than five members (who shall be known as members) and at least three members shall be full time members.

(2) The members shall be appointed by the Governor-General of the Commonwealth on the nomination of the Ministerial Council.

(3) A Chairman and a Deputy Chairman of the National Commission shall be appointed by the Governor-General from the full-time members for the time being on the nomination of the Ministerial Council.

(4) In the event of a vacancy in the office of Chairman or the absence of the Chairman from duty or from Australia the Deputy Chairman shall act as Chairman and in the event of a vacancy in the office of Deputy Chairman or a like absence of the Deputy Chairman a member who has been nominated by the Ministerial Council to act as Chairman in that event may so act.

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

(5) The qualifications of a person for appointment as member shall include suitable experience in business, commerce, law, economics, accounting or public administration.

(6) A member shall, subject to the provisions of the Commonwealth Acts, hold office for such period not exceeding five years as is specified upon appointment and shall be eligible for re-appointment.

34. (1) The affairs of the National Commission shall be conducted at meetings of members and in such other manner as is provided by the Commonwealth Acts.

(2) The quorum for a meeting of the National Commission shall be three members unless at the time the Commission consists of three members only, in which case the quorum shall be two members.

(3) The Chairman of the National Commission or, in the absence of the Chairman, the Deputy Chairman or Acting Deputy Chairman for the time being will preside at meetings.

(4) The person presiding at a meeting shall have a deliberative out not a casting vote.

35. (1) The National Commission shall have power to delegate any of its functions, including the functions referred to in sub-clause 32 (3), to an administration, or to an officer of an administration, of a State or of a Territory.

(2) In performing its functions and exercising its powers, including the power of delegation, the National Commission shall have regard to the principle of the maximum development of a decentralized capacity to interpret and promulgate the uniform policy and administration of the scheme.

36. (1) The staff of the Commission shall consist of such persons as are employed by it in accordance with the Commonwealth Acts and may include persons who, by arrangement between the Commonwealth and a State in accordance with the Commonwealth Acts and the State Acts, are provided for the performance of services for the National Commission.

(2) The National Commission shall be empowered to arrange with the Commonwealth or a State for the services of members of its staff to be made available for the administration by the Commonwealth or the State of company law or the regulation of the securities industry.

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

PART XI—STATE AND TERRITORY ADMINISTRATIONS

37. (1) The administration of company law and the regulation of the securities industry within each State and Territory in accordance with the scheme established under this agreement shall, to the maximum extent practicable, be carried out by the entities and personnel of the State or Territory administration but those entities and personnel shall in the performance of those functions be subject to direction by the National Commission.

(2) The power of the National Commission to give directions to a State or Territory administration shall not apply to functions which that administration performs under legislation or regulations other than that of the Commonwealth and of the States provided for by clause 8 and by paragraphs (b) and (c) of clause 9 respectively.

38. (1) The policy direction and general control over the administration of company law and the regulation of the securities industry throughout Australia by the Ministerial Council and by the Commission in accordance with this agreement shall, subject to Part VI and to clause 25 and to sub-clause (2), be exercised to the exclusion of individual Ministerial direction and control by the responsible Minister of the Commonwealth or of the State.

(2) The exercise of direction and control by the Ministerial Council or by the National Commission referred to in sub-clause (1) shall not extend to matters relating to the Australian Public Service or the Public Service of a State or to the management and provision of facilities and services of the State or Territory administration or to any functions of that administration that are not included within the scope of operation of the scheme established under this agreement.

39. The Minister of the Commonwealth or of a State who has administrative responsibility for company law and regulation of the securities industry in a State or Territory shall be entitled to be notified of, and to be given information concerning, any matter being dealt with by the National Commission or the administration of the State or the Territory and shall have the right to refer any matter arising out of or in connexion with the Minister's responsibilities directly to the National Commission or to the Ministerial Council for consideration.

40. Each party to this agreement will provide the funds and other resources necessary for its State or Territory administration to carry out the functions of that administration in accordance with the scheme established under this agreement.

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

PART XII—FUNDING OF NATIONAL COMMISSION

41. (1) The funds required for the establishment and functioning of the National Commission shall be provided in equal shares by the Commonwealth as to one part and the States jointly as to the other part.

(2) The share of the States of the funds required during a financial year shall be apportioned between the States in accordance with the same proportions as the estimated population of each State on the 31st December in the financial year as determined by the Australian Statistician under section 9 of the States (Personal Income Tax Sharing) Act 1976 of the Commonwealth Parliament bears to the total of the estimated populations of all the States on that date as so determined.

(3) If the Northern Territory becomes a party to this agreement under clause 49, the proportion of the share of the States which that Territory is to provide for the purposes of sub-clause (2) shall be calculated according to the population of that Territory as determined from time to time by the Australian Statistician.

42. (1) The parties will, on or before a date to be agreed between them, enter into an agreement relating to the sharing of relevant fees among the parties in appropriate terms similar to those contained in the agreement dated 15 January 1976 between the States of New South Wales, Victoria, Queensland and Western Australia relating to the sharing of fees for the purposes of the Interstate Corporate Affairs Agreement.

(2) The agreement entered into pursuant to the previous sub-clause shall provide that it may be amended by the unanimous decision of the Ministerial Council.

PART XIII—REPORTS AND STATEMENTS

43. (1) The National Commission shall be required by the Commonwealth Acts to prepare, as soon as practicable after each financial year and not later than the 31st October after the financial year, an annual report and financial statements in respect of that year in such form as is approved from time to time by the Ministerial Council.

(2) The report and financial statements in respect of each financial year shall be submitted to—

- (a) the responsible Minister of the Commonwealth for presentation to the Commonwealth Parliament;

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

- (b) each responsible Minister of a State for presentation to the State Parliament; and
- (c) the Ministerial Council.

PART XIV—AMENDMENT OF LEGISLATION

44. The following provisions shall apply with respect to the amendment of the legislation of the Commonwealth and of the States provided for by this agreement:

- (a) The National Commission or any party to this agreement may at any time submit to the Ministerial Council for consideration, or the Ministerial Council may at any time of its own motion consider, a proposal for the amendment of the Commonwealth Acts.
- (b) In the event that any Bill to amend the Commonwealth Acts is approved by the Ministerial Council, the Commonwealth will submit that Bill to the Commonwealth Parliament and will take such steps as are appropriate to secure the passage of the Bill.
- (c) If a Bill has not been passed by the Commonwealth Parliament within six months from the date on which it was approved by the Ministerial Council, any State may submit to its Parliament and secure the passage of separate legislation which amends the State Acts of that State in such a manner as to give effect to the amendment which that Bill would have made to the Commonwealth Acts.

45. (1) The National Commission or any party to this agreement may at any time submit to the Ministerial Council for consideration, or the Ministerial Council may at any time of its own motion consider, a proposal for the amendment of the regulations made under the Commonwealth Acts.

(2) In the event that any draft regulation to amend the Commonwealth regulations to give effect to such a proposal is approved by the Ministerial Council, the Commonwealth will submit the draft regulation to the Executive Council for making by the Governor-General and will take such steps as are appropriate to secure the making of that amending regulation.

(3) If upon the expiration of six months from the date on which any such amending regulation was approved by the Ministerial Council the amending regulation has not been made or, having been made, is subject

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

to disallowance or has ceased to be in force by disallowance or for any other reason, any State may cause a regulation to be made which amends the regulations made under the State Act of the State in accordance with the amending regulation that was approved by the Ministerial Council.

46. The Commonwealth will not—

- (a) submit to the Commonwealth Parliament any Bill to amend the Commonwealth Acts; or
- (b) cause to be made any regulation which amends the regulations made under the Commonwealth Acts,

unless the amendment which will be made by the Bill or by the regulations, as the case may be, has been approved by the Ministerial Council.

47. (1) The Commonwealth will not submit to its Parliament legislation or take action for the making of regulations which will, upon coming into force, negative the operation of the legislation referred to in paragraph (a) of sub-clause 8 (1) or the regulations referred to in paragraph (b) of that sub-clause or that legislation or those regulations as amended from time to time in accordance with this agreement.

(2) Subject to paragraph (c) of clause 44 and to sub-clause 45 (3), a State will not submit to its Parliament legislation or take action for the making of regulations which will, upon coming into force, negative the operation of the legislation of the State which applies—

- (a) the legislation referred to in paragraph (b) of clause 9; or
- (b) the regulations referred to in paragraph (c) of clause 9.

PART XV—ACCESSION OF NEW STATES AND TERRITORIES

48. (1) A new State of the Commonwealth of Australia may become a party to this agreement by signature on its behalf of a copy of this agreement and notifying each party to this agreement in writing of the signature and the date of signature and shall be deemed to have become a party as from that date.

(2) Subject to sub-clause (3), the provisions of this agreement shall apply to a new State which becomes a party as if it were named as a party to this agreement.

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

(3) Paragraph (a) of clause 6 shall apply to a new State which becomes a party as if the period of six months referred to therein was expressed as commencing on the date that State becomes a party to this agreement.

49. (1) If administrative responsibility for company law and the regulation of the securities industry in respect of the Northern Territory has become vested in a Minister or Executive Officer who is responsible to the Legislative Assembly of the Territory, the Northern Territory shall be entitled to become a party to this agreement on the basis set out in this clause.

(2) If the Northern Territory becomes a party pursuant to the previous sub-clause—

- (a) the appropriate Northern Territory representative shall be entitled to participate in the proceedings of the Ministerial Council but, subject to paragraph (c), shall not be entitled to vote as a member of the Ministerial Council;
- (b) subject to the previous paragraph, the provisions of this agreement shall apply to the Northern Territory so far as is practicable as if the Territory were a State and, to such extent as is appropriate, the provisions of this agreement shall be read and construed and, if necessary, modified to achieve that result; and
- (c) the other parties to this agreement may unanimously agree that the representative referred to in paragraph (a) shall be entitled to vote as a member of the Ministerial Council.

(3) For the purposes of paragraph (b) of the previous sub-clause, references in this agreement to the Parliament of a State shall be read as references to the legislature of the Northern Territory and the expression "the State Acts" shall include the legislation of or for the Northern Territory which corresponds to the legislation of a State that is provided for by this agreement.

(4) If the Northern Territory is, at the time when it becomes a State, a party to this agreement, it shall continue as a party as though it had become a party pursuant to clause 48.

