

**NATIONAL COMPANIES AND SECURITIES
COMMISSION (STATE PROVISIONS) AMENDMENT BILL
1986**

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill is cognate with the Futures Industry (Application of Laws) Bill 1986.

The object of this Bill is to amend the National Companies and Securities Commission (State Provisions) Act 1981 in consequence of the proposed enactment by the Commonwealth Parliament of Part III of the Companies and Securities Legislation Amendment (Futures Industry) Bill 1986 and the enactment by the Commonwealth Parliament of Part VI of the Companies and Securities Legislation (Miscellaneous Amendments) Act 1985 and certain earlier enactments which effected amendments to the National Companies and Securities Commission Act 1979 of the Commonwealth. The National Companies and Securities Commission (State Provisions) Act 1981 is intended to complement the last-mentioned Act and the amendments are designed to ensure that the State Act remains consistent with its Commonwealth counterpart.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the various provisions of the proposed Act.

Clause 3 defines the National Companies and Securities Commission (State Provisions) Act 1981 as the Principal Act.

Clause 4 is a formal provision that gives effect to the Schedules of amendments.

Schedule 1 effects amendments to the Principal Act in consequence of the proposed enactment by the Commonwealth Parliament of Part III of the Companies and Securities Legislation Amendment (Futures Industry) Bill 1986. The last-mentioned Act is itself consequential on the proposed enactment by the Commonwealth of the Futures Industry Bill 1986.

Schedule 1 (1) amends section 3 of the Principal Act (which defines certain expressions for the purposes of that Act) by introducing a definition of the expression "futures contract".

Schedule 1 (2) amends section 16 of the Principal Act, which prohibits members and officers of the National Companies and Securities Commission and others from dealing in securities in certain circumstances. The amendment extends the operation of the section to dealings in futures contracts.

Schedule 1 (3) amends section 17 of the Principal Act, which requires members and officers of the National Companies and Securities Commission and others to notify their interests in securities and in certain other matters to the Commission. The amendment extends the operation of the section to dealings in futures contracts.

Schedule 2 effects miscellaneous amendments to the Principal Act. Most of the amendments are consequential on the enactment by the Commonwealth Parliament of Part VI of the Companies and Securities Legislation (Miscellaneous Amendments) Act 1985 which effected amendments to the National Companies and Securities Commission Act 1979 of the Commonwealth.

Schedule 2 (1) omits from section 3 of the Principal Act (which defines certain expressions for the purposes of that Act) the definition of the expression "investment contract". The definition is now redundant.

Schedule 2 (2) amends section 8 of the Principal Act, which confers on the National Companies and Securities Commission power to summon witnesses and to take evidence. That section will provide that an oath or affirmation to be taken or made by a person at a hearing of the Commission will be an oath or affirmation that evidence (rather than answers to questions) given at a hearing held before the Commission will be true.

Schedule 2 (3) amends section 9 of the Principal Act, which relates to proceedings at hearings conducted by the Commission. As that section now stands the Commission is required to conduct a hearing as if it were a meeting of the Commission. The Commonwealth Act has been amended to enable the Commission to hold meetings by telephone. As a result of the amendment the Commission will be precluded from conducting a hearing by telephone.

Schedule 2 (4) amends section 12 of the Principal Act, which empowers the Commission to delegate its functions and powers. Under the amendment the Commission will be able to delegate to a member or acting member of the Commission the powers conferred on it by section 7, 8, 9 or 10 of the Principal Act. (Those sections respectively relate to hearings of the Commission; power of the Commission to summon witnesses and to take evidence; proceedings at hearings before the Commission; and the consequences of failing to attend before the Commission to answer questions.)

