

FIRST PRINT

**NEW SOUTH WALES INVESTMENT CORPORATION  
(AMENDMENT) BILL 1987**

NEW SOUTH WALES



**EXPLANATORY NOTE**

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

The objects of this Bill are to amend the New South Wales Investment Corporation Act 1986—

- (a) for the purpose of increasing the capital of the Corporation and restructuring that capital so that it is divided into shares;
- (b) to enable the Treasurer, on behalf of the Crown, and certain public authorities to acquire shares in the capital of the Corporation;
- (c) to provide for the Corporation to pay dividends to its shareholders according to their shareholdings;
- (d) to provide for the restructuring of the New South Wales Investment Corporation Fund so that it has an investment component and a financial assistance and development component; and
- (e) to extend the indemnity provisions in section 21 of that Act to all nominees of the Corporation who become directors of bodies corporate by virtue of the fact that the Corporation holds shares in those bodies,

and to make other amendments to that Act of a minor, consequential or ancillary nature.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

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Clause 3 is a formal provision that gives effect to the Schedule of amendments to the New South Wales Investment Corporation Act 1986 ("the Principal Act").

Clause 4 gives effect to the Schedule of savings and transitional provisions.

Schedule 1 (1) amends section 3 of the Principal Act, which defines certain expressions for the purposes of that Act, by inserting in that section definitions of "financial assistance and development function", "financial year", "investment function", "public authority", "register of shareholders", "shareholder", "share certificate" and "shares" (in relation to the Corporation). Further amendments to that section deal with the provision of financial accommodation by the Corporation and the repayment of financial accommodation so provided.

Schedule 1 (2) amends section 6 of the Principal Act, which specifies the general functions of the Corporation. The amendment is consequential on the amendments relating to the provision of financial accommodation, effected by Schedule 1 (1).

Schedule 1 (3) amends section 7 of the Principal Act, which specifies the powers of the Corporation. The amendment replaces the concept of loan with the wider concept of financial accommodation.

Schedule 1 (4) amends section 8 of the Principal Act, which requires the Corporation to comply with the Government's policy objectives. The amendment is designed to restrict the making of directions with respect to the application of the Corporation's capital to that part provided by the Treasurer from the Consolidated Fund.

Schedule 1 (5) amends section 15 of the Principal Act, which sets out the financial objectives of the Corporation. The amendment is consequential on the amendment to section 18 of the Principal Act (Schedule 1 (7)).

Schedule 1 (6) replaces section 17 of the Principal Act, which provides for the capital of the Corporation, with proposed sections 17-17G.

The substituted section 17 provides for the capital of the Corporation to be increased from \$100,000,000 to \$150,000,000. The capital of the Corporation will be divided into class "A" shares and class "B" shares of such nominal values as the Corporation will determine. Class "A" shares will be capable of being acquired by the Treasurer on behalf of the Crown whereas class "B" shares will be available for acquisition by the Treasurer on behalf of the Crown or by certain public authorities. It will be possible to issue class "A" or class "B" shares with such preferred, deferred or other special rights, or such restrictions, as the Corporation may determine.

Proposed section 17A provides for the issue of class "A" shares.

Proposed section 17B provides for the issue of class "B" shares.

Proposed section 17C sets out the rights of holders of shares in the capital of the Corporation. A shareholder will be entitled to receive dividends declared by the Corporation in respect of shares in its capital. Class "B" shares will be transferable.

Proposed section 17D requires the Corporation to keep a register of shareholders.

Proposed section 17E provides that a shareholder of the Corporation is entitled to a share certificate.

Proposed section 17F prohibits the Corporation from dealing in its own shares.

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Proposed section 17G provides for the payment of dividends on shares in the Corporation's capital.

Schedule 1 (7) amends section 18 of the Principal Act, which provides for the establishment in the Special Deposits Account in the Treasury of the New South Wales Investment Corporation Fund. As a result of the amendment, the Fund will be divided into 2 components, an investment component (which will deal with the Corporation's entrepreneurial activities) and a financial assistance and development component.

Schedule 1 (8) amends section 19 of the Principal Act, which deals with the provision by the Corporation of financial assistance to business undertakings. The amendment is consequential on the replacement of the concept of loan by that of financial accommodation.

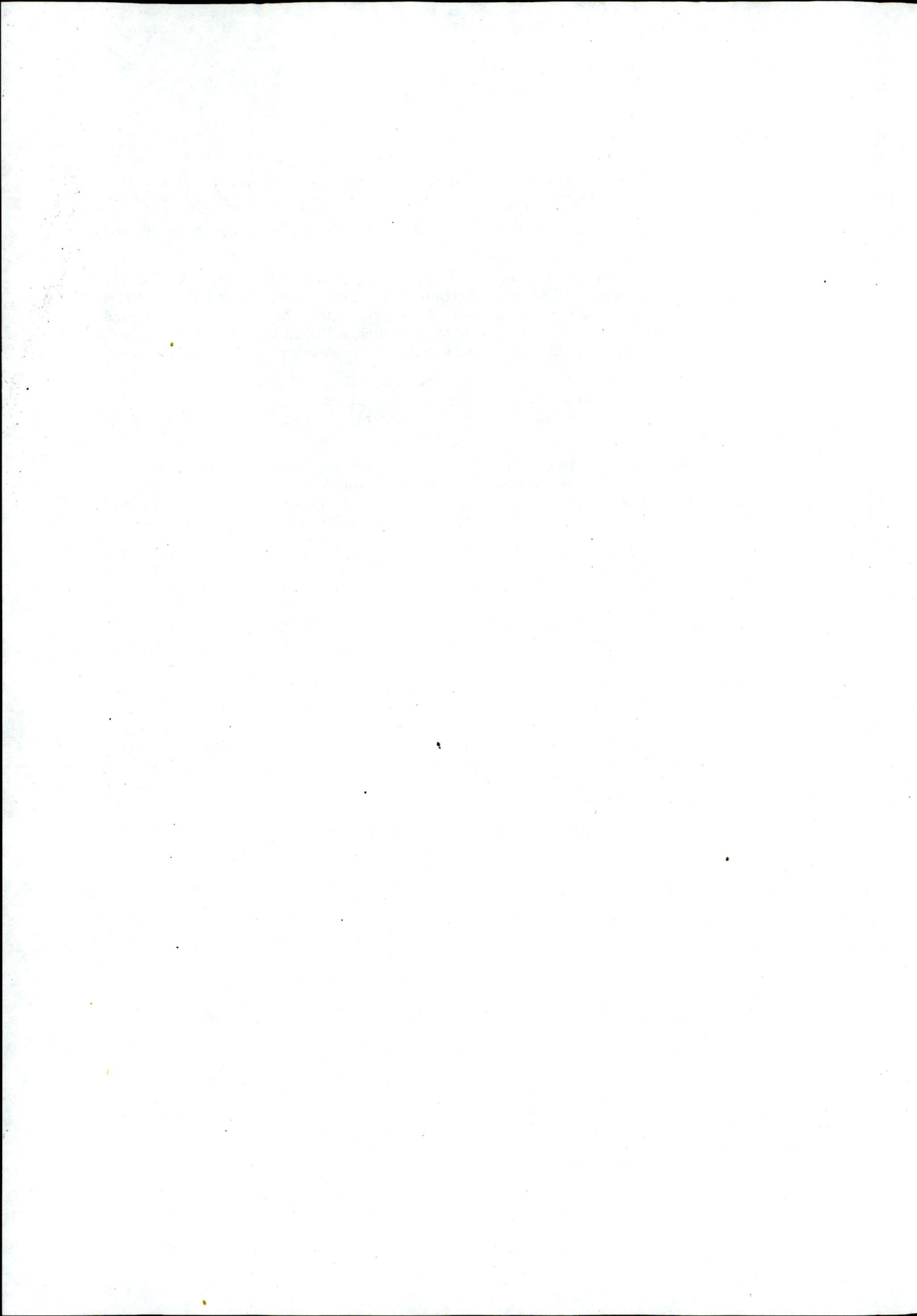
Schedule 1 (9) amends section 20 of the Principal Act, which deals with the acquisition and disposal of securities of business undertakings to which the Corporation has granted financial assistance. The amendment provides for that section to apply to all securities of a business undertaking and not just to shares and prescribed interests as at present.

Schedule 1 (10) amends section 21 of the Principal Act, which provides for a director of the Corporation who is a director of a body corporate by virtue of the fact that the Corporation holds shares in that body corporate to be indemnified against certain liabilities incurred as a result of being a director of that body corporate. The amendment extends the operation of the section to all nominees of the Corporation who become directors of bodies corporate by virtue of the fact that the Corporation holds shares in those bodies.