50. If the Minister of State of the Commonwealth responsible for the administration of company law and the regulation of the securities industry considers that the operation of this agreement should be extended to the administration of company law and the regulation of the securities industry in an external Territory of the Commonwealth he may notify the Ministerial

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

Council in writing to that effect and, subject to the passage by the Commonwealth Parliament of such legislation and the making of such regulations as are necessary to achieve that result, the provisions of this agreement shall apply to that Territory in the same manner and to the same effect as they apply to the Australian Capital Territory.

PART XVI—WITHDRAWAL OF A PARTY

51. (1) A party to this agreement may at any time by notice in writing to the Ministerial Council withdraw from this agreement and shall cease to be a party when the notice of withdrawal takes effect.

(2) Subject to sub-clause (3), a notice of withdrawal under this clause shall take effect on a date to be specified in the notice which is not less than one year from the date on which the notice is given.

(3) If the Commonwealth acts in breach of clause 46, a State may withdraw from this agreement under sub-clause (1) by giving a notice of withdrawal which refers to that breach and which takes effect forthwith.

FIRST SCHEDULE

PART 1

Clause 25

The matters for which immediately before the date of its repeal provision was made by—

- (a) sections 22, 69A and 353 and sub-sections 178 (4), 381 (1) and 381 (2) of the Companies Act 1961 of the State of New South Wales; and
- (b) section 29 and sub-sections 21 (4), 127 (1) and 127 (2) of the Securities Industry Act 1975 of the State of New South Wales.

The National Commission shall not be authorized to exercise the discretion arising from section 29 of the said Securities Industry Act 1975.

*National Companies and Securities Commission (State Provisions).*SCHEDULE 1—*continued.*

PART 2

Clause 32 (3)

The matters for which immediately before the date of its repeal provision was made by—

- (a) sections 24, 79, 179, 179B, 180, 180V, 186, 374D and 374E, subsections 44 (3), 80 (1A), 88 (1), 176 (5), 178 (1), 178 (1A), 178 (2), 178 (3), 178 (5), 178 (6), 178 (7), 178 (8), 178 (9), 178 (10), 224 (3), 334 (2) and 374 (2) and paragraphs 38 (7) (b), 74 (1) (e), 171 (1) (b) and 339 (b) of the Companies Act 1961 of the State of New South Wales; and
- (b) sections 21 (other than subsection (4)) 22, 24, 26 and 129, subsection 19 (5) and paragraph 17 (2) (a) of the Securities Industry Act 1975 of the State of New South Wales.

SECOND SCHEDULE

STATE LEGISLATION

Clause 9 (a)

New South Wales		Companies Act 1961 Marketable Securities Act 1970 Securities Industry Act 1975
Queensland	..	Companies Act 1961-1975 Marketable Securities Act 1966 Securities Industry Act 1975
South Australia	..	Companies Act 1962-1974 Marketable Securities Transfer Act 1967 Sharebrokers Act 1945
Tasmania	Companies Act 1962 Marketable Securities Act 1971
Victoria	Companies Act 1961 Marketable Securities Act 1970 Securities Industry Act 1975
Western Australia	..	Companies Act 1961-1975 Marketable Securities Transfer Act 1970 Securities Industry Act 1975

IN WITNESS WHEREOF this Agreement has been respectively signed for and on behalf of the parties as at the day and year first above written.

SIGNED by the Right Honourable
JOHN MALCOLM FRASER, Prime
Minister of the Commonwealth of
Australia, in the presence of—

MALCOLM FRASER

WAL FIFE

*National Companies and Securities Commission (State Provisions).*SCHEDULE 1—*continued.*

SIGNED by the Honourable NEVILLE
KENNETH WRAN, Premier of the
State of New South Wales, in the
presence of—

NEVILLE WRAN

B. DALE

SIGNED by the Honourable RUPERT
JAMES HAMER, Premier of the State
of Victoria, in the presence of—

R. J. HAMER

K. D. GREEN

SIGNED by the Honourable
JOHANNES BJELKE - PETERSEN,
Premier of the State of Queensland, in
the presence of—

JOH BJELKE-PETERSEN

H. J. TRELOAR

SIGNED by the Honourable DONALD
ALLAN DUNSTAN, Premier of the
State of South Australia, in the presence
of—

DON DUNSTAN

BRUCE GUERIN

SIGNED by the Honourable SIR
CHARLES WALTER MICHAEL
COURT, Premier of the State of Western
Australia, in the presence of—

CHARLES COURT

BRIAN V. JOHNSON

SIGNED by the Honourable DOUGLAS
ACKLEY LOWE, Premier of the State
of Tasmania, in the presence of—

D. A. LOWE

D. EWART

*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

NATIONAL COMPANIES AND SECURITIES COMMISSION (STATE PROVISIONS) BILL, 1981

EXPLANATORY NOTE

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

The following Bills are cognate with this Bill:—

- Securities Industry (Application of Laws) Bill, 1981;
- Companies (Acquisition of Shares) (Application of Laws) Bill, 1981;
- Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Bill, 1981;
- Corporate Affairs Commission Bill, 1981;
- Crimes (Securities Industry) Amendment Bill, 1981.

The object of this Bill is to make provisions with respect to the exercise or performance by the National Companies and Securities Commission ("the National Commission") of functions and powers under laws of the State.

The National Commission is established by the National Companies and Securities Commission Act 1979 of the Commonwealth and its creation and functions were agreed to by an agreement ("the Agreement") between the Commonwealth and the States, a copy of which is set out in Schedule 1.

The Agreement contemplates that the National Commission is to be established and clothed with certain powers by Commonwealth legislation and that each State would confer powers upon it, in relation to companies and other matters connected with the State, by State legislation.

Substantive powers are proposed to be conferred on the National Commission by the Securities Industry Act 1980 and the Companies (Acquisition of Shares) Act 1980 of the Commonwealth, as proposed to be applied as laws of the State by the Securities Industry (Application of Laws) Bill, 1981, and the Companies (Acquisition of Shares) (Application of Laws) Bill, 1981.

This Bill deals principally with formal and procedural matters in relation to the exercise by the National Commission of powers conferred by State law.

The Bill contains the following provisions:—

Clause 1. Short title.

Clause 2. Commencement.

Clause 3. Interpretation.

Clause 4 provides that where the National Commission is acting under State law it represents the Crown in right of the State. The clause also requires the National Commission to perform its functions in accordance with the Agreement.

Clause 5 relates to judicial notice of the common seal of the National Commission and the signatures and appointment of members of the National Commission.

Clause 6 provides protection for members of the National Commission when exercising functions conferred by State law, and gives certain protections to lawyers, witnesses and certain other persons, including members of the Ministerial Council set up by the Agreement.

Clause 7 relates to the holding and conduct of hearings by the National Commission for the purposes of functions conferred upon it by State law.

Clause 8 confers power on the National Commission to summon witnesses and to take evidence.

Clause 9 deals with hearings held before the National Commission and, among other things, requires proceedings to be conducted as informally as possible and provides that the National Commission is not bound by the rules of evidence.

Clause 10 deals with the failure of witnesses to attend and answer questions when required to do so by the National Commission.

Clause 11 deals with contempt of the National Commission, and makes it an offence to insult a member or to interrupt a hearing of the National Commission.

Clause 12 confers on the National Commission a power of delegation. Functions of the National Commission may be delegated to an authority of any State or Territory of the Commonwealth, subject to the approval of the Ministerial Council.

Clause 13 empowers authorities of the State to act as delegates of the National Commission.

Clause 14 empowers the National Commission to give directions to its delegates with respect to the performance of delegated functions.

Clause 15 imposes a requirement of secrecy upon certain persons associated with the National Commission.

Clause 16 imposes restrictions on certain persons associated with the National Commission in relation to certain dealings in securities.

Clause 17 requires certain persons associated with the National Commission to notify the Commission of certain interests in securities and bodies corporate.

Clause 18 provides for evidence of nominations, appointments, recommendations or other acts made or done by the Ministerial Council. The clause also enables the Ministerial Council to authorise a member of the Council to exercise a function conferred on it by State law.

Clause 19 provides for the annual report and financial statements of the National Commission together with a report of the Commonwealth Auditor-General to be tabled before each House of Parliament.

Clause 20 enables the Supreme Court to make rules relating to contempt proceedings.

Clause 21 authorises regulations to be made by the Governor-in-Council and in particular regulations providing for the allowances and expenses payable to witnesses appearing before the National Commission. Regulations may be made only in accordance with advice that is consistent with resolutions of the Ministerial Council.

Clause 22 makes provision, in certain circumstances, for members of the Public Service who become members or employees of the National Commission to be reappointed to the Public Service of the State and for continuance of their superannuation rights.

Schedule 1 sets out the Agreement between the Commonwealth and the States in relation to the scheme for the co-operative regulation of companies and the securities industry.

Clause 21 authorizes regulations to be made by the Governor-in-Council and in particular regulations providing for the salaries and expenses payable to witnesses appearing before the National Commission. Although they be made only in record-keeping order that is consistent with regulations of the Privy Council.

Clause 22 makes provision in certain instances for members of the Public Service who become members or employees of the Judicial Commission to be appointed to the Public Service of the State for the purposes of their remuneration. Schedule I sets out the Agreement between the Commission and the State in relation to the scheme for the co-operative regulation of companies and the transfer of shares.

Clause 23 provides for the appointment of a public servant to be a member of the Commission. Clause 24 provides for the appointment of a public servant to be a member of the Commission.

Clause 25 provides for the appointment of a public servant to be a member of the Commission. Clause 26 provides for the appointment of a public servant to be a member of the Commission.

Clause 27 provides for the appointment of a public servant to be a member of the Commission. Clause 28 provides for the appointment of a public servant to be a member of the Commission.

Clause 29 provides for the appointment of a public servant to be a member of the Commission. Clause 30 provides for the appointment of a public servant to be a member of the Commission.

Clause 31 provides for the appointment of a public servant to be a member of the Commission. Clause 32 provides for the appointment of a public servant to be a member of the Commission.

Clause 33 provides for the appointment of a public servant to be a member of the Commission. Clause 34 provides for the appointment of a public servant to be a member of the Commission.

Clause 35 provides for the appointment of a public servant to be a member of the Commission. Clause 36 provides for the appointment of a public servant to be a member of the Commission.

Clause 37 provides for the appointment of a public servant to be a member of the Commission. Clause 38 provides for the appointment of a public servant to be a member of the Commission.