**NATIONAL COMPANIES AND SECURITIES
COMMISSION (STATE PROVISIONS) AMENDMENT BILL
1986**

NEW SOUTH WALES



TABLE OF PROVISIONS

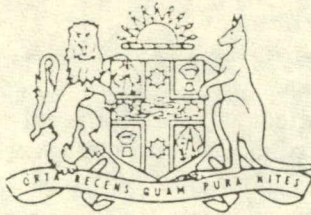
1. Short title
2. Commencement
3. Principal Act
4. Amendment of Act No. 60, 1981

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT IN CONSEQUENCE OF THE ENACTMENT OF PART III OF THE COMPANIES AND SECURITIES LEGISLATION AMENDMENT (FUTURES INDUSTRY) ACT 1986 OF THE COMMONWEALTH

SCHEDULE 2—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

**NATIONAL COMPANIES AND SECURITIES
COMMISSION (STATE PROVISIONS) AMENDMENT BILL
1986**

NEW SOUTH WALES



No. , 1986

A BILL FOR

An Act to amend the National Companies and Securities Commission (State Provisions) Act 1981 in consequence of the enactment by the Commonwealth Parliament of certain amendments to the National Companies and Securities Commission Act 1979 of the Commonwealth.

*National Companies and Securities Commission (State Provisions)
Amendment 1986*

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) Amendment Act 1986".

Commencement

2. (1) Except as provided by subsections (2)–(4), this Act shall commence
10 on the date of assent to this Act.

(2) Section 4, in its application to a provision of Schedules 1 and 2, shall commence or be deemed to have commenced on the day on which the provision commences or commenced.

(3) Schedule 1 shall commence on the day on which Part III of the
15 Companies and Securities Legislation Amendment (Futures Industry) Act 1986 of the Commonwealth comes into operation.

(4) Schedule 2 shall commence or be deemed to have commenced on the day on which Part VI of the Companies and Securities Legislation (Miscellaneous Amendments) Act 1985 of the Commonwealth comes or
20 came into operation.

Principal Act

3. The National Companies and Securities Commission (State Provisions) Act 1981 is referred to in this Act as the Principal Act.

Amendment of Act No. 60, 1981

25 4. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

*National Companies and Securities Commission (State Provisions)
Amendment 1986*

SCHEDULE 1

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT IN CONSEQUENCE OF
THE ENACTMENT OF PART III OF THE COMPANIES AND
5 SECURITIES LEGISLATION AMENDMENT (FUTURES
INDUSTRY) ACT 1986 OF THE COMMONWEALTH

(1) Section 3 (**Interpretation**)—

Section 3 (1), definition of “futures contract”—

After the definition of “functions”, insert:

10 “futures contract” means a futures contract within the meaning
of the Futures Industry (New South Wales) Code or of the
provisions of a law in force in a participating State or in
a participating Territory that correspond with that Code;

15 (2) Section 16 (**Restrictions on dealings in securities and futures
contracts**)—

(a) Section 16 (1), (2)—

Omit the subsections, insert instead:

(1) A person who—

(a) is, or has at any time been—

20 (i) appointed for the purposes of this Act or any other
prescribed Act or law;

(ii) engaged as a member of the staff of the
Commission; or

25 (iii) authorized to perform or exercise any function or
power of the Commission or any function or power
on behalf of the Commission; and

(b) has, by reason that the person is, or has at any time been,
so appointed, engaged or authorized, information that is
not generally available but, if it were, would be likely
30 materially to affect—

(i) the price of securities; or

(ii) the price for dealing in a futures contract,

*National Companies and Securities Commission (State Provisions)
Amendment 1986*

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT IN CONSEQUENCE OF
THE ENACTMENT OF PART III OF THE COMPANIES AND
SECURITIES LEGISLATION AMENDMENT (FUTURES
INDUSTRY) ACT 1986 OF THE COMMONWEALTH—*continued*

shall not—

(c) in a case where paragraph (b) (i) applies—deal in, or cause
or procure any other person to deal in, those securities; or

5 (d) in a case where paragraph (b) (ii) applies—deal in, or cause
or procure any other person to deal in, that futures
contract or a futures contract of the same kind as that
futures contract.