Schedule 1 (11) amends section 32 of the Principal Act, which empowers the Governor-in-Council to make regulations for the purposes of that Act. The amendment will replace subsection (2) of that section and will enable regulations to be made which will, with prescribed modifications, apply specified provisions of the Companies (New South Wales) Code to the Corporation or its directors, shareholders or employees. The amendment to subsection (1) of that section is consequential on the replacement of subsection (2) of that section.

Schedule 2 provides for savings and matters of a transitional nature.

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# NEW SOUTH WALES INVESTMENT CORPORATION (AMENDMENT) BILL 1987

NEW SOUTH WALES



## TABLE OF PROVISIONS

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SCHEDULE 1—AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986

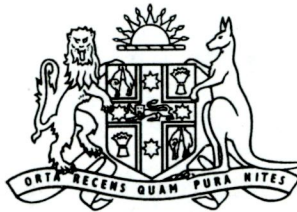
SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

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**NEW SOUTH WALES INVESTMENT CORPORATION  
(AMENDMENT) BILL 1987**

NEW SOUTH WALES



No. , 1987

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**A BILL FOR**

An Act to amend the New South Wales Investment Corporation Act 1986 for the purpose of restructuring the capital of the Corporation and for other purposes.

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*New South Wales Investment Corporation (Amendment) 1987*

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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:

**5 Short title**

1. This Act may be cited as the "New South Wales Investment Corporation (Amendment) Act 1987".

**Commencement**

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

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

**Amendment of Act No. 82, 1986**

15 3. The New South Wales Investment Corporation Act 1986 is amended in the manner set forth in Schedule 1.

**Savings and transitional provisions**

4. Schedule 2 has effect.

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## SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 19865 (1) Section 3 (**Interpretation**)—

- (a) Section 3 (1), definitions of “financial assistance and development function”, “financial year”—

After the definition of “financial assistance”, insert:

10 “financial assistance and development function”, in relation to the Corporation, means—

(a) a function of the Corporation with respect to a prescribed special assistance scheme or a prescribed development fund; or

15 (b) the function of providing financial assistance pursuant to a direction given under section 8 (1) (b) or (c);

“financial year” means a financial year of the Corporation prescribed, or determined as provided, by section 16;

- (b) Section 3 (1), definition of “investment function”—

After the definition of “Fund”, insert:

20 “investment function”, in relation to the Corporation, means a function of the Corporation that is not a financial assistance and development function;

- (c) Section 3 (1), definitions of “public authority”, “register of shareholders”—

25 After the definition of “prescribed interest”, insert:

“public authority” means a corporation constituted or established by or under an Act for a public purpose;

“register of shareholders” means the register of shareholders of the Corporation kept under section 17D (1);

*New South Wales Investment Corporation (Amendment) 1987*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

- (d) Section 3 (1), definitions of “share certificate”, “shareholder”, “shares”—

After the definition of “securities”, insert:

5 “share certificate” means a certificate evidencing shares issued by the Corporation;

“shareholder”, in relation to the Corporation, means a person who holds shares in the capital of the Corporation;

“shares”, in relation to the Corporation, means shares in the capital of the Corporation;

- 10 (e) Section 3 (2A)–(2C)—

After section 3 (2), insert:

15 (2A) In this Act, a reference to the provision of financial accommodation by the Corporation (however expressed) is a reference to the provision by the Corporation of a financial benefit—

(a) by granting a loan;

(b) by purchasing or otherwise dealing in securities; or

(c) by any other means approved by the Treasurer.

20 (2B) In this Act, a reference (however expressed) to the repayment of financial accommodation includes a reference to the payment of money to the Corporation in relation to the financial accommodation, whether or not by way of repayment of money to the Corporation and whether or not constituting a payment by way of advance.

25 (2C) For the purposes of this Act, a reference to net profit, in relation to a financial year of the Corporation, is a reference to the net profit that would be taxable for that year under the Income Tax Assessment Act 1936 of the Commonwealth if the Corporation were a company that was liable to pay tax under that  
30 Act.

*New South Wales Investment Corporation (Amendment) 1987*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

(2) Section 6 (**General functions of Corporation**)—

Section 6 (1) (d)—

Omit “and loans”, insert instead “, providing financial accommodation”.

5 (3) Section 7 (**Powers of Corporation**)—

Section 7 (2) (b)—

Omit the paragraph, insert instead:

(b) to provide financial accommodation;

10 (4) Section 8 (**Corporation to comply with Government’s policy objectives etc.**)—

(a) Section 8 (a1)—

After section 8 (a), insert:

15 (a1) a direction in writing requiring the Corporation to transfer from the investment component of the Fund to the financial assistance and development component of the Fund any portion of the capital of the Corporation attributable to the issue by the Corporation of class “A” shares;

(b) Section 8 (2)—

20 At the end of section 8, insert:

(2) Nothing in subsection (1) authorises the Minister to direct the Corporation as to the application of that part of its capital that is attributable to the issue by the Corporation of class “B” shares.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

(5) Section 15 (**Financial objectives of Corporation**)—

(a) Section 15 (1) (b)—

Omit the paragraph, insert instead:

- 5 (b) endeavour to ensure that, except in relation to its financial assistance and development functions, the revenue derived from its operations in each financial year of the Corporation exceeds its expenditure for that year.

(b) Section 15 (2)–(4)—

Omit the subsections, insert instead:

- 10 (2) If the Corporation has, for a financial year, made a net profit from the exercise of its investment functions, the Corporation must, within 6 months after the end of that year, pay to the Treasurer an amount equivalent to the amount that the Corporation would have been liable to pay for that year in respect of that profit to the Commonwealth by way of tax under the  
15 Income Tax Assessment Act, 1936 of the Commonwealth if the Corporation were a company within the meaning of that Act, assuming that the members of the company were not persons exempt from liability to pay tax under that Act.

- 20 (3) As soon as practicable after receiving or recovering an amount payable under subsection (2), the Treasurer must pay that amount into the Consolidated Fund.

(6) Sections 17–17G—

Omit section 17, insert instead:

25 **Capital of Corporation**

- 30 17. (1) The authorised share capital of the Corporation is \$150,000,000 divided into such number of class “A” shares and such number of class “B” shares, having such nominal value or values, as the Corporation may determine after consultation with the Minister and the Treasurer.

SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

- (2) Class "A" shares are capable of being acquired only by the Crown, but class "B" shares are capable of being acquired either by the Crown or by a public authority.
- 5 (3) Each share in the capital of the Corporation must be distinguished by an appropriate number.
- (4) Subject to section 17C, shares in the capital of the Corporation may be issued with such preferred, deferred or other special rights, or such restrictions, whether with regard to payment of dividends or otherwise, as the Corporation may determine.
- 10 (5) Shares having preferred rights may, if the Corporation so decides, be issued as redeemable preference shares that are, or are at the option of the Corporation, liable to be redeemed.
- (6) Redeemable preference shares referred to in subsection (5) are redeemable only—
- 15 (a) out of profits of the Corporation that would otherwise be available for the payment of dividends to shareholders; or
- (b) out of the proceeds of a fresh issue of shares made for the purposes of the redemption.
- 20 (7) If redeemable preference shares referred to in subsection (5) are redeemed otherwise than out of the proceeds of a fresh issue of shares, the Corporation must, out of profits of the Corporation that would otherwise be available for the payment of dividends, transfer to a reserve called the "capital redemption reserve" a sum equal to the nominal amount of the shares redeemed.
- 25 (8) If, in accordance with this section, the Corporation has redeemed or is about to redeem any redeemable preference shares, it may issue shares up to the sum of the nominal value of the shares redeemed or to be redeemed as if those shares had never been issued.
- 30 (9) The Corporation's capital redemption reserve may be applied in paying up unissued shares in the capital of the Corporation to be issued to shareholders as fully paid bonus shares.

SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued***Issue of class "A" shares**

5 17A. (1) As soon as practicable after the commencement of the New South Wales Investment Corporation (Amendment) Act 1987, the Treasurer shall, on behalf of the Crown, apply for and acquire class "A" shares in the capital of the Corporation in accordance with this section.

(2) Shares referred to in subsection (1) must be acquired in such parcels and at such times as may be arranged by the Treasurer in consultation with the Corporation.

10 (3) On receiving an application made in accordance with arrangements made under subsection (2), the Corporation must issue to the Crown, as fully paid up shares, the number of class "A" shares specified in the application.