Clause 39 provides for the appointment of a public servant to be a member of the Commission. Clause 40 provides for the appointment of a public servant to be a member of the Commission.

Clause 41 provides for the appointment of a public servant to be a member of the Commission. Clause 42 provides for the appointment of a public servant to be a member of the Commission.

**NATIONAL COMPANIES AND SECURITIES
COMMISSION (STATE PROVISIONS) BILL,
1981**

No. 1981.

A BILL FOR

**An Act to make provision for the operation of the National
Companies and Securities Commission in the State.**

[MR WALKER—18 March, 1981.]

See also Securities Industry (Application of Laws) Bill, 1981; Companies (Acquisition of Shares) (Application of Laws) Bill, 1981; Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Bill, 1981; Corporate Affairs Commission Bill, 1981; Crimes (Securities Industry) Amendment Bill, 1981.

National Companies and Securities Commission (State Provisions).

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 "National Companies and Securities Commission (State Provisions) Act, 1981".

Commencement.

2. (1) This section and section 1 shall commence on the date
10 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, unless the contrary intention appears—

20 "Agreement" means the agreement made on 22nd December, 1978, between the Commonwealth and the States a copy of which is set out in Schedule 1 or, if that agreement is or has been amended or affected by another agreement, that agreement as so amended or affected;

"Commission" means the National Companies and Securities Commission established by the National Companies and Securities Commission Act 1979 of the Commonwealth;

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

"deal" has the same meaning as in the Commission Act;

National Companies and Securities Commission (State Provisions)

“functions” includes duties;

“investment contract” has the same meaning as in the Commission Act;

5 “Ministerial Council” means the body known as the Ministerial Council for Companies and Securities that is established by the Agreement;

“power” includes an authority;

“regulations” means regulations under this Act;

“securities” has the same meaning as in the Commission Act.

10 (2) In this Act—

(a) a reference to an Act includes a reference to this Act and includes a reference to a regulation or other instrument made under, or by virtue of, an Act;

15 (b) a reference to a Commonwealth Act includes a reference to a regulation or other instrument made under, or by virtue of, a Commonwealth Act; and

(c) a reference to an Act of another State includes a reference to—

20 (i) a regulation or other instrument made under, or by virtue of, an Act of another State;

(ii) an enactment of the Australian Capital Territory, the Northern Territory or an external Territory to which the operation of the Agreement extends; and

25 (iii) a regulation or other instrument made under, or by virtue of, an enactment referred to in subparagraph (ii).

National Companies and Securities Commission (State Provisions).

(3) A reference in this Act to a member of the staff of the Commission shall be read as a reference to—

- (a) an employee of the Commission;
- (b) a person whose services are available to the Commission by virtue of arrangements made under section 24 (1) or (2) of the Commission Act; or
- (c) a person engaged under section 25 (1) of the Commission Act.

(4) In this Act, unless the contrary intention appears, where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

(5) This Act, other than sections 1, 2, 3, 4, 20, 21 and 22, is a relevant Code within the meaning of the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981.

Commission acting under State Act represents Crown.

4. (1) In the performance of a function or the exercise of a power under an Act, the Commission represents the Crown in right of the State of New South Wales.

(2) The Commission shall perform the functions and exercise the powers conferred or expressed to be conferred on it by or under an Act in accordance with the Agreement and shall comply in all respects with the provisions of the Agreement that are applicable to it in the performance of such functions and the exercise of such powers.

(3) Anything done by the Commission which could have been validly done by the Commission if it were a body established by the law of the State with the powers and functions conferred or expressed to be conferred on the Commission by laws of the State, or if it were a delegate of such a body, shall be valid and effective for the purposes of the law of the State.

National Companies and Securities Commission (State Provisions).

(4) No proceedings lie against the Commission to restrain it from acting beyond its capacity or powers if the act or proposed act to which the proceedings relate is one to which subsection (3) applies or would apply.

5 Judicial notice.

5. (1) Every court shall take judicial notice of the common seal of the Commission affixed to a document and, unless the contrary is established, shall presume that it was duly affixed.

(2) Every court shall take judicial notice of—

- 10 (a) the official signature of any person who holds or has held, or is acting or has acted in, the office of Chairman, Deputy Chairman or other member of the Commission; and
- 15 (b) the fact that that person holds or has held or is acting or has acted in that office,

if a signature purporting to be the signature of that person appears on any official document.

(3) In this section, a reference to a court shall be construed as including a reference to—

- 20 (a) a judge of a court; and
- (b) any other person authorized by law or by consent or parties to receive evidence,

and, in relation to a person referred to in paragraph (b), the reference to taking judicial notice shall be construed as a reference 25 to taking the like notice as would be taken by a court.

Protection of members, &c.

6. (1) A member or an acting member of the Commission has, in the performance of his functions or the exercise of his powers as such a member or acting member in relation to a

National Companies and Securities Commission (State Provisions)

hearing before the Commission held for the purposes of the performance of a function or the exercise of a power conferred or expressed to be conferred on it by or under an Act, the same protection and immunity as a Justice of the High Court of
5 Australia.

(2) A barrister, solicitor or other person appearing on behalf of a person at a hearing referred to in subsection (1) has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court of Australia.

10 (3) Subject to this Act, a person summoned to attend, or appearing before, the Commission at a hearing referred to in subsection (1) as a witness has the same protection as a witness in proceedings in the High Court of Australia.

(4) The Commission, a person appointed for the purposes
15 of a prescribed Act, the Commission Act, or any Commonwealth Act that is a prescribed Act for the purposes of section 41 (4) of the Commission Act, a member of the staff of the Commission or a person authorized to perform or exercise any function or power of the Commission or any function or power on behalf of the
20 Commission is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power conferred or expressed to be conferred by or under an Act.

25 (5) A member of the Ministerial Council is not liable to an action, suit or proceeding for or in relation to an act done or omitted to be done by the Ministerial Council in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power, conferred on that
30 Council by or under an Act.

(6) A member of the Ministerial Council is not liable to an action, suit or proceeding for or in relation to an act done or omitted to be done by the member in the exercise of a discretion under an Act that the Ministerial Council has, pursuant to
35 clause 25 of the Agreement, authorized him to exercise.

National Companies and Securities Commission (State Provisions).

Hearings before Commission.

7. (1) The Commission may hold hearings for the purpose of the performance of a function or the exercise of a power conferred or expressed to be conferred on it by or under an Act.
- 5 (2) Subject to this section, where the Commission is required or decides to hold a hearing, the Commission may either direct that the hearing take place in public or direct that the hearing take place in private.
- (3) Subject to subsections (4) and (6), if a person who
10 is entitled under an Act to be afforded the opportunity by the Commission to appear at a hearing before the Commission requests that the hearing take place in public, the Commission shall direct that the hearing take place in public.
- (4) Where the Commission holds a hearing under a pro-
15 vision of an Act that requires the hearing to take place in private, the Commission shall direct that the hearing take place in private.
- (5) Where the Commission directs that a hearing to be held by it take place in private, the Commission may give directions as to the persons who may be present at the hearing.
- 20 (6) Where, at a hearing by the Commission that is held in public, the Commission is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, the Commission may—
- 25 (a) direct that the hearing or a part of the hearing take place in private and give directions as to the persons who may be present; or
- (b) give directions preventing or restricting the publication of evidence given before the Commission or of matters contained in documents lodged with the Commission.

National Companies and Securities Commission (State Provisions).

(7) Nothing in any direction given by the Commission under subsection (5) or paragraph (a) of subsection (6) prevents the presence at a hearing of—

- 5 (a) a person who is entitled under an Act to be afforded the opportunity to appear at that hearing;
- (b) a person representing, pursuant to section 9 (2), a person referred to in paragraph (a); or
- 10 (c) a person representing, pursuant to section 9 (2), a person who, by reason of a direction given by the Commission under subsection (5) or paragraph (a) of subsection (6), is entitled to be present at the hearing.

(8) Where the Commission directs that a hearing or part of a hearing before the Commission take place in private, a person (other than a member or an acting member of the Commission, or

15 a member of the staff of the Commission approved by the Commission) shall not be present at the hearing unless he is entitled to be present by virtue of the direction or by virtue of subsection (7).

Penalty: \$1,000 or imprisonment for 3 months.

(9) Where the Commission is required by an Act to afford

20 a person an opportunity to appear at a hearing before the Commission and to make submissions and give evidence to the Commission, the Commission shall appoint a date, time and place for the hearing and cause notice in writing of the date, time and place to be given to the person.

25 (10) Where a person referred to in subsection (9) does not wish to appear before the Commission, he may, before the date of the hearing, lodge with the Commission in writing any submissions that he wishes the Commission to take into account in relation to the matter.

30 (11) The Commission shall take into account any submission made or lodged or evidence given to the Commission when making any decision on the matter to which the submission or evidence relates.

National Companies and Securities Commission (State Provisions).

Power to summon witnesses and take evidence.

8. (1) A member or an acting member of the Commission may summon a person to appear before the Commission at a hearing held for the purpose of the performance of a function 5 or the exercise of a power conferred on it by or under an Act to give evidence and to produce such documents (if any) as are referred to in the summons.

(2) The Commission may, at a hearing referred to in subsection (1), take evidence on oath or affirmation and for that 10 purpose a member or an acting member of the Commission may—

- (a) require a person appearing at the hearing to give evidence either to take an oath or make an affirmation; and
- (b) administer an oath or affirmation to a person so appearing at the hearing.

15 (3) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers he will give to the questions asked him will be true.

(4) The preceding provisions of this section have effect 20 notwithstanding anything to the contrary in the Evidence Act, 1898, or the Oaths Act, 1900.

Proceedings at hearings.