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

10 (2) Where a person to whom subsection (1) applies has
information as mentioned in that subsection and, in
contravention of that subsection—

(a) deals in, or causes or procures another person to deal in,
securities; or

15 (b) deals in, or causes or procures another person to deal in,
a futures contract,

the first-mentioned person is liable to compensate any other
party to the transaction for any loss sustained by that party by
reason of—

20 (c) 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; or

25 (d) any difference between the price at which that dealing in
that futures contract took place and the price at which it
would be likely to have taken place if the information had
been generally available,

as the case may be.

*National Companies and Securities Commission (State Provisions)
Amendment 1986*

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT IN CONSEQUENCE OF
THE ENACTMENT OF PART III OF THE COMPANIES AND
SECURITIES LEGISLATION AMENDMENT (FUTURES
INDUSTRY) ACT 1986 OF THE COMMONWEALTH—*continued*

(b) Section 16 (5)—

Omit the subsection, insert instead:

5 (5) An action under this section for recovery of compensation for a loss is not maintainable after the end of the period of 2 years commencing on the day of completion of—

(a) the transaction in which securities were dealt in and in which the loss occurred; or

(b) the dealing in a futures contract, being the dealing in which the loss occurred,

10 as the case requires.

(c) Section 16 (8)—

After section 16 (7), insert:

(8) An expression (other than a reference to a futures contract) used—

15 (a) in a provision of subsection (1) (b) (ii) or (d), (2) (b) or (d) or (5) (b); or

(b) in a provision of the Futures Industry (New South Wales) Code,

has the same meaning in that provision as it has in that Code.

20 (3) Section 17 (**Notification of interests**)—

(a) Section 17 (1) (ca), (cb)—

After section 17 (1) (c), insert:

(ca) a futures contract in which the person has a relevant interest;

25 (cb) a futures contract that is of the same kind as a futures contract in which the person has a relevant interest;

*National Companies and Securities Commission (State Provisions)
Amendment 1986*

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT IN CONSEQUENCE OF
THE ENACTMENT OF PART III OF THE COMPANIES AND
SECURITIES LEGISLATION AMENDMENT (FUTURES
INDUSTRY) ACT 1986 OF THE COMMONWEALTH—*continued*

(b) Section 17 (2)—

Omit “or particular securities”, insert instead “, particular securities or a particular futures contract,”.

(c) Section 17 (3)—

- 5 After “securities”, insert “, or in a futures contract, whether a futures contract is of the same kind as another futures contract”.
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SCHEDULE 2

(Sec. 4)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

10 (1) Section 3 (**Interpretation**)—

Section 3 (1), definition of “investment contract”—

Omit the definition.

(2) Section 8 (**Power to summon witnesses and take evidence**)—

Section 8 (3)—

- 15 Omit the subsection, insert instead:

(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 evidence that the person will give will be true.

(3) Section 9 (**Proceedings at hearings**)—

- 20 (a) Section 9 (1) (d)—

Omit “and”.

*National Companies and Securities Commission (State Provisions)
Amendment 1986*

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(b) Section 9 (1) (e), (f)—

Omit section 9 (1) (e), insert instead:

5 (e) except in the case of a hearing before a Division of the Commission—the provisions of section 20 of the Commission Act (other than subsections (3A) and (3B)) apply, so far as they are capable of application, as if the hearing were a meeting of the Commission; and

10 (f) in the case of a hearing before a Division of the Commission—the provisions of section 20 of the Commission Act (other than subsections (3A) and (3B)) and of section 21 of that Act (other than subsections (4A) and (4B)) apply, so far as they are capable of application, as if the hearing were a meeting of that Division.

(4) Section 12 (**Delegation by Commission**)—

15 (a) Section 12 (1A)—

After section 12 (1), insert:

20 (1A) Without limiting the generality of subsection (1), the Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to a member or acting member all or any powers of the Commission under section 7, 8, 9 or 10.

(b) Section 12 (6A)—

After section 12 (6), insert:

25 (6A) Any act or thing done in the exercise of a power by a person to whom that power has been delegated by the Commission under subsection (1A) shall be deemed to have been done by the Commission.