15 (4) An application referred to in subsection (3) must be in a form provided or approved by the Corporation.

(5) An amount payable to the Corporation for shares issued under subsection (3) is a charge on the Consolidated Fund and is payable out of that Fund without further appropriation than this Act.

**Issue of class "B" shares**

20 17B. (1) The Treasurer, on behalf of the Crown, or any public authority may make an application for any of the class "B" shares in the capital of the Corporation.

25 (2) A public authority is authorised to make an application under subsection (1) only if it is empowered, either expressly or by implication, by the Act by or under which it is constituted or established, or by some other Act, to invest in or to acquire and hold shares in a body corporate.

30 (3) An application under subsection (1) must be made in a form provided or approved by the Corporation.

SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT CORPORATION ACT 1986—*continued*

(4) On receiving an application made under subsection (1), the Corporation may, subject to subsection (5), issue to the applicant the number of class “B” shares applied for.

5 (5) The Corporation must not issue shares under subsection (4) if by so doing the prescribed limit (if any) for a holding of shares by a shareholder (other than the Crown) would be exceeded.

(6) The Corporation may issue class “B” shares only as fully paid up shares.

10 (7) The amount to be paid for class “B” shares may, if the Corporation so decides, include a payment by way of premium.

(8) A payment under subsection (7) made by way of premium may be applied—

(a) in such manner as may be prescribed by the regulations;  
or

15 (b) if there are no regulations in force for the purposes of this subsection, in such manner as the Corporation may decide.

20 (9) An amount payable to the Corporation for shares issued to the Crown under subsection (4) is a charge on the Consolidated Fund and is payable out of that Fund without further appropriation than this Act.

**Rights etc. of shareholders**

17c. (1) A share in the capital of the Corporation is personal property.

(2) A holder of shares in the Corporation’s capital—

25 (a) is not liable to contribute any amount in respect of the debts and liabilities of the Corporation other than the nominal value of, and any premium payable in respect of, those shares;

30 (b) is entitled to receive any dividend declared by the Corporation in respect of those shares;

SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

- (c) in the case of class “B” shares held by the Crown, is entitled to transfer all or any of those shares to a public authority;
- 5 (d) in the case of class “B” shares held by a public authority, is entitled to transfer all or any of those shares to the Crown or another public authority;
- 10 (e) is entitled to receive free of charge a copy of the annual report of the Corporation, prepared in accordance with the Annual Reports (Statutory Bodies) Act 1984, not later than 1 month after the report was laid or deemed to have been laid before both Houses of Parliament in accordance with section 11 of that Act; and
- (f) has such other rights and such obligations as may be prescribed.
- 15 (3) A transfer of shares in the exercise of the right conferred by subsection (2) (c) or (d) is not effective unless it—
- (a) is executed by the transferor and the transferee in a form provided or approved by the Corporation; and
- (b) is delivered to the Corporation.
- 20 (4) The rights attached to a class of shares in the capital of the Corporation (other than the rights conferred by or under subsection (2)) may be varied—
- (a) in the case of class “A” shares—only with the consent in writing of the Treasurer; or
- 25 (b) in the case of class “B” shares—only with the consent in writing of the holders of not less than three-quarters of the shares of that class.
- (5) Except with respect to redeemable preference shares or, in the case of any other kind of shares, except as provided by the regulations—
- 30 (a) shares in the capital of the Corporation may not be surrendered; and



SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

(b) no part of that capital may be withdrawn or repaid.

(6) If the regulations so provide, shares in the capital of the Corporation may be forfeited to the Corporation in the prescribed circumstances and subject to such conditions as may be prescribed.

**Register of shareholders to be kept**

17D. (1) The Corporation shall keep a register of its shareholders and enter in that register—

(a) the name and address of each shareholder;

(b) a statement of the shares held by each shareholder;

(c) the date at which each shareholder was entered in the register as a shareholder;

(d) the date at which a person ceased to be such a shareholder; and

(e) the date of every issue of shares to shareholders and the number of shares comprised in each issue.

(2) A statement referred to in subsection (1) (b) must distinguish each share by its number or by the number of the certificate evidencing the shares held by the shareholder concerned.

(3) The Corporation may keep names and particulars relating to persons who have ceased to be shareholders in the capital of the Corporation separately, and the names and particulars relating to those former shareholders need not be supplied to a person who applies for a copy of the register unless the person specifically asks for the names and particulars of former shareholders.

(4) The register of shareholders is evidence of any matters inserted in that register as required or authorised by this section.

(5) The Corporation may close the register of shareholders, but not for more than 30 days in the aggregate in any calendar year.

SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

(6) Any person may, without charge, inspect the register of shareholders at any time during the ordinary hours of business of the Corporation.

5 (7) A person may request the Corporation to supply the person with a copy of the register of shareholders or part of that register, but only so far as it relates to names, addresses, numbers of shares held and amounts paid on shares.

10 (8) If a person has made a request in accordance with subsection (7) and paid the prescribed fee (if any), the Corporation must send to the person a copy of the register of shareholders, or the part of the register requested, within 21 days after the request was received by the Corporation.

**Share certificates**

15 17E. (1) Every person whose name is entered as a shareholder in the register of shareholders is, without charge, entitled to be issued with a certificate under the common seal of the Corporation specifying—

- 20 (a) the name of the Corporation;
- (b) the numbers, class and nominal value of the shares held by the person; and
- (c) if the shares have preferred, deferred or other special rights or are subject to restrictions—that the shares have those rights or are subject to those restrictions.

25 (2) A certificate issued in accordance with subsection (1) specifying the shares held by a person is evidence of the person's title to the shares.

(3) If a person has transferred part of the shares held by that person, that person is entitled to be issued with a certificate for the balance without charge.

SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

(4) If a share certificate is worn out, defaced, lost or destroyed, the Corporation may—

(a) on receipt of an application made to it in writing by the shareholder concerned; and

5 (b) on production of the worn out or defaced certificate or proof of the loss or destruction of the certificate,

issue a replacement certificate on such terms (if any) as to evidence and indemnity as the Corporation thinks fit.

**Corporation not to deal in its own shares**

10 17F. (1) Subject to this section, the Corporation shall not—

(a) whether directly or indirectly, give any financial assistance for the purpose of, or in connection with—

15 (i) the acquisition by any person (whether before or simultaneously with the giving of financial assistance) of shares in the capital of the Corporation; or

(ii) the proposed acquisition by any person of shares in the capital of the Corporation;

(b) whether directly or indirectly, in any way acquire shares in the capital of the Corporation; or

20 (c) whether directly or indirectly, in any way lend money on the security of shares in the capital of the Corporation.

Penalty: \$5,000.

25 (2) A reference in this section to the giving of financial assistance includes a reference to the giving of financial assistance by means of providing financial accommodation, giving a guarantee, providing security, releasing an obligation or forgiving a debt or by any other means.

SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

(3) For the purposes of this section, the Corporation shall be taken to have given financial assistance for the purpose of an acquisition or proposed acquisition referred to in subsection (1) (a) if—

- 5           (a) the Corporation gave the financial assistance for purposes that included that purpose; and
- (b) that purpose was a substantial purpose in the giving of the financial assistance.

10           (4) For the purposes of this section, the Corporation shall be taken to have given financial assistance in connection with an acquisition or proposed acquisition referred to in subsection (1) (a) if, when the financial assistance was given to a person, the Corporation was aware that the financial assistance would financially assist—

- 15           (a) the acquisition by a person of shares in the Corporation's capital; or
- (b) if shares in the Corporation's capital had already been acquired—the payment by a person of—
- 20                 (i) any unpaid amount payable in respect of the shares; or
- (ii) any premium payable in respect of the shares.

(5) Subsection (1) does not prohibit—

- (a) the payment of a dividend by the Corporation in good faith and in the ordinary course of business;
- 25           (b) the redemption of redeemable preference shares in the capital of the Corporation or, if the regulations so permit, the withdrawal or repayment of other shares in that capital;
- 30           (c) the discharge by the Corporation of a liability of the Corporation that was incurred in good faith as a result of a transaction entered into in the ordinary course of business; or

SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

- (d) any other transaction entered into by the Corporation of a class prescribed by the regulations for the purposes of this paragraph,

but nothing in this subsection—

- 5 (e) shall be taken to imply that a particular act of the Corporation would, but for this subsection, be prohibited by subsection (1); or

- 10 (f) shall be taken as limiting the operation of any rule of law permitting the giving of financial assistance by the Corporation, the acquisition of shares or units of shares by the Corporation or the providing of financial accommodation by the Corporation on the security of shares.