9. (1) At a hearing before the Commission held for the purpose of the performance of a function or the exercise of a 25 power conferred on it by or under an Act—

- (a) the proceedings shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of that Act and a proper consideration of the matters before the Commission permit;
- 30 (b) the Commission is not bound by the rules of evidence;
- (c) the Commission may, upon such conditions as it thinks fit, permit a person to intervene in the proceedings;

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- (d) the Commission shall observe the rules of natural justice; and
- (e) the proceedings shall so far as applicable be conducted as if the hearing were a meeting of the Commission.
- 5 (2) At a hearing before the Commission referred to in subsection (1)—
- (a) a natural person may appear in person or may be represented by an employee of the person approved by the Commission;
- 10 (b) a body corporate may be represented by an employee, or by a director or other officer, of the body corporate approved by the Commission;
- (c) an unincorporated association of persons or a member of an unincorporated association of persons may be represented by a member or officer of the association approved by the Commission; and
- 15 (d) any person may be represented by a barrister or solicitor of the Supreme Court or of the Supreme Court of another State or of a Territory or of the High Court.
- 20 (3) A person who attends at a hearing before the Commission pursuant to a summons issued under section 8 is entitled to be paid—
- (a) in the case where the summons was issued at the request of a person—by that person; or
- 25 (b) in any other case—by the Commission,
- such allowances and expenses as are provided for by the regulations.
- (4) The Commission may permit a person appearing as a witness before the Commission to give evidence by tendering and, 30 if the Commission thinks fit, verifying by oath or affirmation, a written statement.

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Failure of witnesses to attend and answer questions.

10. (1) A person served, as prescribed, with a summons to appear as a witness at a hearing before the Commission held for the purpose of the performance of a function or the exercise of a power conferred on it by or under an Act shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to attend from day to day unless excused, or released from further attendance, by a member or an acting member of the Commission.

(2) A person appearing as a witness at a hearing referred to in subsection (1) shall not, without reasonable excuse—

- (a) when required pursuant to section 8 either to take an oath or make an affirmation—refuse or fail to comply with the requirement;
- (b) refuse or fail to answer a question that he is required to answer by the member or acting member of the Commission presiding at the hearing; or
- (c) refuse or fail to produce a document that he was required to produce by a summons served on him as prescribed.

(3) A person shall not, at a hearing referred to in subsection (1), give evidence that is false or misleading.

(4) Where—

- (a) a duly qualified legal practitioner is required to answer a question or produce a document at a hearing referred to in subsection (1); and
- (b) the answer to the question would disclose, or the document contains, a privileged communication made by or to the legal practitioner in his capacity as a legal practitioner,

the legal practitioner is entitled to refuse to comply with the requirement unless the person to whom or by whom the communication was made agrees to the legal practitioner

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complying with the requirement but, where the legal practitioner refuses to comply with the requirement, he shall, if so required by the member or acting member of the Commission presiding at the hearing, and if he knows the name and address of the person to whom or by whom the communication was made, forthwith furnish that name and address in writing to the Commission.

(5) It is not a reasonable excuse for the purposes of subsection (2) for a person to refuse or fail to answer a question put to him that the answer might tend to incriminate him but, where the person claims, before answering the question, that the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings for a contravention of subsection (3) or proceedings in relation to a charge of perjury in respect of the answer.

(6) A person who contravenes subsection (1), (2), (3) or (4) is guilty of an offence and is punishable, upon conviction, by a fine not exceeding \$1,000, or imprisonment for a period not exceeding 3 months.

(7) Where the Commission is satisfied that—

- (a) a person served, as prescribed, with a summons to appear as a witness at a hearing referred to in subsection (1) has, without reasonable excuse, failed to attend as required by paragraph (a) or (b) of subsection (1); or
- (b) a person appearing as a witness at a hearing referred to in subsection (1) has, without reasonable excuse—
- (i) when required pursuant to section 8 either to take an oath or make an affirmation;
 - (ii) when required by the member or acting member of the Commission presiding at the hearing to answer a question; or
 - (iii) when required to produce a document by a summons served on him as prescribed,
- refused or failed to comply with the requirement,

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a member or acting member of the Commission may, by instrument in writing, certify the failure to attend or the refusal or failure to comply with the requirement, as the case may be, to the Supreme Court.

- 5 (8) Where a certificate is given under subsection (7), the Supreme Court may inquire into the case and, if it is satisfied that the person to whom the certificate relates has, without reasonable excuse, failed to attend or refused or failed to comply with a requirement as mentioned in the certificate—
- 10 (a) may order the person to attend, or to comply with the requirement, at a hearing before the Commission to be held at a time and place specified in the order; or
- (b) may punish the person in the same manner as if he had been guilty of contempt of the Court and, if it thinks fit,
- 15 also make an order under paragraph (a).

Contempt of Commission.

11. A person shall not—
- (a) insult a member or an acting member of the Commission in the performance of his functions or the exercise of his powers as such a member or acting member at a hearing before the Commission held for the purposes of the performance of a function or the exercise of a power conferred on it by or under an Act;
- 20 (b) interrupt such a hearing;
- (c) create a disturbance or take part in creating or continuing a disturbance, in or near a place where the Commission is holding such a hearing; or
- 25 (d) do any other act that would, if the Commission were a court of record, constitute contempt of that court.
- 30 Penalty : \$1,000 or imprisonment for 3 months.

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Delegation by Commission.

12. (1) The Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to any person, being an authority of any State, the Australian Capital Territory, the Northern Territory or an external Territory to which the operation of the Agreement extends or an officer of any State, the Australian Capital Territory, the Northern Territory or such an external Territory or of such an authority, any functions or powers that are conferred or expressed to be conferred on the Commission by or under any Act (other than functions or powers the delegation of which is prohibited by the Act).

(2) The Commission may delegate under subsection (1) a function or power of the Ministerial Council that the Commission is authorized by that Council to perform or exercise other than a function or power that the Ministerial Council has directed the Commission not to delegate.

(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, an Act of another State or a Commonwealth Act.

(4) 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,
- authorize another person to perform the function or exercise the power so delegated.

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

- (a) a specified person; or

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- (b) a person for the time being holding a specified office under an Act, an Act of another State or a Commonwealth Act.
- (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 authorized 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 or is expressed to confer 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 authorized by the delegate under subsection (4) upon the opinion, belief or state of mind of the delegate or of the authorized 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 or expressed to be conferred on the Commission by or under an Act, an Act of another State or a Commonwealth Act, it shall be presumed, unless the contrary is established, that the person is duly authorized as a delegate of the Commission or as a person duly authorized by such a delegate to perform the function or exercise the power.

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(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.

(12) A document purporting to be signed by a person authorized 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 authorized and to have been so signed pursuant to the performance of a function or the exercise of a power that he is duly authorized by such a delegate to perform or exercise.

(13) Where a function or power of the Commission is, or is to be, performed or exercised by a person to whom the Commission has delegated the function or power under subsection (1) or by a person authorized by such a delegate under subsection (4) to perform the function or exercise the power—

(a) the provisions of sections 6 to 11 (other than section 9 (1) (e)) apply for the purpose of the performance of the function or the exercise of the power by the person in like manner as they would apply if the function were being performed or the power were being exercised by the Commission; and

(b) for the purpose of the application of the provisions of those sections in accordance with paragraph (a), references in those provisions to the Commission or to a member or acting member other than—

(i) the references to the Commission first and second occurring in section 7 (3) and first, second and third occurring in section 7 (9); and

(ii) the reference to the Commission in section 9 (3) (b), shall be construed as references to the person.

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Authority, &c., of State may act as delegate.

13. A person, being an authority of the State or an officer of the State or of such an authority, may perform or exercise any functions or powers that are conferred or expressed to be conferred on the Commission by or under any Act, an Act of another State or a Commonwealth Act, being functions or powers—

- (a) that are delegated to that person pursuant to this Act, an Act of another State or the Commission Act; or
- 10 (b) which, pursuant to this Act, an Act of another State or the Commission Act, he is authorized by a delegate to perform or exercise,

and may perform or exercise those functions or powers in addition to carrying out his duties as an authority of the State or as an officer of the State or of such an authority.

Directions by Commission.

14. Where the Commission has delegated a function or power to a person under section 12—

- 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 12 (4), authorized 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.

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Secrecy.

15 **15. (1)** Subject to this section, a person who is, or has at any time been, appointed for the purposes of a prescribed Act or authorized to perform or exercise any function or power of the Commission conferred or expressed to be conferred on the Commission by an Act or a relevant 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 authorized, 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.

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

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

- 20 (a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under any prescribed Act or relevant Act;
- 25 (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;
- 30 (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, Commonwealth Act or Act of another State to be produced, divulged or communicated, as the case may be.

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(3) In this section, "relevant Act" means the Commission Act, any Commonwealth Act that is a prescribed Act for the purposes of section 47 (2) of the Commission Act, or any Act of another State that is a prescribed Act for the purposes of a provision of an Act or enactment of the relevant State or Territory that corresponds to this section.

Restrictions on dealings in securities.

16. (1) A person who is, or has at any time been, appointed for the purposes of a prescribed Act or authorized to perform or exercise any function or power of the Commission conferred or expressed to be conferred on the Commission by an Act, the Commission Act, any Commonwealth Act that is a prescribed Act for the purposes of section 47 (2) of the Commission Act, or any Act of another State that is a prescribed Act for the purposes of a provision of an Act or enactment of the relevant State or Territory that corresponds to section 15 of this Act or any such function or power on behalf of the Commission and has, by reason that he is, or has at any time been, so appointed or authorized, 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 when 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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5 (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 or an Act of another State or a Commonwealth 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.

10 (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.

15 (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.

20 (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.

Notification of interests.

25 17. (1) A person who is appointed for the purposes of a prescribed Act or is authorized to perform or exercise any function or power of the Commission conferred or expressed to be conferred on the Commission by an Act, the Commission Act, any Commonwealth Act that is a prescribed Act for the purposes of section 47 (2) of the Commission Act, or any Act of another State that is
30 a prescribed Act for the purposes of a provision of an Act or enactment of the relevant State or Territory that corresponds to section 15 of this Act or any such function or power on behalf of

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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—

- 5 (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;
- 10 (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
- 15 (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 so inform the Commission in writing.

(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
20 Commission 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
25 Commission that he was required to consider the first-mentioned matter.

(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
30 for the purposes of this section shall be determined as prescribed under the Commission Act for the purposes of section 49 (4) of that Act.

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

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Provisions relating to Ministerial Council.

18. (1) A certificate purporting to be signed by a member of the Ministerial Council, or by a person authorized by the Ministerial Council to sign certificates for the purposes of section 51 (1) of the Commission Act or of this subsection, stating that the Ministerial Council has made any nomination, appointment or recommendation, given any consent or direction, passed any resolution, done any other act or formed any opinion is, upon mere production, receivable as prima facie evidence of that fact.