(c) Section 12 (7), (8), (13)—

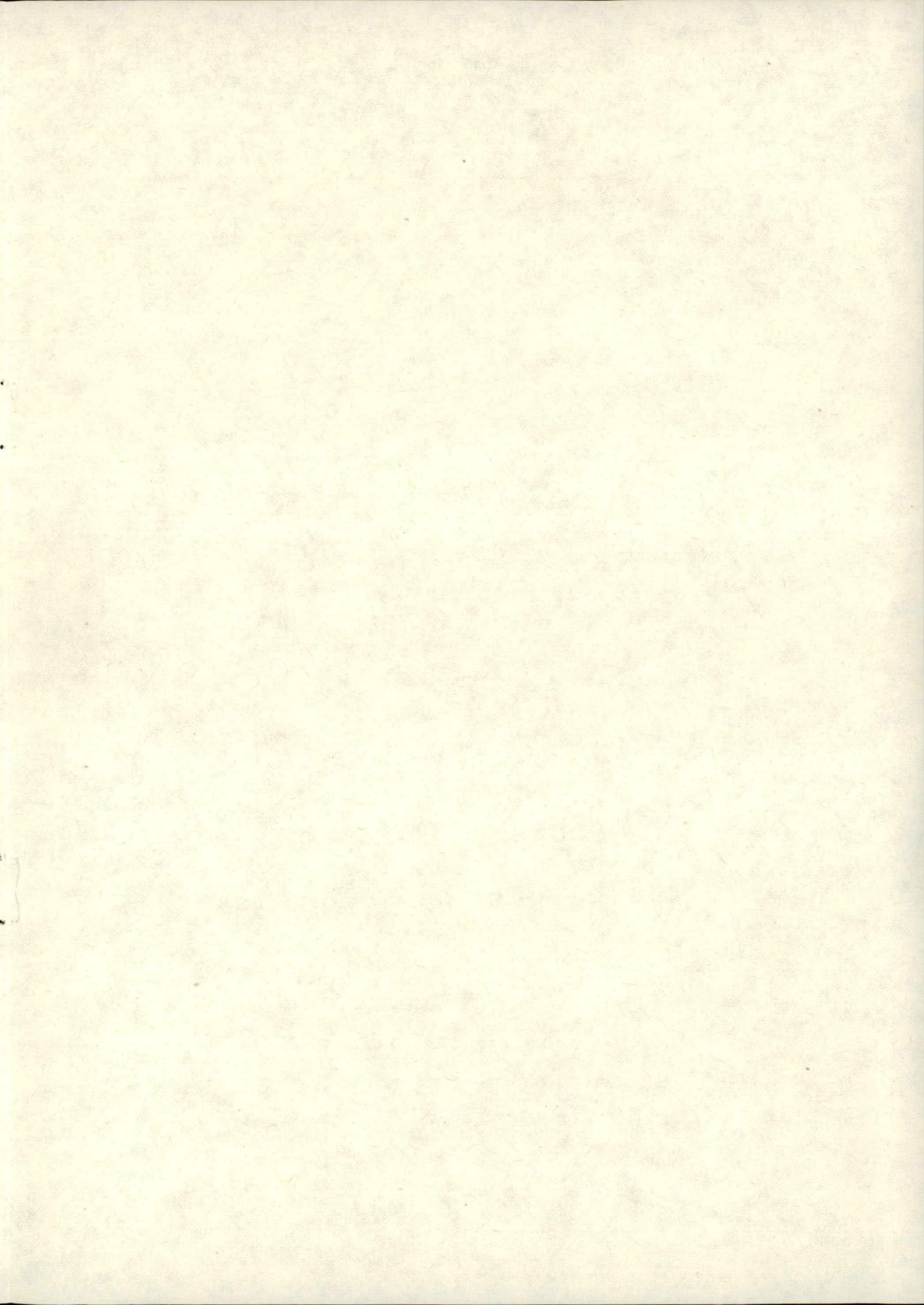
After “subsection (1)” wherever occurring, insert “or (1A)”.

30 (d) Section 12 (13) (a)—

After “section 9 (1) (e)”, insert “and (f)”.

