

**COMPANIES AND SECURITIES LEGISLATION (AMENDMENT)  
ACT 1989 No. 131**

NEW SOUTH WALES



**Act No. 131, 1989**

An Act to amend the Companies (Application of Laws) Act 1981, the Companies (Acquisition of Shares) (Application of Laws) Act 1981, the Securities Industry (Application of Laws) Act 1981 and the Futures Industry (Application of Laws) Act 1986 as a consequence of the Co-operative Scheme Legislation Amendment Act 1989 of the Commonwealth. [Assented to 5 September 1989]



**COMPANIES AND SECURITIES LEGISLATION (AMENDMENT)  
ACT 1989 No. 131**

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Companies and Securities Legislation (Amendment) Act 1989.

**Commencement**

2. This Act commences on the day on which Part 9 of the Co-operative Scheme Legislation Amendment Act 1989 of the Commonwealth commences.

**Amendment of Companies (Application of Laws) Act 1981 No. 122**

3. The Companies (Application of Laws) Act 1981 is amended as set out in Schedule 1.

**Amendment of Companies (Acquisition of Shares) (Application of Laws) Act 1981 No. 62**

4. The Companies (Acquisition of Shares) (Application of Laws) Act 1981 is amended as set out in Schedule 2.

**Amendment of Securities Industry (Application of Laws) Act 1981 No. 61**

5. The Securities Industry (Application of Laws) Act 1981 is amended as set out in Schedule 3.

**Amendment of Futures Industry (Application of Laws) Act 1986 No. 66**

6. The Futures Industry (Application of Laws) Act 1986 is amended as set out in Schedule 4.

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**SCHEDULE 1 - AMENDMENT OF COMPANIES (APPLICATION  
OF LAWS) ACT 1981**

(Sec. 3)

(1) Section 4 (**Definitions**):

(a) In alphabetical order in section 4 (1), insert:

"act" includes thing;

"chargeable matter" means a matter of a kind referred to in any of paragraphs (a) - (h), inclusive, of section 8 (1);

"fee" includes tax;

"for", in relation to a fee, includes in respect of;

"lodge" means lodge with the Commission;

(b) Section 4 (1A), (1B):

After section 4 (1), insert:

(1A) In this Act, a reference to the Companies (Fees) Act 1981 of the Commonwealth includes a reference to the Companies (Fees: Taxation Component) Act 1989 of the Commonwealth.

(1B) Subject to this section, an expression in section 8, 8A, 8B, 8C or 8D has the same meaning as in the applied provisions.

(2) Sections 8 - 8D:

Omit section 8, insert instead:

**Fees payable**

8. (1) There shall be paid to the State Commission, for and on behalf of the State, for:

(a) the lodgment of documents under the applied provisions;

SCHEDULE 1 - AMENDMENT OF COMPANIES  
(APPLICATION OF LAWS) ACT 1981 - *continued*

- (b) the registration of documents under the applied provisions;
- (c) the inspection or search of registers kept by, or documents in the custody of, the National Commission under the applied provisions;
- (d) the making available by the National Commission, under the applied provisions, of information (whether in the form of a document or otherwise);
- (e) the production by the National Commission, under a subpoena, of such registers or documents;
- (f) the issuing of documents or copies of documents, the granting of licences, consents or approvals, or the doing of other acts, by the Ministerial Council or the National Commission under the applied provisions;
- (g) the making of inquiries of, or applications to, the Ministerial Council or the National Commission in relation to matters arising under the applied provisions; and
- (h) the submission to the National Commission of documents for examination by the National Commission,

such fees (if any) as are prescribed by regulations in force for the time being under the Companies (Fees) Act 1981 of the Commonwealth and specified in the Schedule to those regulations as if amended as set out in Schedule 3 and as if, unless the contrary intention appears, the expressions used had the same respective meanings as in the applied provisions.

(2) Despite subsection (1), where but for this subsection the fee, or the total of the fees, payable under that subsection for a chargeable matter would exceed \$25,000, so much of that fee, or of that total, as exceeds \$25,000 is not payable.

SCHEDULE 1 - AMENDMENT OF COMPANIES  
(APPLICATION OF LAWS) ACT 1981 - *continued*

(3) Where:

- (a) because of section 265A of the Companies (New South Wales) Code, a company is taken, for the purposes of that Code, to lodge a document at a particular time; and
- (b) if the company had in fact lodged the document at that time, a fee would have been payable to the State Commission under subsection (1) for the lodgment,

then:

- (c) the company shall be taken, for the purposes of this section (other than subsection (4)), to lodge the document at that time; and
- (d) as from that time, the fee that, because of paragraph (c), is payable under subsection (1) for the lodgment of the document is a debt due to the State and payable by the company.