10 (2) A certificate purporting to be signed by a member of the Ministerial Council stating that a specified person is authorized by the Ministerial Council to sign certificates for the purposes of section 51 (1) of the Commission Act or of subsection (1) is, upon mere production, receivable as prima facie evidence that the
15 person is so authorized.

(3) A function or power conferred by an Act on the Ministerial Council may, if the Ministerial Council has authorized a member of the Ministerial Council, or has authorized the Commission, to perform or exercise that function or power, be
20 performed or exercised by that member or by the Commission, as the case may be.

Annual report and financial statements of Commission to be tabled in Parliament.

19. (1) The Minister shall cause—

25 (a) copies of the report and financial statements of the Commission prepared by the Commission in each year pursuant to section 52 (1) of the Commission Act; and

30 (b) a copy of the report of the Auditor-General for the Commonwealth on those financial statements,

submitted to the Minister by the Commission pursuant to section 52 (3) of the Commission Act, to be laid before each House of Parliament within 15 sitting days of that House after their receipt by him.

National Companies and Securities Commission (State Provisions).

(2) For the purposes of subsection (1), sitting days shall be counted, whether or not they occur during the same session.

Supreme Court may make rules relating to contempt proceedings.

20. (1) Rules of court may be made under the Supreme Court Act, 1970, for or with respect to inquiries held by the Court under section 10 (8) of this Act or under section 39 (8) of the Commission Act.

(2) Subsection (1) does not limit the rule-making powers conferred by the Supreme Court Act, 1970.

10 Regulations.

21. (1) The Governor may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

15 (2) Regulations providing for allowances and expenses for the purposes of section 9 (3) may provide for those allowances and expenses by reference to a scale of expenses as in force for the time being for witnesses who attend before a court specified in the regulations, being a federal court or the Supreme Court or the
20 Supreme Court of another State or of a Territory.

(3) The regulations may be of general or specially limited application or may differ according to differences in time, place or circumstance.

(4) Regulations prescribing matters for the purposes of
25 this Act may prescribe those matters by reference to regulations for the time being in force under the Commission Act.

(5) The power of the Governor to make regulations shall be exercised only in accordance with advice that is consistent with resolutions of the Ministerial Council.

National Companies and Securities Commission (State Provisions).

Rights of public servants who become members or employees of Commission.

22. (1) The Governor may, by instrument in writing, declare that the provisions of subsection (2) or (3), or both, apply to a person specified in the instrument, and a declaration under this subsection may be made unconditionally or subject to conditions.

(2) Where—

- 10 (a) a person, in respect of whom a declaration under subsection (1) is in force in relation to this subsection, ceases to be engaged in a period of service—
- (i) during the whole of which he held office as a full-time member or employee of the Commission (or both successively); or
- 15 (ii) during any part or parts of which he held office as such a full-time member or employee (or both successively) and during the remainder of which he held office as a full-time member of the Corporate Affairs Commission; and
- 20 (b) he was, immediately before the commencement of that period, an officer of the Public Service,

he is, if he has not attained the age of 60 years, entitled to be appointed to some position in the Public Service not lower in classification and salary than that which he held immediately before the commencement of that period.

25 (3) A person, in respect of whom a declaration under subsection (1) is in force in relation to this subsection, shall, for the purposes of the Superannuation Act, 1916, be deemed—

- 30 (a) to be on leave of absence from the service of the employer in whose service he was employed immediately before he became a full-time member or employee of the Commission; and
- (b) to be in receipt of salary at the rate at which remuneration is payable to him as such a full-time member or employee.

National Companies and Securities Commission (State Provisions).

(4) Subsection (2) does not apply to a person if he ceases to hold office—

- (a) as a full-time member of the Commission—pursuant to section 18 of the Commonwealth Act; or
- 5 (b) as a full-time member of the Corporate Affairs Commission—for any reason, other than the expiration of his term of office or his resignation.

(5) Where, but for this subsection, the operation of subsection (2) in relation to a person would be precluded by reason only of the existence of a period between his holding any of the offices referred to in subsection (2) (a), that period shall, but only if the Governor so directs, be disregarded for the purposes of subsection (2).

SCHEDULE 1.

15 (Sec. 3 (1).)

AN AGREEMENT made the twenty-second day of December, One thousand nine hundred and seventy-eight, between—

- THE COMMONWEALTH OF AUSTRALIA of the first part,
- THE STATE OF NEW SOUTH WALES of the second part,
- 20 THE STATE OF VICTORIA of the third part,
- THE STATE OF QUEENSLAND of the fourth part,
- THE STATE OF SOUTH AUSTRALIA of the fifth part,
- THE STATE OF WESTERN AUSTRALIA of the sixth part and
- THE STATE OF TASMANIA of the seventh part.

25 WHEREAS—

(A) it is generally acknowledged in the interests of the public and of persons and authorities concerned with the administration of the laws relating to—

- (a) companies; and

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SCHEDULE 1—*continued.*

- (b) the regulation of the securities industry,
- 5 that there should be uniformity both in those laws and in their administration in the States and Territories of Australia in order to promote commercial certainty and bring about a reduction in business costs and greater efficiency of the capital markets and that the confidence of investors in the securities market should be maintained through suitable provisions for investor protection;
- 10 (B) the Governments of the Commonwealth and of the States of Australia are agreed that such uniformity will be achieved by establishing and implementing a co-operative scheme the objectives of which are to ensure that—
- 15 (a) the legislation relating to the scheme is, and continues to be, uniform throughout Australia at all times;
- (b) the legislation is administered on a uniform basis;
- 20 (c) the Commonwealth and the States are able to co-operate with each other in regard to the matters to be provided in the legislation and the way in which the legislation is administered;
- (d) the legislation is capable of effective administration throughout Australia with the minimum of procedural requirements and is so administered; and
- 25 (e) changes in the legislation are proposed for consideration as appropriate from time to time and amendments made when the need for reform arises;
- (C) as the result of conferences between their respective Ministers the Governments have reached agreement on a scheme to achieve those objectives;
- 30 (D) the essential element of the scheme is an agreement between the Commonwealth and the States to provide for the introduction of legislation, the establishment and operation of a Ministerial Council and of a National Companies and Securities Commission and for matters relating to the functioning of the scheme as hereinafter appears; and
- 35 (E) the funds and other resources required for the administration of each State or Territory to carry out its functions in accordance with the scheme are to be provided by the respective parties to that agreement:

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SCHEDULE 1—*continued.*

NOW IT IS HEREBY AGREED as follows:

PART I—INTERPRETATION

1. In this agreement, except where a contrary intention appears—

- 5 (a) “the Commonwealth” means the Commonwealth of Australia as a party to this agreement;
- (b) “State” means a State of the Commonwealth of Australia that is at the relevant time a party to this agreement;
- 10 (c) “the States” means all the States that are for the time being parties to this agreement; and
- (d) “Territory” includes, in addition to a mainland Territory, an external Territory of the Commonwealth to which the operation of this agreement is at any time and for the time being extended in accordance with clause 50 and “Australia” extends to any such
- 15 Territory.

2. In this agreement, unless the contrary intention appears or the context otherwise requires—

20 “financial year” means a period of twelve months ending on a thirtieth day of June and, where the relevant provision of this agreement is applicable during part only of any such period, means the portion of the period during which the provision so applies;

“the Commonwealth Acts” means the legislation of the Parliament of the Commonwealth that is provided for by this agreement as amended from time to time consistently with this agreement;

25 “the Interstate Corporate Affairs Agreement” means the agreement so named made the 18th February 1974 between the States of New South Wales, Victoria and Queensland to which the State of Western Australia has become a party;

30 “the Ministerial Council” means the Ministerial Council for Companies and Securities established by Part VII;

“the National Commission” means the National Companies and Securities Commission to be established by the Commonwealth Acts; and

35 “the State Acts” means legislation of the Parliament of a State that is provided for by this agreement as amended from time to time consistently with this agreement.

*National Companies and Securities Commission (State Provisions).*SCHEDULE 1—*continued.*

3. In this agreement, unless a contrary intention appears—

- (a) a reference to a Part is a reference to the relevant Part of this agreement;
- 5 (b) a reference to a clause is a reference to the relevant clause of this agreement; and
- (c) a reference to a sub-clause is a reference to the relevant sub-clause of the clause in which the reference appears or of such other clause as the reference indicates.

10

PART II—OPERATION OF AGREEMENT

4. (1) This agreement shall come into force when it has been executed by all of the parties hereinbefore designated.

15 (2) This agreement may, after its coming into force, be amended only by the unanimous decision of all parties for the time being with representatives in the Ministerial Council with a right to vote in proceedings of that Council.

20 5. In the event that a State, including a State which has become a party pursuant to clause 48, ceases to be a party, this agreement shall nevertheless continue in force with respect to the Commonwealth and the States which are parties when the cessation takes effect.

6. A State shall cease to be a party to this agreement if—

- 25 (a) the State, within a period of six months from the passage of the Commonwealth legislation referred to in clause 8, or within such extension or extensions of that period as may be unanimously approved by the Ministerial Council, fails to secure the passage of the legislation of that State provided for by clause 9; or
- (b) the State withdraws from this agreement pursuant to Part XVI.

PART III—ESTABLISHMENT OF SCHEME

30 7. The Commonwealth and the States will take such action as is provided for by this agreement and is otherwise requisite on their respective parts to achieve the objectives set out in recital (B) by initiating and operating the scheme of legislative and administrative acts and procedures that is contemplated by this agreement.