BY AUTHORITY

♠. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1986



**NATIONAL COMPANIES AND SECURITIES
COMMISSION (STATE PROVISIONS) AMENDMENT ACT
1986 No. 67**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Principal Act
4. Amendment of Act No. 60, 1981

**SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT IN CONSEQUENCE OF
THE ENACTMENT OF PART III OF THE COMPANIES AND SECURITIES
LEGISLATION AMENDMENT (FUTURES INDUSTRY) ACT 1986 OF THE
COMMONWEALTH**

SCHEDULE 2—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

**NATIONAL COMPANIES AND SECURITIES COMMISSION
(STATE PROVISIONS) AMENDMENT ACT 1986 No. 67**

NEW SOUTH WALES



Act No. 67, 1986

An Act to amend the National Companies and Securities Commission (State Provisions) Act 1981 in consequence of the enactment by the Commonwealth Parliament of certain amendments to the National Companies and Securities Commission Act 1979 of the Commonwealth. [Assented to, 21 May 1986]

*National Companies and Securities Commission (State Provisions)
Amendment 1986*

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) Amendment Act 1986".

Commencement

2. (1) Except as provided by subsections (2)–(4), this Act shall commence on the date of assent to this Act.

(2) Section 4, in its application to a provision of Schedules 1 and 2, shall commence or be deemed to have commenced on the day on which the provision commences or commenced.

(3) Schedule 1 shall commence on the day on which Part III of the Companies and Securities Legislation Amendment (Futures Industry) Act 1986 of the Commonwealth comes into operation.

(4) Schedule 2 shall commence or be deemed to have commenced on the day on which Part VI of the Companies and Securities Legislation (Miscellaneous Amendments) Act 1985 of the Commonwealth comes or came into operation.

Principal Act

3. The National Companies and Securities Commission (State Provisions) Act 1981 is referred to in this Act as the Principal Act.

Amendment of Act No. 60, 1981

4. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

*National Companies and Securities Commission (State Provisions)
Amendment 1986*

SCHEDULE 1

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT IN CONSEQUENCE OF
THE ENACTMENT OF PART III OF THE COMPANIES AND
SECURITIES LEGISLATION AMENDMENT (FUTURES
INDUSTRY) ACT 1986 OF THE COMMONWEALTH

(1) Section 3 (**Interpretation**)—

Section 3 (1), definition of “futures contract”—

After the definition of “functions”, insert:

“futures contract” means a futures contract within the meaning of the Futures Industry (New South Wales) Code or of the provisions of a law in force in a participating State or in a participating Territory that correspond with that Code;

(2) Section 16 (**Restrictions on dealings in securities and futures contracts**)—

(a) Section 16 (1), (2)—

Omit the subsections, insert instead:

(1) A person who—

(a) is, or has at any time been—

(i) appointed for the purposes of this Act or any other prescribed Act or law;

(ii) engaged as a member of the staff of the Commission; or

(iii) authorized to perform or exercise any function or power of the Commission or any function or power on behalf of the Commission; and

(b) has, by reason that the person is, or has at any time been, so appointed, engaged or authorized, information that is not generally available but, if it were, would be likely materially to affect—

(i) the price of securities; or

(ii) the price for dealing in a futures contract,

*National Companies and Securities Commission (State Provisions)
Amendment 1986*

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT IN CONSEQUENCE OF
THE ENACTMENT OF PART III OF THE COMPANIES AND
SECURITIES LEGISLATION AMENDMENT (FUTURES
INDUSTRY) ACT 1986 OF THE COMMONWEALTH—*continued*

shall not—

- (c) in a case where paragraph (b) (i) applies—deal in, or cause or procure any other person to deal in, those securities; or
- (d) in a case where paragraph (b) (ii) applies—deal in, or cause or procure any other person to deal in, that futures contract or a futures contract of the same kind as that futures contract.