- 15 (6) Section 130 of the Companies (New South Wales) Code applies, with necessary modifications, to and in respect of a contract made or performed, or a transaction engaged in, by the Corporation in the same way as that section applies to and in respect of a contract made or performed, or a transaction engaged in, by a company within the meaning of that Code.

20 **Dividends**

17G. (1) If the Corporation has, for a financial year—

- (a) made a net profit from the exercise of its investment functions; and
- 25 (b) made provision for the payment of the amount payable under section 15 (2),

the Corporation may, with the concurrence of the Minister and the Treasurer, pay to the shareholders, from the balance of the net profit remaining, such dividends as appear to the Corporation to be appropriate.

SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

5 (2) If the Corporation has, for a financial year, made a net profit in respect of its financial assistance and development functions, the Corporation must, unless the Treasurer otherwise directs, pay to the Treasurer, not later than 6 months after the end of that year, an amount by way of dividend equal to such proportion of that net profit as may be determined by the Treasurer after consultation with the Corporation.

10 (3) The Corporation may from time to time, with the concurrence of the Minister and the Treasurer, pay to its shareholders such interim dividends as appear to it to be justified by the profits (if any) derived by the Corporation from the exercise of its investment functions.

15 (4) Subject to the rights of shareholders (if any) entitled to shares with special rights as to the payment of dividends, all dividends under this section must be declared and paid proportionately according to the number and nominal value of the shares held by the shareholders in the capital of the Corporation.

20 (5) As soon as practicable after declaring any dividends under this section, the Corporation must notify the shareholders of the amounts of those dividends and pay those amounts to the shareholders.

(6) As soon as practicable after receiving or recovering an amount payable under subsection (2), (3) or (5), the Treasurer must pay that amount into the Consolidated Fund.

25 (7) Section 18 (**New South Wales Investment Corporation Fund**)—

Section 18 (2)–(7)—

Omit section 18 (2) and (3), insert instead:

(2) The Fund shall be divided into an investment component and a financial assistance and development component.

SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

(3) There shall be paid into the investment component of the Fund—

- 5 (a) the capital of the Corporation, other than that portion of the capital (if any) directed by the Minister to be paid into the financial assistance and development component of the Fund in accordance with section 8 (1) (a1);
- 10 (b) all principal money received or recovered by the Corporation in respect of the repayment of financial accommodation provided by the Corporation in the exercise of its investment functions;
- (c) all interest received or recovered in respect of financial accommodation referred to in paragraph (b);
- 15 (d) all money received or recovered by the Corporation as dividends or profits by virtue of being the holder of securities acquired by the Corporation in the exercise of its investment functions; and
- (e) all other money received or derived by the Corporation in connection with the exercise of its investment functions.
- 20 (4) There shall be paid into the financial assistance and development component of the Fund—
- (a) such portion of the capital of the Corporation as is directed by the Minister to be paid into that component in accordance with a direction given under section 8 (1) (a1);
- 25 (b) all principal money received or recovered by the Corporation in respect of the repayment of financial accommodation made or deemed to have been made by the Corporation in the exercise of its financial assistance and development functions;
- 30 (c) except in relation to financial accommodation of a class specified by the Treasurer, all interest received or recovered in respect of financial accommodation referred to in paragraph (b);

SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT CORPORATION ACT 1986—*continued*

- 5 (d) except in relation to dividends derived from securities of a class specified by the Treasurer with the concurrence of the Minister, all money received or recovered by the Corporation as dividends or profits by virtue of being the holder of securities acquired by the Corporation in the exercise of its financial assistance and development functions; and
- 10 (e) all other money received or derived by the Corporation in connection with the exercise of its financial assistance and development functions.
- (5) The investment component of the Fund shall be applied towards the following purposes:
- 15 (a) the provision of financial accommodation in the exercise of the Corporation's investment functions;
- 20 (b) the making of payments, in respect of the acquisition by the Corporation in the exercise of those functions, of securities in or issued by a body corporate that is a business undertaking;
- 25 (c) the payment of amounts that become payable under guarantees executed by the Corporation in the exercise by the Corporation of those functions;
- 30 (d) the payment of such portion of the remuneration and allowances paid or payable to directors, employees and consultants appointed, employed or engaged under this Act as, in the opinion of the Corporation, relates to the exercise by the Corporation of those functions;
- (e) the payment of such portion of the other expenses incurred by the Corporation as, in the opinion of the Corporation, relates to the exercise by the Corporation of those functions.



SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

- (6) The financial assistance and development component of the Fund shall be applied towards the following purposes:
- 5 (a) the making of grants and the provision of financial accommodation in the exercise by the Corporation of its financial assistance and development functions;
  - (b) the making of payments, in respect of the acquisition by the Corporation in the exercise of those functions, of securities in or issued by a body corporate that is a business undertaking;
  - 10 (c) the payment of amounts that become payable under guarantees executed by the Corporation in the exercise by the Corporation of those functions;
  - 15 (d) the payment of such portion of the remuneration and allowances paid or payable to directors, employees and consultants appointed, employed or engaged under this Act as, in the opinion of the Corporation, relates to the exercise by the Corporation of those functions;
  - 20 (e) the payment of such portion of the other expenses incurred by the Corporation as, in the opinion of the Corporation, relates to the exercise by the Corporation of those functions;
  - (f) where a direction referred to in section 6 (1) (g) has been given, the payment of pay-roll tax rebates under the Country Industries (Pay-roll Tax Rebates) Act 1977.
- 25 (7) For the purposes of Division 3 of Part III of the Public Finance and Audit Act 1983, the investment component and the financial assistance and development component shall be treated as if each of those components related to the funds and transactions of a separate statutory body.

*New South Wales Investment Corporation (Amendment) 1987*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

(8) Section 19 (**Provision of financial assistance to business undertakings**)—

(a) Section 19 (4) (b)—

5 Omit “make to the applicant a loan”, insert instead “provide the applicant with financial accommodation”.

(b) Section 19 (4) (c)—

After “prescribed interests” where firstly occurring, insert “or other securities”.

(c) Section 19 (4) (c)—

10 Omit “or prescribed interests”, insert instead “, prescribed interests or other securities”.

(d) Section 19 (6) (a)—

Omit “a loan”, insert instead “financial accommodation”.

(e) Section 19 (6) (a) (i)—

15 Omit the subparagraph, insert instead:

(i) where appropriate, determine an effective annual interest rate applicable to the financial accommodation; and

(f) Section 19 (6) (a) (ii)—

20 Omit “loan” wherever occurring, insert instead “financial accommodation”.

(9) Section 20 (**Provisions as to acquisition and disposal of shares etc. of business undertakings to which financial assistance is granted**)—

(a) Section 20 (1), (2)—

25 Omit “or prescribed interests” wherever occurring, insert instead “, prescribed interests or other securities”.

(b) Section 20 (2), (3)—

Omit “shares of a class” wherever occurring, insert instead “securities of a class”.

*New South Wales Investment Corporation (Amendment) 1987*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

(c) Section 20 (3)—

After “prescribed interests”, insert instead “or other securities”.

(d) Section 20 (3)—

5 Omit “or interests”, insert instead “, prescribed interests or other securities”.

(10) Section 21 (**Nominee of the Corporation appointed as director of body corporate to be indemnified against certain liabilities**)—

Section 21 (a)—

Omit “director” where firstly occurring, insert instead “nominee”.

10 (11) Section 32 (**Regulations**)—

(a) Section 32 (1)—

After “with this Act”, insert “or any other Act applicable to the Corporation”.

(b) Section 32 (2)—

15 Omit the subsection, insert instead:

20 (2) Regulations under subsection (1) may, with such modifications as may be prescribed, apply specified provisions of the Companies (New South Wales) Code to or in respect of the Corporation, the directors, shareholders or the employees of the Corporation.

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*New South Wales Investment Corporation (Amendment) 1987*

## SCHEDULE 2

(Sec. 4)

## SAVINGS AND TRANSITIONAL PROVISIONS

**Interpretation**

5 1. In this Schedule—

“Corporation” means the New South Wales Investment Corporation constituted by the Principal Act;

“Principal Act” means the New South Wales Investment Corporation Act 1986.

**Capital of the Corporation**

10 2. (1) If the Corporation has received from the Treasurer payments under section 17 of the Principal Act, as in force before the commencement of this Act, the Corporation shall, in accordance with section 17A of the Principal Act, as in force after that commencement, issue to the Crown class “A” shares that have a total face value equivalent to the amounts of those payments.