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

PART IV—INITIAL LEGISLATION

8. (1) The Commonwealth will—
- 5 (a) submit to the Commonwealth Parliament legislation which has been unanimously approved by the Ministerial Council to form the basis of the scheme and take such steps as are appropriate to secure the passage of the legislation; and
- 10 (b) submit to the Federal Executive Council for making by the Governor-General regulations under that legislation which have been unanimously approved by the Ministerial Council.
- (2) The legislation and regulations provided for by sub-clause (1) shall—
- 15 (a) constitute the substantive law relating to companies and the regulation of the securities industry that will apply to the Australian Capital Territory and, subject to clause 49 and as contemplated by clause 50, to other Territories;
- 20 (b) except to the extent that amendments are agreed upon by the Ministerial Council or are required to give effect to Parts V and VI, be substantially in conformity with the provisions of the Companies Acts, Securities Industry Acts and Marketable Securities Acts in force at the date of this agreement in the States which are the parties to the Interstate Corporate Affairs Agreement;
- 25 (c) confer on the Ministerial Council such powers as may appropriately be so conferred to give effect to its functions under and in accordance with this agreement;
- (d) establish the National Commission and make provision for and in relation to its members;
- 30 (e) confer on the National Commission such functions and powers as, in conjunction with functions and powers which are conferred on it by the State Acts, will enable it to carry out its functions under and in accordance with this agreement;
- (f) make provision for and in relation to the staff of the National Commission; and

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

- 5 (g) include provisions relating to the financial management, proceedings, reports and records of the National Commission and for matters that are necessary or incidental to the performance of its functions.
9. Each State will as soon as practicable after the passage of the Commonwealth Acts submit to the Parliament of the State and take such steps as are appropriate to secure the passage of legislation which has been unanimously approved by the Ministerial Council and which—
- 10 (a) to the extent necessary for the purposes of this agreement, repeals, amends or modifies the operation of the legislation of the State relating to companies and to the regulation of the securities industry referred to in the Second Schedule and any regulations made under that legislation;
- 15 (b) as from the coming into force of that legislation, applies, in place of the legislation so repealed, amended or modified in operation, the legislation relating to companies and to the regulation of the securities industry enacted by the Parliament of the Commonwealth as provided in paragraph (a) of sub-clause 8 (1) and, as from the respective dates of that coming into force, any legislation from time to time enacted in accordance with this agreement which amends, supplements or is substituted for that legislation;
- 20 (c) applies, as from the coming into force of the legislation, the regulations referred to in paragraph (b) of sub-clause 8 (1) and any further regulations that amend or supplement or are substituted for those regulations;
- 25 (d) authorizes such action as is requisite for the State to take under clause 7; and
- 30 (e) in the case of the States which are parties to the Interstate Corporate Affairs Agreement, terminates the operation of that agreement.
10. (1) As at the date of execution of this agreement, the question of the application, in respect of the scheme contemplated by this agreement, of Commonwealth and State laws relating to the review of administrative decisions, freedom of information and archives has not been resolved.
- (2) This question will be the subject of further enquiry and subsequent agreement between the parties.

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

PART V—NAMES AND REGISTRATION

11. The legislation of the Commonwealth and of the States provided for by Part IV (in this Part referred to as “the Commonwealth and State 5 legislation”) shall include provisions under which, except with the consent of the Ministerial Council—

- (a) a company shall not be incorporated in any State or Territory under a name which is undesirable or is a name of a kind which the Ministerial Council has directed to be unacceptable;
- 10 (b) a body formed outside Australia shall not be registered as a foreign company in any State or Territory under a name which is undesirable or is a name or a name of a kind which the Ministerial Council has directed to be unacceptable; and
- 15 (c) a body formed within Australia other than a company shall not be entitled to be registered as a foreign company in any State or Territory under a name which is undesirable or is a name or a name of a kind which the Ministerial Council has directed to be unacceptable.

12. The Commonwealth and State legislation shall include provisions 20 under which—

- (a) a body which immediately before the legislation provided for by clauses 8 and 9 comes into force is—
 - (i) a company incorporated in a State or Territory;
 - 25 (ii) a body formed outside Australia and registered as a foreign company in a State or Territory;
 - (iii) a body formed within Australia other than a company and registered as a foreign company in any State or Territory, may carry on business or establish a place of business under the name by which, and in any State or Territory in which, it is so 30 incorporated or is registered as a foreign company or in which it is a recognised company and has reserved that name;
- (b) a company incorporated in any State or Territory and a body 35 formed outside Australia which is registered as a foreign company in any State or Territory may reserve its name in any other State or Territory if its name is, in that other State or Territory, not undesirable and not a name of a kind which the Ministerial Council has directed to be unacceptable;

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

- (c) a company or body which has reserved its name in a State or Territory other than the State or Territory of its incorporation or formation will not be required—
 - 5 (i) to register in that other State or Territory in order to carry on business or establish a place of business in that other State or Territory; or
 - 10 (ii) to lodge any documents in that other State or Territory for the purpose of carrying on business or establishing a place of business in that other State or Territory; and
- (d) a body formed within Australia other than a company shall not be entitled to carry on business or establish a place of business in any State or Territory other than the State or Territory in which it is formed unless it is registered in that other State or Territory as a foreign company.
 - 15

13. The Commonwealth and State legislation shall include provisions by virtue of which—

- (a) a company incorporated in a State or Territory;
- 20 (b) a body formed outside Australia and registered as a foreign company in any State or Territory;
- (c) a body formed within Australia other than a company and registered as a foreign company in any State or Territory,

shall not, except with the consent of the Ministerial Council, change its name to a name which, in any State or Territory in which it is incorporated or in which its name is reserved, as a recognised company, is undesirable or is a name or a name of a kind which the Ministerial Council has directed to be unacceptable.

14. (1) The National Commission shall examine proposals that are from time to time made for an alternative version of the provisions of the Commonwealth and State legislation referred to in this Part, whether or not those provisions have been enacted, or which have been included in the Commonwealth and State legislation pursuant to those clauses and furnish a report to the Ministerial Council on the proposals.

(2) A report by the National Commission on any proposal under sub-clause (1) shall be furnished to the Ministerial Council within two years after the proposal was made.

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—continued.

(3) The Ministerial Council shall give due consideration to a report by the National Commission under sub-clauses (1) and (2) and may modify any provision of the Commonwealth and State legislation or, if the legislation has been enacted, approve an amendment thereof, having regard to the modification proposed.

15. In this Part—

- (a) “company” means a company incorporated under the Companies Act or Companies Ordinance of a State or Territory and does not include a Co-operative Company to which the Companies (Co-operative) Act 1943–1976 of the State of Western Australia (or that Act as subsequently amended) applies.
- (b) “body” includes a company except where a body other than a company is referred to in which case the reference is to a corporation (other than a company) or unincorporated organization which, if it is or were not formed within a State or Territory, is or would be capable of registration in the State or Territory as a foreign company.

PART VI—SPECIAL INVESTIGATIONS

16. The principles that will be adopted in the legislation of the Commonwealth and of the States with respect to special investigations shall be—

- (a) that the power to order special investigations shall be exercisable exclusively by the members of the Ministerial Council either collectively as the Ministerial Council or individually; and
- (b) that the National Commission shall have responsibility for the appointment of inspectors and for the direction and co-ordination of investigatory activities.

17. The principles in respect of special investigations shall be applied by the legislation to the following effect:

- (a) the Minister responsible for the administration of the State Acts in respect of a State or the Commonwealth Acts in respect of a Territory shall be empowered to order a special investigation where it appears to that Minister in the public interest in respect of the State or the Territory to do so;
- (b) the Minister responsible for the administration of the Commonwealth Acts shall be empowered to order a special investigation where it appears to the Minister to be in the national interest to do so;

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

- (c) the Ministerial Council shall be empowered to order a special investigation where in the circumstances it thinks fit;
- 5 (d) the National Commission, in performing its function as appointing authority either where it will undertake the special investigation or will appoint an inspector to do so, will be required—
- 10 (i) where the special investigation has been ordered by a Minister without any request by the National Commission for the Minister to do so, to act in accordance with the wishes of that Minister as to the identity of the inspector and the terms and conditions of the appointment;
- 15 (ii) in any other case, to have regard to the views of the individual Minister or of the Ministerial Council, as the authority by which the special investigation was ordered, as to the identity of the inspector and the terms and conditions of the appointment; and
- 20 (iii) in the event of a disagreement with the Minister or the Ministerial Council on a matter coming within subparagraph (ii), to accept the decision of the Ministerial Council in the relevant respect;
- (e) the National Commission shall be entitled to request an individual Minister or the Ministerial Council, as the appropriate authority, to order a special investigation;
- (f) the power to publish the report of an inspector shall reside—
- 25 (i) in a case where the costs of the investigation are to be met by the National Commission—in the Ministerial Council;
- (ii) in any other case—in the Minister who ordered the investigation,
- 30 but, where an opinion of the relevant Law Officer of the Commonwealth or of a State advising that the publication of the report would be prejudicial to the administration of justice in a Territory or the State has been made available to the Ministerial Council or the Minister having the power to publish the report as the case may be, the power shall not be exercised until a further opinion
- 35 by the relevant Law Officer is similarly made available to the effect that publication would be no longer prejudicial to that administration of justice;

*National Companies and Securities Commission (State Provisions).*SCHEDULE 1—*continued.*

(g) where a special investigation has been ordered by a Minister without any request by the National Commission for the Minister to do so, that Minister, not the National Commission, shall, unless and until the Ministerial Council subsequently approves the investigation, have in relation to that investigation those powers and functions of "the Minister" presently expressed in Part VIA of the Companies Act 1961 or Division 2 of Part II of the Securities Industry Act 1975 of the State of New South Wales, whichever is relevant, which are referred to in Part 2 of the First Schedule.

18. (1) The cost and expenses of and in connection with the carrying out of a special investigation shall be borne—

(a) where the investigation was ordered by—

- 15 (i) the Ministerial Council;
 (ii) an individual Minister at the request of the National Commission; or
 (iii) an individual Minister but subsequently approved by the Ministerial Council,
 20 by the National Commission;

(b) in all other cases—by the party to this agreement whose Minister ordered the investigation.

(2) Moneys which are recovered in respect of the costs and expenses of a special investigation shall be paid or credited to the National Commission or to the party to this agreement according to the allocation under sub-clause (1) of responsibility for those costs and expenses.

PART VII—ESTABLISHMENT OF MINISTERIAL COUNCIL

19. For the purposes of the scheme there shall be a Council of Commonwealth and State Ministers to be known as the Ministerial Council for Companies and Securities.

20. (1) The Ministerial Council shall consist of a member representing each party for the time being to this agreement who, subject to sub-clause (2), shall be the Minister of State of that party who is for the time being responsible for administering the law relating to companies and the regulation of the securities industry.

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

(2) A member of the Ministerial Council for the time being representing a party to this agreement—

- 5 (a) may appoint a delegate who is another Minister of State of that party to attend a meeting of the Ministerial Council in place of the member; or
- (b) shall, while a Minister of State of the party is for the time being acting as the Minister who is referred to in sub-clause (1), be the Minister who is so acting,

10 and references in this agreement (other than in this clause) to a member of the Ministerial Council shall include a delegate in respect of attendance at any such meeting or a Minister who is so acting.