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, in contravention of that subsection—

- (a) deals in, or causes or procures another person to deal in, securities; or
- (b) deals in, or causes or procures another person to deal in, a futures contract,

the first-mentioned person is liable to compensate any other party to the transaction for any loss sustained by that party by reason of—

- (c) 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; or
- (d) any difference between the price at which that dealing in that futures contract took place and the price at which it would be likely to have taken place if the information had been generally available,

as the case may be.

*National Companies and Securities Commission (State Provisions)
Amendment 1986*

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT IN CONSEQUENCE OF
THE ENACTMENT OF PART III OF THE COMPANIES AND
SECURITIES LEGISLATION AMENDMENT (FUTURES
INDUSTRY) ACT 1986 OF THE COMMONWEALTH—*continued*

(b) Section 16 (5)—

Omit the subsection, insert instead:

(5) An action under this section for recovery of compensation for a loss is not maintainable after the end of the period of 2 years commencing on the day of completion of—

- (a) the transaction in which securities were dealt in and in which the loss occurred; or
- (b) the dealing in a futures contract, being the dealing in which the loss occurred,

as the case requires.

(c) Section 16 (8)—

After section 16 (7), insert:

(8) An expression (other than a reference to a futures contract) used—

- (a) in a provision of subsection (1) (b) (ii) or (d), (2) (b) or (d) or (5) (b); or
- (b) in a provision of the Futures Industry (New South Wales) Code,

has the same meaning in that provision as it has in that Code.

(3) Section 17 (**Notification of interests**)—

(a) Section 17 (1) (ca), (cb)—

After section 17 (1) (c), insert:

- (ca) a futures contract in which the person has a relevant interest;
- (cb) a futures contract that is of the same kind as a futures contract in which the person has a relevant interest;

*National Companies and Securities Commission (State Provisions)
Amendment 1986*

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT IN CONSEQUENCE OF
THE ENACTMENT OF PART III OF THE COMPANIES AND
SECURITIES LEGISLATION AMENDMENT (FUTURES
INDUSTRY) ACT 1986 OF THE COMMONWEALTH—*continued*

(b) Section 17 (2)—

Omit “or particular securities”, insert instead “, particular securities or a particular futures contract,”.

(c) Section 17 (3)—

After “securities”, insert “, or in a futures contract, whether a futures contract is of the same kind as another futures contract”.

SCHEDULE 2

(Sec. 4)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 3 (**Interpretation**)—

Section 3 (1), definition of “investment contract”—

Omit the definition.

(2) Section 8 (**Power to summon witnesses and take evidence**)—

Section 8 (3)—

Omit the subsection, insert instead:

(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 evidence that the person will give will be true.

(3) Section 9 (**Proceedings at hearings**)—

(a) Section 9 (1) (d)—

Omit “and”.

*National Companies and Securities Commission (State Provisions)
Amendment 1986*

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(b) Section 9 (1) (e), (f)—

Omit section 9 (1) (e), insert instead:

(e) except in the case of a hearing before a Division of the Commission—the provisions of section 20 of the Commission Act (other than subsections (3A) and (3B)) apply, so far as they are capable of application, as if the hearing were a meeting of the Commission; and

(f) in the case of a hearing before a Division of the Commission—the provisions of section 20 of the Commission Act (other than subsections (3A) and (3B)) and of section 21 of that Act (other than subsections (4A) and (4B)) apply, so far as they are capable of application, as if the hearing were a meeting of that Division.

(4) Section 12 (**Delegation by Commission**)—

(a) Section 12 (1A)—

After section 12 (1), insert:

(1A) Without limiting the generality of subsection (1), the Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to a member or acting member all or any powers of the Commission under section 7, 8, 9 or 10.

(b) Section 12 (6A)—

After section 12 (6), insert:

(6A) Any act or thing done in the exercise of a power by a person to whom that power has been delegated by the Commission under subsection (1A) shall be deemed to have been done by the Commission.

(c) Section 12 (7), (8), (13)—

After “subsection (1)” wherever occurring, insert “or (1A)”.

National Companies and Securities Commission (State Provisions)
Amendment 1986

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(d) Section 12 (13) (a)—

After “section 9 (1) (e)”, insert “and (f)”.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1986