15 (2) For the purposes of subclause (1), payments received from the Treasurer under section 17 of the Principal Act, as in force before the commencement of this Act, shall be taken to have included—

(a) all amounts transferred to the Corporation from—

(i) the Country Industries Assistance Fund; and

20 (ii) the Advanced Technology Development Assistance Fund,

in accordance with a determination made under clause 4 of Schedule 7 to the State Development and Industries Assistance (Amendment) Act 1986; and

(b) all amounts transferred to the Corporation from—

25 (i) the Western Sydney Business Development Fund account established in the Special Deposits Account in the Treasury;

(ii) the Small Business Development Fund account so established; and

(iii) the account so established in respect of the Wollongong Special Assistance Scheme.

**Regulations**

30 3. (1) Regulations under the Principal Act may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision made in accordance with this clause may, if the regulations under the Principal Act so provide, take effect as from the appointed day or a later date.

*New South Wales Investment Corporation (Amendment) 1987*

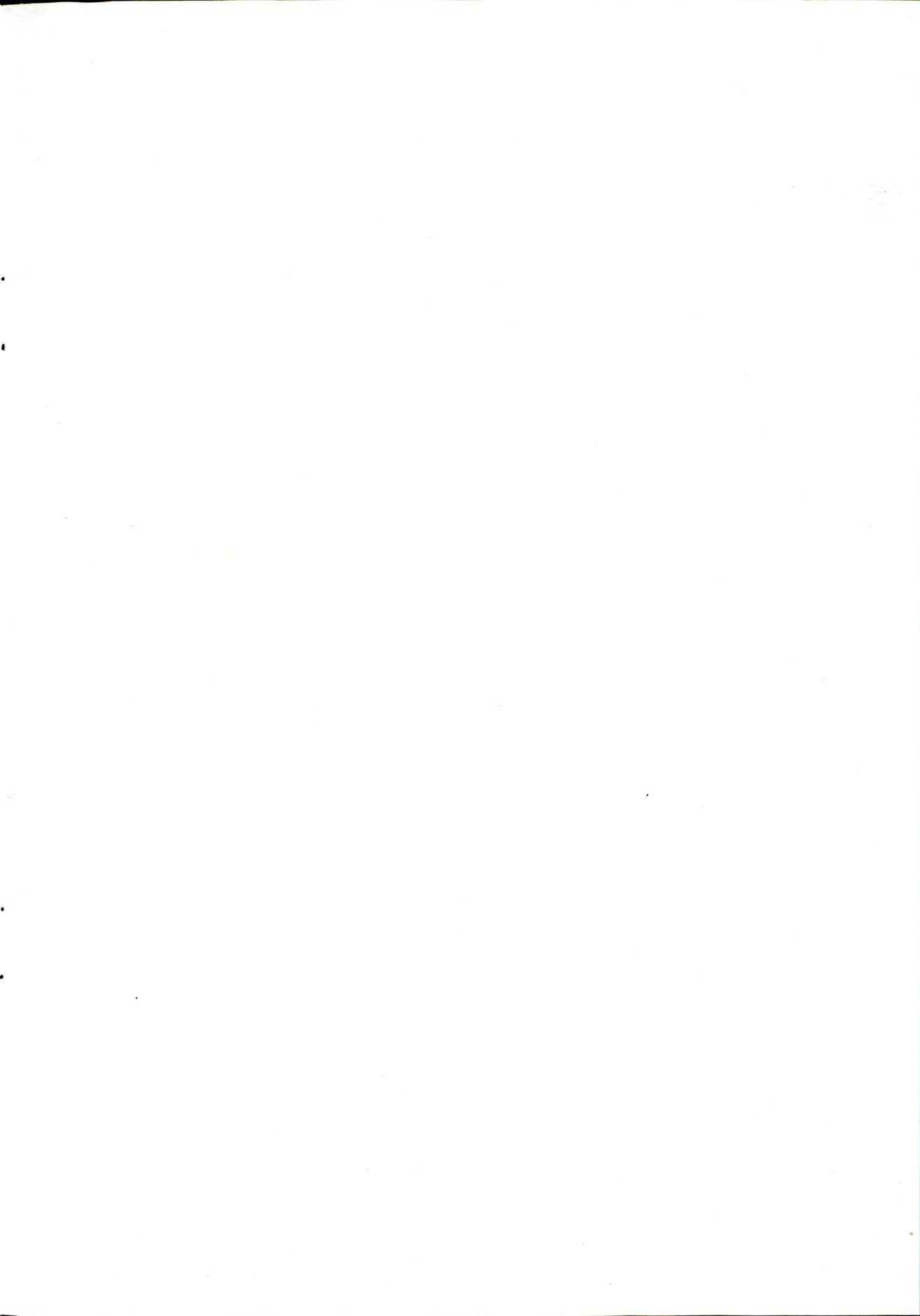
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SCHEDULE 2—*continued*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
- 5 (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or any authority of the State) in respect of anything done or omitted to be done before the date of its publication.









**NEW SOUTH WALES INVESTMENT CORPORATION  
(AMENDMENT) ACT 1987 No. 129**

NEW SOUTH WALES



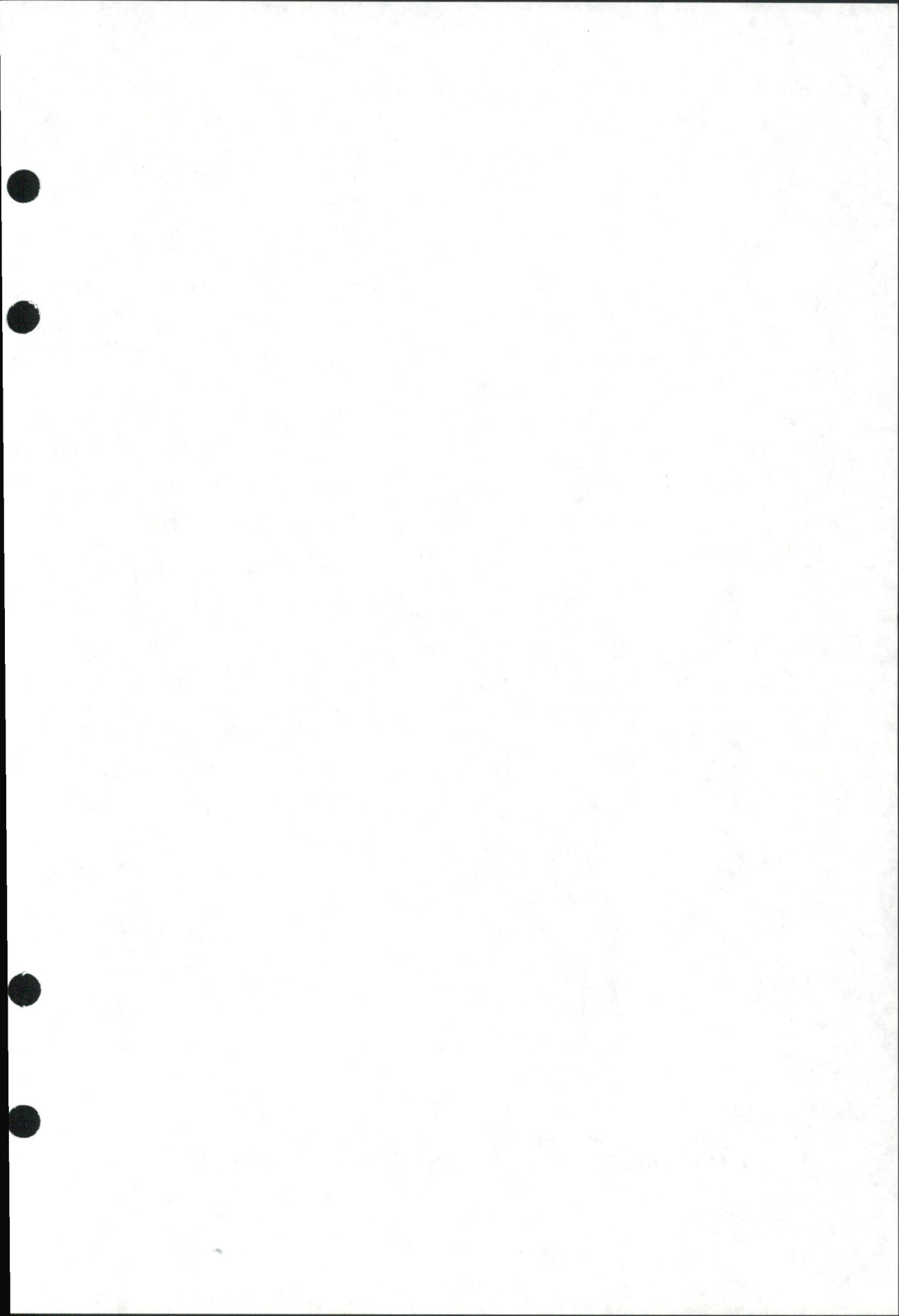
**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Act No. 82, 1986
4. Savings and transitional provisions

**SCHEDULE 1—AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986**

**SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS**

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**NEW SOUTH WALES INVESTMENT CORPORATION  
(AMENDMENT) ACT 1987 No. 129**

NEW SOUTH WALES



**Act No. 129, 1987**

An Act to amend the New South Wales Investment Corporation Act 1986 for the purpose of restructuring the capital of the Corporation and for other purposes. [Assented to 16 June 1987]

*New South Wales Investment Corporation (Amendment) 1987*

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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 "New South Wales Investment Corporation (Amendment) Act 1987".