PART VIII—FUNCTIONS OF MINISTERIAL COUNCIL

21. (1) The functions of the Ministerial Council shall be—

- 15 (a) to consider and to keep under review the formulation and operation of the legislation and regulations provided for by this agreement; and
- (b) to exercise general oversight and control over the implementation and operation of the scheme.

20 (2) To assist the Ministerial Council in discharging its functions under paragraph (a) of the previous sub-clause, there shall be a Companies and Securities Law Review Committee—

- 25 (a) to carry out research into and advise on law reform in relation to the legislation and regulations referred to in that paragraph;
- (b) the number of the members of which is to be determined from time to time by the Ministerial Council;
- (c) the members of which are to be appointed and may be removed by the Ministerial Council and will be engaged on terms and conditions determined by the Ministerial Council.

30 22. (1) Without prejudice to the generality of clause 21, the functions of the Ministerial Council shall include—

- (a) consideration and approval of the Bills which will comprise the Commonwealth legislation referred to in clause 8 and of the regulations under that legislation;

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

- (b) consideration and approval of the Bills of each State which will comprise the State legislation referred to in clause 9 and of any regulations under that legislation;
- 5 (c) consideration and approval of any amendments of, or of any legislation proposed to supplement or be substituted for, the Commonwealth Acts and the regulations for the time being in force thereunder;
- 10 (d) consideration and approval of any amendments of, or of any legislation proposed to supplement or be substituted for, the State Acts and any regulations for the time being in force thereunder;
- (e) general oversight, including budgetary control, over the functioning of the National Commission; and
- 15 (f) giving directions to the National Commission in respect of any policy or matter that comes within the functions of the National Commission under the Commonwealth Acts or the State Acts.

(2) Subject to Part VI and clause 39, the functions of the Ministerial Council under paragraph (f) of sub-clause (1) shall be an exclusive function and the National Commission shall not be required to recognize or acknowledge any other person or authority as empowered to give directions to it in that respect.

23. The Ministerial Council shall be entitled to require the National Commission to furnish a report to the Ministerial Council in relation to—

- 25 (a) any policy which the National Commission is pursuing, or proposes to pursue, including a report of the estimated financial effect on State and Territory administrations of any policy or change in policy which the National Commission proposes to pursue; and
- (b) any other matter within the functions of the Ministerial Council or of the National Commission.

30 24. The functions of the Ministerial Council shall not, except as provided in clause 25, be able to be, and shall not be, delegated to any Minister or to any other person or authority.

35 25. The Ministerial Council may itself exercise and, without derogation from its power in that respect at any time, may from time to time and for such time as it may determine, authorize any one or more of its members or the National Commission to exercise a discretion arising out of or relating to a matter or to matters specified in, and subject to, Part 1 of the First Schedule to this agreement.

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

PART IX—PROCEEDINGS OF MINISTERIAL COUNCIL

26. (1) Ordinary meetings of the Ministerial Council (in this Part called "Council") shall be held at such times and places as are from time to time
5 decided by Council but not less than four shall be held in each calendar year.

(2) A special meeting of Council may be convened by any member by notice of 14 days or of such other period as may be accepted by all members for the purpose of the meeting.

10 (3) A special meeting shall not, except with the agreement of all members of Council, consider a matter which has not been specified in or at the time of the notice of the meeting.

27. The quorum for a meeting of Council shall be five members.

28. (1) The Chairman of a meeting of Council shall be decided by
15 Council prior to or, if not previously decided, at the meeting.

(2) At a meeting of Council the Chairman shall have a deliberative but not casting vote.

29. (1) Except as otherwise provided in this clause, in paragraph (a) of clause 6 and in clauses 8, 9 and 30, a resolution will be carried by
20 Council by a simple majority of members present and voting on the resolution.

(2) A unanimous vote of all members of Council shall be required for the passage of a resolution which—

25 (a) nominates a person for appointment as a member of the National Commission;

(b) approves amendments of the Commonwealth Acts which will change the number of members of the National Commission; or

(c) cancels the approval of any stock exchange in Australia.

30 A resolution which, without being considered at a meeting of Council, is referred to all members of Council and of which a majority of the members, or, if a unanimous vote is required for the passage of the resolution, all the members indicate by telephone, teleprinter message or other mode of communication to the National Commission that they are in favour shall be as valid and effectual as if it had been passed at a meeting of
35 Council duly convened and held.

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

31. Subject to the foregoing provisions of this Part, Council may determine its own procedure and for that purpose may make rules of procedure, including rules relating to notices of meetings and conduct of business at 5 meetings and to voting by members under clause 30, and may from time to time alter such rules.

PART X—NATIONAL COMPANIES AND SECURITIES
COMMISSION

32. (1) Subject to this agreement, the functions of the National Com-
10 mission to be established by the Commonwealth Acts shall be to have and to exercise, subject only to directions from time to time of the Ministerial Council, responsibility for the entire area of policy and administration with respect to company law and the regulation of the securities industry.

(2) The National Commission shall be required by the Common-
15 wealth Acts to comply with directions that are from time to time given to it by the Ministerial Council in accordance with the agreement or by a Minister pursuant to sub-paragraph (d) (i) of clause 17, and in conformity with the Commonwealth Acts and the State Acts.

(3) Without prejudice to the generality of sub-clause (1), the
20 functions of the National Commission shall, subject to paragraph 17 (g), include the exercise of discretions in respect of the matters specified in Part 2 of the First Schedule for the purposes of the operation of the provisions by which those discretions are conferred.

33. (1) The National Commission shall be a body corporate under the
25 name National Companies and Securities Commission and shall consist of not less than three and not more than five members (who shall be known as members) and at least three members shall be full time members.

(2) The members shall be appointed by the Governor-General of the Commonwealth on the nomination of the Ministerial Council.

30 (3) A Chairman and a Deputy Chairman of the National Commission shall be appointed by the Governor-General from the full-time members for the time being on the nomination of the Ministerial Council.

(4) In the event of a vacancy in the office of Chairman or the
35 absence of the Chairman from duty or from Australia the Deputy Chairman shall act as Chairman and in the event of a vacancy in the office of Deputy Chairman or a like absence of the Deputy Chairman a member who has been nominated by the Ministerial Council to act as Chairman in that event may so act.

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

- (5) The qualifications of a person for appointment as member shall include suitable experience in business, commerce, law, economics, accounting or public administration.
- 5 (6) A member shall, subject to the provisions of the Commonwealth Acts, hold office for such period not exceeding five years as is specified upon appointment and shall be eligible for re-appointment.
34. (1) The affairs of the National Commission shall be conducted at meetings of members and in such other manner as is provided by the
10 Commonwealth Acts.
- (2) The quorum for a meeting of the National Commission shall be three members unless at the time the Commission consists of three members only, in which case the quorum shall be two members.
- (3) The Chairman of the National Commission or, in the absence
15 of the Chairman, the Deputy Chairman or Acting Deputy Chairman for the time being will preside at meetings.
- (4) The person presiding at a meeting shall have a deliberative but not a casting vote.
35. (1) The National Commission shall have power to delegate any of
20 its functions, including the functions referred to in sub-clause 32 (3), to an administration, or to an officer of an administration, of a State or of a Territory.
- (2) In performing its functions and exercising its powers, including
25 the power of delegation, the National Commission shall have regard to the principle of the maximum development of a decentralized capacity to interpret and promulgate the uniform policy and administration of the scheme.
36. (1) The staff of the Commission shall consist of such persons as are
30 employed by it in accordance with the Commonwealth Acts and may include persons who, by arrangement between the Commonwealth and a State in accordance with the Commonwealth Acts and the State Acts, are provided for the performance of services for the National Commission.
- (2) The National Commission shall be empowered to arrange with
35 the Commonwealth or a State for the services of members of its staff to be made available for the administration by the Commonwealth or the State of company law or the regulation of the securities industry.

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—continued.

PART XI—STATE AND TERRITORY ADMINISTRATIONS

37. (1) The administration of company law and the regulation of the securities industry within each State and Territory in accordance with the scheme established under this agreement shall, to the maximum extent practicable, be carried out by the entities and personnel of the State or Territory administration but those entities and personnel shall in the performance of those functions be subject to direction by the National Commission.
- 10 (2) The power of the National Commission to give directions to a State or Territory administration shall not apply to functions which that administration performs under legislation or regulations other than that of the Commonwealth and of the States provided for by clause 8 and by paragraphs (b) and (c) of clause 9 respectively.
- 15 38. (1) The policy direction and general control over the administration of company law and the regulation of the securities industry throughout Australia by the Ministerial Council and by the Commission in accordance with this agreement shall, subject to Part VI and to clause 25 and to sub-clause (2), be exercised to the exclusion of individual Ministerial direction and control by the responsible Minister of the Commonwealth or of the State.
- 20 (2) The exercise of direction and control by the Ministerial Council or by the National Commission referred to in sub-clause (1) shall not extend to matters relating to the Australian Public Service or the Public Service of a State or to the management and provision of facilities and services of the State or Territory administration or to any functions of that administration that are not included within the scope of operation of the scheme established under this agreement.
- 25 39. The Minister of the Commonwealth or of a State who has administrative responsibility for company law and regulation of the securities industry in a State or Territory shall be entitled to be notified of, and to be given information concerning, any matter being dealt with by the National Commission or the administration of the State or the Territory and shall have the right to refer any matter arising out of or in connexion with the Minister's responsibilities directly to the National Commission or to the Ministerial Council for consideration.
- 30 40. Each party to this agreement will provide the funds and other resources necessary for its State or Territory administration to carry out the functions of that administration in accordance with the scheme established under this agreement.
- 35 40

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—continued.

PART XII—FUNDING OF NATIONAL COMMISSION

41. (1) The funds required for the establishment and functioning of the National Commission shall be provided in equal shares by the Commonwealth as to one part and the States jointly as to the other part.

(2) The share of the States of the funds required during a financial year shall be apportioned between the States in accordance with the same proportions as the estimated population of each State on the 31st December in the financial year as determined by the Australian Statistician under section 9 of the States (Personal Income Tax Sharing) Act 1976 of the Commonwealth Parliament bears to the total of the estimated populations of all the States on that date as so determined.

(3) If the Northern Territory becomes a party to this agreement under clause 49, the proportion of the share of the States which that Territory is to provide for the purposes of sub-clause (2) shall be calculated according to the population of that Territory as determined from time to time by the Australian Statistician.