**Commencement**

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

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

**Amendment of Act No. 82, 1986**

3. The New South Wales Investment Corporation Act 1986 is amended in the manner set forth in Schedule 1.

**Savings and transitional provisions**

4. Schedule 2 has effect.

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## SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986(1) Section 3 (**Interpretation**)—

- (a) Section 3 (1), definitions of “financial assistance and development function”, “financial year”—

After the definition of “financial assistance”, insert:

“financial assistance and development function”, in relation to the Corporation, means—

- (a) a function of the Corporation with respect to a prescribed special assistance scheme or a prescribed development fund; or
- (b) the function of providing financial assistance pursuant to a direction given under section 8 (1) (b) or (c);

“financial year” means a financial year of the Corporation prescribed, or determined as provided, by section 16;

- (b) Section 3 (1), definition of “investment function”—

After the definition of “Fund”, insert:

“investment function”, in relation to the Corporation, means a function of the Corporation that is not a financial assistance and development function;

- (c) Section 3 (1), definitions of “public authority”, “register of shareholders”—

After the definition of “prescribed interest”, insert:

“public authority” means a corporation constituted or established by or under an Act for a public purpose;

“register of shareholders” means the register of shareholders of the Corporation kept under section 17D (1);

SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

- (d) Section 3 (1), definitions of “share certificate”, “shareholder”, “shares”—

After the definition of “securities”, insert:

“share certificate” means a certificate evidencing shares issued by the Corporation;

“shareholder”, in relation to the Corporation, means a person who holds shares in the capital of the Corporation;

“shares”, in relation to the Corporation, means shares in the capital of the Corporation;

- (e) Section 3 (2A)–(2C)—

After section 3 (2), insert:

(2A) In this Act, a reference to the provision of financial accommodation by the Corporation (however expressed) is a reference to the provision by the Corporation of a financial benefit—

- (a) by granting a loan;
- (b) by purchasing or otherwise dealing in securities; or
- (c) by any other means approved by the Treasurer.

(2B) In this Act, a reference (however expressed) to the repayment of financial accommodation includes a reference to the payment of money to the Corporation in relation to the financial accommodation, whether or not by way of repayment of money to the Corporation and whether or not constituting a payment by way of advance.

(2C) For the purposes of this Act, a reference to net profit, in relation to a financial year of the Corporation, is a reference to the net profit that would be taxable for that year under the Income Tax Assessment Act 1936 of the Commonwealth if the Corporation were a company that was liable to pay tax under that Act.

*New South Wales Investment Corporation (Amendment) 1987*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

(2) Section 6 (**General functions of Corporation**)—

Section 6 (1) (d)—

Omit “and loans”, insert instead “, providing financial accommodation”.

(3) Section 7 (**Powers of Corporation**)—

Section 7 (2) (b)—

Omit the paragraph, insert instead:

(b) to provide financial accommodation;

(4) Section 8 (**Corporation to comply with Government’s policy objectives etc.**)—

(a) Section 8 (a1)—

After section 8 (a), insert:

(a1) a direction in writing requiring the Corporation to transfer from the investment component of the Fund to the financial assistance and development component of the Fund any portion of the capital of the Corporation attributable to the issue by the Corporation of class “A” shares;

(b) Section 8 (2)—

At the end of section 8, insert:

(2) Nothing in subsection (1) authorises the Minister to direct the Corporation as to the application of that part of its capital that is attributable to the issue by the Corporation of class “B” shares.

SCHEDULE 1—*continued*

AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

(5) Section 15 (**Financial objectives of Corporation**)—

(a) Section 15 (1) (b)—

Omit the paragraph, insert instead:

- (b) endeavour to ensure that, except in relation to its financial assistance and development functions, the revenue derived from its operations in each financial year of the Corporation exceeds its expenditure for that year.

(b) Section 15 (2)–(4)—

Omit the subsections, insert instead:

(2) If the Corporation has, for a financial year, made a net profit from the exercise of its investment functions, the Corporation must, within 6 months after the end of that year, pay to the Treasurer an amount equivalent to the amount that the Corporation would have been liable to pay for that year in respect of that profit to the Commonwealth by way of tax under the Income Tax Assessment Act 1936 of the Commonwealth if the Corporation were a company within the meaning of that Act, assuming that the members of the company were not persons exempt from liability to pay tax under that Act.

(3) As soon as practicable after receiving or recovering an amount payable under subsection (2), the Treasurer must pay that amount into the Consolidated Fund.

(6) Sections 17–17G—

Omit section 17, insert instead:

**Capital of Corporation**

17. (1) The authorised share capital of the Corporation is \$150,000,000 divided into such number of class “A” shares and such number of class “B” shares, having such nominal value or values, as the Corporation may determine after consultation with the Minister and the Treasurer.



SCHEDULE 1—*continued*

AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

(2) Class “A” shares are capable of being acquired only by the Crown, but class “B” shares are capable of being acquired either by the Crown or by a public authority.

(3) Each share in the capital of the Corporation must be distinguished by an appropriate number.

(4) Subject to section 17C, shares in the capital of the Corporation may be issued with such preferred, deferred or other special rights, or such restrictions, whether with regard to payment of dividends or otherwise, as the Corporation may determine.

(5) Shares having preferred rights may, if the Corporation so decides, be issued as redeemable preference shares that are, or are at the option of the Corporation, liable to be redeemed.

(6) Redeemable preference shares referred to in subsection (5) are redeemable only—

- (a) out of profits of the Corporation that would otherwise be available for the payment of dividends to shareholders; or
- (b) out of the proceeds of a fresh issue of shares made for the purposes of the redemption.

(7) If redeemable preference shares referred to in subsection (5) are redeemed otherwise than out of the proceeds of a fresh issue of shares, the Corporation must, out of profits of the Corporation that would otherwise be available for the payment of dividends, transfer to a reserve called the “capital redemption reserve” a sum equal to the nominal amount of the shares redeemed.

(8) If, in accordance with this section, the Corporation has redeemed or is about to redeem any redeemable preference shares, it may issue shares up to the sum of the nominal value of the shares redeemed or to be redeemed as if those shares had never been issued.

(9) The Corporation’s capital redemption reserve may be applied in paying up unissued shares in the capital of the Corporation to be issued to shareholders as fully paid bonus shares.

SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued***Issue of class “A” shares**

17A. (1) As soon as practicable after the commencement of the New South Wales Investment Corporation (Amendment) Act 1987, the Treasurer shall, on behalf of the Crown, apply for and acquire class “A” shares in the capital of the Corporation in accordance with this section.

(2) Shares referred to in subsection (1) must be acquired in such parcels and at such times as may be arranged by the Treasurer in consultation with the Corporation.

(3) On receiving an application made in accordance with arrangements made under subsection (2), the Corporation must issue to the Crown, as fully paid up shares, the number of class “A” shares specified in the application.

(4) An application referred to in subsection (3) must be in a form provided or approved by the Corporation.

(5) An amount payable to the Corporation for shares issued under subsection (3) is a charge on the Consolidated Fund and is payable out of that Fund without further appropriation than this Act.

**Issue of class “B” shares**

17B. (1) The Treasurer, on behalf of the Crown, or any public authority may make an application for any of the class “B” shares in the capital of the Corporation.

(2) A public authority is authorised to make an application under subsection (1) only if it is empowered, either expressly or by implication, by the Act by or under which it is constituted or established, or by some other Act, to invest in or to acquire and hold shares in a body corporate.

(3) An application under subsection (1) must be made in a form provided or approved by the Corporation.

SCHEDULE 1—*continued*

AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

(4) On receiving an application made under subsection (1), the Corporation may, subject to subsection (5), issue to the applicant the number of class “B” shares applied for.

(5) The Corporation must not issue shares under subsection (4) if by so doing the prescribed limit (if any) for a holding of shares by a shareholder (other than the Crown) would be exceeded.

(6) The Corporation may issue class “B” shares only as fully paid up shares.

(7) The amount to be paid for class “B” shares may, if the Corporation so decides, include a payment by way of premium.

(8) A payment under subsection (7) made by way of premium may be applied—

- (a) in such manner as may be prescribed by the regulations;  
or
- (b) if there are no regulations in force for the purposes of this subsection, in such manner as the Corporation may decide.

(9) An amount payable to the Corporation for shares issued to the Crown under subsection (4) is a charge on the Consolidated Fund and is payable out of that Fund without further appropriation than this Act.

**Rights etc. of shareholders**

17c. (1) A share in the capital of the Corporation is personal property.

(2) A holder of shares in the Corporation’s capital—

- (a) is not liable to contribute any amount in respect of the debts and liabilities of the Corporation other than the nominal value of, and any premium payable in respect of, those shares;
- (b) is entitled to receive any dividend declared by the Corporation in respect of those shares;

SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

- (c) in the case of class “B” shares held by the Crown, is entitled to transfer all or any of those shares to a public authority;
  - (d) in the case of class “B” shares held by a public authority, is entitled to transfer all or any of those shares to the Crown or another public authority;
  - (e) is entitled to receive free of charge a copy of the annual report of the Corporation, prepared in accordance with the Annual Reports (Statutory Bodies) Act 1984, not later than 1 month after the report was laid or deemed to have been laid before both Houses of Parliament in accordance with section 11 of that Act; and
  - (f) has such other rights and such obligations as may be prescribed.
- (3) A transfer of shares in the exercise of the right conferred by subsection (2) (c) or (d) is not effective unless it—
- (a) is executed by the transferor and the transferee in a form provided or approved by the Corporation; and
  - (b) is delivered to the Corporation.
- (4) The rights attached to a class of shares in the capital of the Corporation (other than the rights conferred by or under subsection (2)) may be varied—
- (a) in the case of class “A” shares—only with the consent in writing of the Treasurer; or
  - (b) in the case of class “B” shares—only with the consent in writing of the holders of not less than three-quarters of the shares of that class.
- (5) Except with respect to redeemable preference shares or, in the case of any other kind of shares, except as provided by the regulations—
- (a) shares in the capital of the Corporation may not be surrendered; and

SCHEDULE 1—*continued*

AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

(b) no part of that capital may be withdrawn or repaid.

(6) If the regulations so provide, shares in the capital of the Corporation may be forfeited to the Corporation in the prescribed circumstances and subject to such conditions as may be prescribed.

**Register of shareholders to be kept**

17D. (1) The Corporation shall keep a register of its shareholders and enter in that register—

- (a) the name and address of each shareholder;
- (b) a statement of the shares held by each shareholder;
- (c) the date at which each shareholder was entered in the register as a shareholder;
- (d) the date at which a person ceased to be such a shareholder; and
- (e) the date of every issue of shares to shareholders and the number of shares comprised in each issue.

(2) A statement referred to in subsection (1) (b) must distinguish each share by its number or by the number of the certificate evidencing the shares held by the shareholder concerned.

(3) The Corporation may keep names and particulars relating to persons who have ceased to be shareholders in the capital of the Corporation separately, and the names and particulars relating to those former shareholders need not be supplied to a person who applies for a copy of the register unless the person specifically asks for the names and particulars of former shareholders.

(4) The register of shareholders is evidence of any matters inserted in that register as required or authorised by this section.

(5) The Corporation may close the register of shareholders, but not for more than 30 days in the aggregate in any calendar year.

SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

(6) Any person may, without charge, inspect the register of shareholders at any time during the ordinary hours of business of the Corporation.

(7) A person may request the Corporation to supply the person with a copy of the register of shareholders or part of that register, but only so far as it relates to names, addresses, numbers of shares held and amounts paid on shares.

(8) If a person has made a request in accordance with subsection (7) and paid the prescribed fee (if any), the Corporation must send to the person a copy of the register of shareholders, or the part of the register requested, within 21 days after the request was received by the Corporation.

**Share certificates**

17E. (1) Every person whose name is entered as a shareholder in the register of shareholders is, without charge, entitled to be issued with a certificate under the common seal of the Corporation specifying—

- (a) the name of the Corporation;
- (b) the numbers, class and nominal value of the shares held by the person; and
- (c) if the shares have preferred, deferred or other special rights or are subject to restrictions—that the shares have those rights or are subject to those restrictions.

(2) A certificate issued in accordance with subsection (1) specifying the shares held by a person is evidence of the person's title to the shares.

(3) If a person has transferred part of the shares held by that person, that person is entitled to be issued with a certificate for the balance without charge.

SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

(4) If a share certificate is worn out, defaced, lost or destroyed, the Corporation may—

- (a) on receipt of an application made to it in writing by the shareholder concerned; and
- (b) on production of the worn out or defaced certificate or proof of the loss or destruction of the certificate,

issue a replacement certificate on such terms (if any) as to evidence and indemnity as the Corporation thinks fit.

**Corporation not to deal in its own shares**

17F. (1) Subject to this section, the Corporation shall not—

- (a) whether directly or indirectly, give any financial assistance for the purpose of, or in connection with—
  - (i) the acquisition by any person (whether before or simultaneously with the giving of financial assistance) of shares in the capital of the Corporation; or
  - (ii) the proposed acquisition by any person of shares in the capital of the Corporation;
- (b) whether directly or indirectly, in any way acquire shares in the capital of the Corporation; or
- (c) whether directly or indirectly, in any way lend money on the security of shares in the capital of the Corporation.

Penalty: \$5,000.

(2) A reference in this section to the giving of financial assistance includes a reference to the giving of financial assistance by means of providing financial accommodation, giving a guarantee, providing security, releasing an obligation or forgiving a debt or by any other means.

SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

(3) For the purposes of this section, the Corporation shall be taken to have given financial assistance for the purpose of an acquisition or proposed acquisition referred to in subsection (1) (a) if—

- (a) the Corporation gave the financial assistance for purposes that included that purpose; and
- (b) that purpose was a substantial purpose in the giving of the financial assistance.

(4) For the purposes of this section, the Corporation shall be taken to have given financial assistance in connection with an acquisition or proposed acquisition referred to in subsection (1) (a) if, when the financial assistance was given to a person, the Corporation was aware that the financial assistance would financially assist—

- (a) the acquisition by a person of shares in the Corporation's capital; or
- (b) if shares in the Corporation's capital had already been acquired—the payment by a person of—
  - (i) any unpaid amount payable in respect of the shares; or
  - (ii) any premium payable in respect of the shares.

(5) Subsection (1) does not prohibit—

- (a) the payment of a dividend by the Corporation in good faith and in the ordinary course of business;
- (b) the redemption of redeemable preference shares in the capital of the Corporation or, if the regulations so permit, the withdrawal or repayment of other shares in that capital;
- (c) the discharge by the Corporation of a liability of the Corporation that was incurred in good faith as a result of a transaction entered into in the ordinary course of business; or



*New South Wales Investment Corporation (Amendment) 1987*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

- (d) any other transaction entered into by the Corporation of a class prescribed by the regulations for the purposes of this paragraph,

but nothing in this subsection—

- (e) shall be taken to imply that a particular act of the Corporation would, but for this subsection, be prohibited by subsection (1); or
- (f) shall be taken as limiting the operation of any rule of law permitting the giving of financial assistance by the Corporation, the acquisition of shares or units of shares by the Corporation or the providing of financial accommodation by the Corporation on the security of shares.

(6) Section 130 of the Companies (New South Wales) Code applies, with necessary modifications, to and in respect of a contract made or performed, or a transaction engaged in, by the Corporation in the same way as that section applies to and in respect of a contract made or performed, or a transaction engaged in, by a company within the meaning of that Code.

**Dividends**

17G. (1) If the Corporation has, for a financial year—

- (a) made a net profit from the exercise of its investment functions; and
- (b) made provision for the payment of the amount payable under section 15 (2),

the Corporation may, with the concurrence of the Minister and the Treasurer, pay to the shareholders, from the balance of the net profit remaining, such dividends as appear to the Corporation to be appropriate.

SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

(2) If the Corporation has, for a financial year, made a net profit in respect of its financial assistance and development functions, the Corporation must, unless the Treasurer otherwise directs, pay to the Treasurer, not later than 6 months after the end of that year, an amount by way of dividend equal to such proportion of that net profit as may be determined by the Treasurer after consultation with the Corporation.