42. (1) The parties will, on or before a date to be agreed between them, enter into an agreement relating to the sharing of relevant fees among the parties in appropriate terms similar to those contained in the agreement dated 15 January 1976 between the States of New South Wales, Victoria, Queensland and Western Australia relating to the sharing of fees for the purposes of the Interstate Corporate Affairs Agreement.

(2) The agreement entered into pursuant to the previous sub-clause shall provide that it may be amended by the unanimous decision of the Ministerial Council.

PART XIII—REPORTS AND STATEMENTS

43. (1) The National Commission shall be required by the Commonwealth Acts to prepare, as soon as practicable after each financial year and not later than the 31st October after the financial year, an annual report and financial statements in respect of that year in such form as is approved from time to time by the Ministerial Council.

(2) The report and financial statements in respect of each financial year shall be submitted to—

(a) the responsible Minister of the Commonwealth for presentation to the Commonwealth Parliament;

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—*continued.*

- (b) each responsible Minister of a State for presentation to the State Parliament; and
- (c) the Ministerial Council.

5 PART XIV—AMENDMENT OF LEGISLATION

44. The following provisions shall apply with respect to the amendment of the legislation of the Commonwealth and of the States provided for by this agreement:

- 10 (a) The National Commission or any party to this agreement may at any time submit to the Ministerial Council for consideration, or the Ministerial Council may at any time of its own motion consider, a proposal for the amendment of the Commonwealth Acts.
- 15 (b) In the event that any Bill to amend the Commonwealth Acts is approved by the Ministerial Council, the Commonwealth will submit that Bill to the Commonwealth Parliament and will take such steps as are appropriate to secure the passage of the Bill.
- 20 (c) If a Bill has not been passed by the Commonwealth Parliament within six months from the date on which it was approved by the Ministerial Council, any State may submit to its Parliament and secure the passage of separate legislation which amends the State Acts of that State in such a manner as to give effect to the amendment which that Bill would have made to the Commonwealth Acts.

25 45. (1) The National Commission or any party to this agreement may at any time submit to the Ministerial Council for consideration, or the Ministerial Council may at any time of its own motion consider, a proposal for the amendment of the regulations made under the Commonwealth Acts.

30 (2) In the event that any draft regulation to amend the Commonwealth regulations to give effect to such a proposal is approved by the Ministerial Council, the Commonwealth will submit the draft regulation to the Executive Council for making by the Governor-General and will take such steps as are appropriate to secure the making of that amending regulation.

35 (3) If upon the expiration of six months from the date on which any such amending regulation was approved by the Ministerial Council the amending regulation has not been made or, having been made, is subject

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—continued.

to disallowance or has ceased to be in force by disallowance or for any other reason, any State may cause a regulation to be made which amends the regulations made under the State Act of the State in accordance with the amending regulation that was approved by the Ministerial Council.

46. The Commonwealth will not—

- (a) submit to the Commonwealth Parliament any Bill to amend the Commonwealth Acts; or
 - (b) cause to be made any regulation which amends the regulations made under the Commonwealth Acts,
- unless the amendment which will be made by the Bill or by the regulations, as the case may be, has been approved by the Ministerial Council.

47. (1) The Commonwealth will not submit to its Parliament legislation or take action for the making of regulations which will, upon coming into force, negative the operation of the legislation referred to in paragraph (a) of sub-clause 8 (1) or the regulations referred to in paragraph (b) of that sub-clause or that legislation or those regulations as amended from time to time in accordance with this agreement.

(2) Subject to paragraph (c) of clause 44 and to sub-clause 45 (3), a State will not submit to its Parliament legislation or take action for the making of regulations which will, upon coming into force, negative the operation of the legislation of the State which applies—

- (a) the legislation referred to in paragraph (b) of clause 9; or
- (b) the regulations referred to in paragraph (c) of clause 9.

PART XV—ACCESSION OF NEW STATES AND TERRITORIES

48. (1) A new State of the Commonwealth of Australia may become a party to this agreement by signature on its behalf of a copy of this agreement and notifying each party to this agreement in writing of the signature and the date of signature and shall be deemed to have become a party as from that date.

(2) Subject to sub-clause (3), the provisions of this agreement shall apply to a new State which becomes a party as if it were named as a party to this agreement.

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—continued.

(3) Paragraph (a) of clause 6 shall apply to a new State which becomes a party as if the period of six months referred to therein was expressed as commencing on the date that State becomes a party to this agreement.

49. (1) If administrative responsibility for company law and the regulation of the securities industry in respect of the Northern Territory has become vested in a Minister or Executive Officer who is responsible to the Legislative Assembly of the Territory, the Northern Territory shall be entitled to become a party to this agreement on the basis set out in this clause.

(2) If the Northern Territory becomes a party pursuant to the previous sub-clause—

15 (a) the appropriate Northern Territory representative shall be entitled to participate in the proceedings of the Ministerial Council but, subject to paragraph (c), shall not be entitled to vote as a member of the Ministerial Council;

20 (b) subject to the previous paragraph, the provisions of this agreement shall apply to the Northern Territory so far as is practicable as if the Territory were a State and, to such extent as is appropriate, the provisions of this agreement shall be read and construed and, if necessary, modified to achieve that result; and

25 (c) the other parties to this agreement may unanimously agree that the representative referred to in paragraph (a) shall be entitled to vote as a member of the Ministerial Council.

30 (3) For the purposes of paragraph (b) of the previous sub-clause, references in this agreement to the Parliament of a State shall be read as references to the legislature of the Northern Territory and the expression "the State Acts" shall include the legislation of or for the Northern Territory which corresponds to the legislation of a State that is provided for by this agreement.

(4) If the Northern Territory is, at the time when it becomes a State, a party to this agreement, it shall continue as a party as though it had become a party pursuant to clause 48.

35 50. If the Minister of State of the Commonwealth responsible for the administration of company law and the regulation of the securities industry considers that the operation of this agreement should be extended to the administration of company law and the regulation of the securities industry in an external Territory of the Commonwealth he may notify the Ministerial

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—continued.

Council in writing to that effect and, subject to the passage by the Commonwealth Parliament of such legislation and the making of such regulations as are necessary to achieve that result, the provisions of this agreement shall apply to that Territory in the same manner and to the same effect as they apply to the Australian Capital Territory.

PART XVI—WITHDRAWAL OF A PARTY

51. (1) A party to this agreement may at any time by notice in writing to the Ministerial Council withdraw from this agreement and shall cease to be a party when the notice of withdrawal takes effect.

(2) Subject to sub-clause (3), a notice of withdrawal under this clause shall take effect on a date to be specified in the notice which is not less than one year from the date on which the notice is given.

(3) If the Commonwealth acts in breach of clause 46, a State may withdraw from this agreement under sub-clause (1) by giving a notice of withdrawal which refers to that breach and which takes effect forthwith.

FIRST SCHEDULE

PART 1

Clause 25

The matters for which immediately before the date of its repeal provision was made by—

(a) sections 22, 69A and 353 and sub-sections 178 (4), 381 (1) and 381 (2) of the Companies Act 1961 of the State of New South Wales; and

(b) section 29 and sub-sections 21 (4), 127 (1) and 127 (2) of the Securities Industry Act 1975 of the State of New South Wales.

The National Commission shall not be authorized to exercise the discretion arising from section 29 of the said Securities Industry Act 1975.

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—continued.

PART 2

Clause 32 (3)

The matters for which immediately before the date of its repeal provision was made by—

- 5 (a) sections 24, 79, 179, 179B, 180, 180v, 186, 374D and 374E, sub-sections 44 (3), 80 (1A), 88 (1), 176 (5), 178 (1), 178 (1A), 178 (2), 178 (3), 178 (5), 178 (6), 178 (7), 178 (8), 178 (9), 178 (10), 224 (3), 334 (2) and 374 (2) and paragraphs 38 (7) (b), 74 (1) (e), 171 (1) (b) and 339 (b) of the Companies Act 1961 of the State of New South Wales; and
- 10 (b) sections 21 (other than subsection (4)) 22, 24, 26 and 129, subsection 19 (5) and paragraph 17 (2) (a) of the Securities Industry Act 1975 of the State of New South Wales.

SECOND SCHEDULE

15

STATE LEGISLATION

Clause 9 (a)

- | | |
|-------------------------|--|
| New South Wales | Companies Act 1961
Marketable Securities Act 1970
Securities Industry Act 1975 |
| 20 Queensland .. | Companies Act 1961–1975
Marketable Securities Act 1966
Securities Industry Act 1975 |
| South Australia .. | Companies Act 1962–1974
Marketable Securities Transfer Act 1967
Sharebrokers Act 1945 |
| 25 Tasmania | Companies Act 1962
Marketable Securities Act 1971 |
| Victoria | Companies Act 1961
Marketable Securities Act 1970
Securities Industry Act 1975 |
| 30 Western Australia .. | Companies Act 1961–1975
Marketable Securities Transfer Act 1970
Securities Industry Act 1975 |

IN WITNESS WHEREOF this Agreement has been respectively signed for and on behalf of the parties as at the day and year first above written.

35 SIGNED by the Right Honourable
JOHN MALCOLM FRASER, Prime
Minister of the Commonwealth of
Australia, in the presence of—

MALCOLM FRASER

WAL FIFE

National Companies and Securities Commission (State Provisions).

SCHEDULE 1—continued.

- 5 SIGNED by the Honourable NEVILLE KENNETH WRAN, Premier of the State of New South Wales, in the presence of— NEVILLE WRAN
- 10 SIGNED by the Honourable RUPERT JAMES HAMER, Premier of the State of Victoria, in the presence of— R. J. HAMER
- 15 SIGNED by the Honourable JOHANNES BJELKE - PETERSEN, Premier of the State of Queensland, in the presence of— JOH BJELKE-PETERSEN
- 20 SIGNED by the Honourable DONALD ALLAN DUNSTAN, Premier of the State of South Australia, in the presence of— DON DUNSTAN
- 25 SIGNED by the Honourable SIR CHARLES WALTER MICHAEL COURT, Premier of the State of Western Australia, in the presence of— CHARLES COURT
- 30 SIGNED by the Honourable DOUGLAS ACKLEY LOWE, Premier of the State of Tasmania, in the presence of— D. A. LOWE
- 35 SIGNED by the Honourable D. EWART

BY AUTHORITY

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

(\$1.50)