(3) The Corporation may from time to time, with the concurrence of the Minister and the Treasurer, pay to its shareholders such interim dividends as appear to it to be justified by the profits (if any) derived by the Corporation from the exercise of its investment functions.

(4) Subject to the rights of shareholders (if any) entitled to shares with special rights as to the payment of dividends, all dividends under this section must be declared and paid proportionately according to the number and nominal value of the shares held by the shareholders in the capital of the Corporation.

(5) As soon as practicable after declaring any dividends under this section, the Corporation must notify the shareholders of the amounts of those dividends and pay those amounts to the shareholders.

(6) As soon as practicable after receiving or recovering an amount payable under subsection (2), (3) or (5), the Treasurer must pay that amount into the Consolidated Fund.

(7) **Section 18 (New South Wales Investment Corporation Fund)—**

Section 18 (2)–(7)—

Omit section 18 (2) and (3), insert instead:

(2) The Fund shall be divided into an investment component and a financial assistance and development component.

*New South Wales Investment Corporation (Amendment) 1987*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

(3) There shall be paid into the investment component of the Fund—

- (a) the capital of the Corporation, other than that portion of the capital (if any) directed by the Minister to be paid into the financial assistance and development component of the Fund in accordance with section 8 (1) (a1);
- (b) all principal money received or recovered by the Corporation in respect of the repayment of financial accommodation provided by the Corporation in the exercise of its investment functions;
- (c) all interest received or recovered in respect of financial accommodation referred to in paragraph (b);
- (d) all money received or recovered by the Corporation as dividends or profits by virtue of being the holder of securities acquired by the Corporation in the exercise of its investment functions; and
- (e) all other money received or derived by the Corporation in connection with the exercise of its investment functions.

(4) There shall be paid into the financial assistance and development component of the Fund—

- (a) such portion of the capital of the Corporation as is directed by the Minister to be paid into that component in accordance with a direction given under section 8 (1) (a1);
- (b) all principal money received or recovered by the Corporation in respect of the repayment of financial accommodation made or deemed to have been made by the Corporation in the exercise of its financial assistance and development functions;
- (c) except in relation to financial accommodation of a class specified by the Treasurer, all interest received or recovered in respect of financial accommodation referred to in paragraph (b);

SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

- (d) except in relation to dividends derived from securities of a class specified by the Treasurer with the concurrence of the Minister, all money received or recovered by the Corporation as dividends or profits by virtue of being the holder of securities acquired by the Corporation in the exercise of its financial assistance and development functions; and
  - (e) all other money received or derived by the Corporation in connection with the exercise of its financial assistance and development functions.
- (5) The investment component of the Fund shall be applied towards the following purposes:
- (a) the provision of financial accommodation in the exercise of the Corporation's investment functions;
  - (b) the making of payments, in respect of the acquisition by the Corporation in the exercise of those functions, of securities in or issued by a body corporate that is a business undertaking;
  - (c) the payment of amounts that become payable under guarantees executed by the Corporation in the exercise by the Corporation of those functions;
  - (d) the payment of such portion of the remuneration and allowances paid or payable to directors, employees and consultants appointed, employed or engaged under this Act as, in the opinion of the Corporation, relates to the exercise by the Corporation of those functions;
  - (e) the payment of such portion of the other expenses incurred by the Corporation as, in the opinion of the Corporation, relates to the exercise by the Corporation of those functions.

SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT CORPORATION ACT 1986—*continued*

- (6) The financial assistance and development component of the Fund shall be applied towards the following purposes:
- (a) the making of grants and the provision of financial accommodation in the exercise by the Corporation of its financial assistance and development functions;
  - (b) the making of payments, in respect of the acquisition by the Corporation in the exercise of those functions, of securities in or issued by a body corporate that is a business undertaking;
  - (c) the payment of amounts that become payable under guarantees executed by the Corporation in the exercise by the Corporation of those functions;
  - (d) the payment of such portion of the remuneration and allowances paid or payable to directors, employees and consultants appointed, employed or engaged under this Act as, in the opinion of the Corporation, relates to the exercise by the Corporation of those functions;
  - (e) the payment of such portion of the other expenses incurred by the Corporation as, in the opinion of the Corporation, relates to the exercise by the Corporation of those functions;
  - (f) where a direction referred to in section 6 (1) (g) has been given, the payment of pay-roll tax rebates under the Country Industries (Pay-roll Tax Rebates) Act 1977.
- (7) For the purposes of Division 3 of Part III of the Public Finance and Audit Act 1983, the investment component and the financial assistance and development component shall be treated as if each of those components related to the funds and transactions of a separate statutory body.

SCHEDULE 1—*continued*AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

- (8) Section 19 (**Provision of financial assistance to business undertakings**)—
- (a) Section 19 (4) (b)—  
Omit “make to the applicant a loan”, insert instead “provide the applicant with financial accommodation”.
- (b) Section 19 (4) (c)—  
After “prescribed interests” where firstly occurring, insert “or other securities”.
- (c) Section 19 (4) (c)—  
Omit “or prescribed interests”, insert instead “, prescribed interests or other securities”.
- (d) Section 19 (6) (a)—  
Omit “a loan”, insert instead “financial accommodation”.
- (e) Section 19 (6) (a) (i)—  
Omit the subparagraph, insert instead:  
(i) where appropriate, determine an effective annual interest rate applicable to the financial accommodation; and
- (f) Section 19 (6) (a) (ii)—  
Omit “loan” wherever occurring, insert instead “financial accommodation”.
- (9) Section 20 (**Provisions as to acquisition and disposal of shares etc. of business undertakings to which financial assistance is granted**)—
- (a) Section 20 (1), (2)—  
Omit “or prescribed interests” wherever occurring, insert instead “, prescribed interests or other securities”.
- (b) Section 20 (2), (3)—  
Omit “shares of a class” wherever occurring, insert instead “securities of a class”.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE NEW SOUTH WALES INVESTMENT  
CORPORATION ACT 1986—*continued*

(c) Section 20 (3)—

After “prescribed interests”, insert instead “or other securities”.

(d) Section 20 (3)—

Omit “or interests”, insert instead “, prescribed interests or other securities”.

(10) Section 21 (**Nominee of the Corporation appointed as director of body corporate to be indemnified against certain liabilities**)—

Section 21 (a)—

Omit “director” where firstly occurring, insert instead “nominee”.

(11) Section 32 (**Regulations**)—

(a) Section 32 (1)—

After “with this Act”, insert “or any other Act applicable to the Corporation”.

(b) Section 32 (2)—

Omit the subsection, insert instead:

(2) Regulations under subsection (1) may, with such modifications as may be prescribed, apply specified provisions of the Companies (New South Wales) Code to or in respect of the Corporation, the directors, shareholders or the employees of the Corporation.

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## SCHEDULE 2

(Sec. 4)

## SAVINGS AND TRANSITIONAL PROVISIONS

**Interpretation**

1. In this Schedule—

“Corporation” means the New South Wales Investment Corporation constituted by the Principal Act;

“Principal Act” means the New South Wales Investment Corporation Act 1986.

**Capital of the Corporation**

2. (1) If the Corporation has received from the Treasurer payments under section 17 of the Principal Act, as in force before the commencement of this Act, the Corporation shall, in accordance with section 17A of the Principal Act, as in force after that commencement, issue to the Crown class “A” shares that have a total face value equivalent to the amounts of those payments.

(2) For the purposes of subclause (1), payments received from the Treasurer under section 17 of the Principal Act, as in force before the commencement of this Act, shall be taken to have included—

(a) all amounts transferred to the Corporation from—

- (i) the Country Industries Assistance Fund; and
- (ii) the Advanced Technology Development Assistance Fund,

in accordance with a determination made under clause 4 of Schedule 7 to the State Development and Industries Assistance (Amendment) Act 1986; and

(b) all amounts transferred to the Corporation from—

- (i) the Western Sydney Business Development Fund account established in the Special Deposits Account in the Treasury;
- (ii) the Small Business Development Fund account so established; and
- (iii) the account so established in respect of the Wollongong Special Assistance Scheme.

**Regulations**

3. (1) Regulations under the Principal Act may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision made in accordance with this clause may, if the regulations under the Principal Act so provide, take effect as from the appointed day or a later date.



*New South Wales Investment Corporation (Amendment) 1987*

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SCHEDULE 2—*continued*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or any authority of the State) in respect of anything done or omitted to be done before the date of its publication.