(4) Where:

- (a) a fee is payable under subsection (1) for the lodgment of a document; and
- (b) the document is submitted for lodgment without payment of the fee,

the document shall be taken not to have been lodged until the fee is paid.

(5) Subsection (4) does not apply where, at the time when the document is submitted for lodgment, the amount of the fee cannot be ascertained, but if the State Commission, before or at that time, requires under subsection (9) the payment of a deposit on account of the fee, the document shall be taken not to have been lodged until the deposit or the fee has been paid.

(6) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for any



SCHEDULE 1 - AMENDMENT OF COMPANIES  
(APPLICATION OF LAWS) ACT 1981 - *continued*

matter involving the doing of an act by the Ministerial Council or the National Commission, the Ministerial Council or the National Commission shall not do that act until the fee has been paid.

(7) Subsection (6) does not prohibit the doing of an act at a particular time if, as at that time:

- (a) the amount of the fee cannot be ascertained; and
- (b) if the State Commission has required under subsection (9) the payment of a deposit on account of the fee - the deposit has been paid.

(8) This section has effect notwithstanding anything contained in the applied provisions.

(9) Where the amount of a fee payable under subsection (1) for:

- (a) the lodgment of a document; or
- (b) a matter involving the doing of an act by the Ministerial Council or the National Commission,

cannot be ascertained, the State Commission may:

- (c) before or at the time when the document is submitted for lodgment; or
- (d) before the Ministerial Council or the National Commission does the act,

as the case may be, require the payment to the State Commission, on account of the fee, of a deposit of a specified amount that the State Commission considers it reasonable to expect will be the amount of the fee.

**Fee not ascertainable when it becomes payable**

8A. (1) This section applies where the amount of a fee under section 8 (1) cannot be ascertained when the fee becomes payable, but at a later time becomes able to be ascertained.

**SCHEDULE 1 - AMENDMENT OF COMPANIES  
(APPLICATION OF LAWS) ACT 1981 - *continued***

(2) If a person has paid a deposit on account of the fee, the State Commission shall apply towards payment of the fee so much of the deposit as does not exceed the amount of the fee and:

- (a) if the amount of the deposit exceeds the amount of the fee - the State Commission shall refund to the person the amount of the excess; or
- (b) if the amount of the fee exceeds the amount of the deposit - as from the later time, so much of the fee as exceeds the amount of the deposit is a debt due to the State and payable by the person.

(3) Otherwise, the fee is, as from the later time, a debt due to the State and payable by the person whom the State Commission determines in writing to be the person who it is reasonable to expect would have paid the fee had the fee been able to be ascertained when it became payable.

**Waiver and refund of fees**

8B. Nothing in section 8 or 8A prevents the State Commission for and on behalf of the State from:

- (a) waiving or reducing, in a particular case or in particular classes of cases, fees that would otherwise be payable under section 8 or 8A; or
- (b) refunding in whole or in part, in a particular case or in particular classes of cases, fees paid under section 8 or 8A.

**Debts due to the State**

8C. The State Commission may recover in a court of competent jurisdiction a debt due under section 8 or 8A.

**Payment of fee does not give right to inspect or search**

8D. To avoid doubt, nothing in section 8 or 8A, and nothing done under section 8 or 8A:

**SCHEDULE 1 - AMENDMENT OF COMPANIES  
(APPLICATION OF LAWS) ACT 1981 - *continued***

- (a) imposes on the National Commission a duty to allow the inspection or search of a register or document, or to make available information; or
  - (b) confers a right to inspect or search a register or document or to have information made available, except so far as such a duty or right would exist under another provision of this Act or under some other law but for the effect of section 8 (6) and (7).
- (3) **Section 13 (Publication of provisions of amended Code or regulations):**  
Section 13 (1) (c) (ii):  
After "8", insert "or 8A".
- (4) **Section 15 (Amendment of certain provisions in accordance with approval of Ministerial Council):**  
After "8" wherever occurring, insert ", 8A, 8B, 8C or 8D".

**SCHEDULE 2 - AMENDMENT OF COMPANIES (ACQUISITION OF SHARES) (APPLICATION OF LAWS) ACT 1981**

(Sec. 4)

- (1) **Section 3 (Definitions):**
- (a) In alphabetical order in section 3 (1), insert:
    - "act" includes thing;
    - "chargeable matter" means a matter of a kind referred to in any of paragraphs (a) - (h), inclusive, of section 9 (1);



SCHEDULE 2 - AMENDMENT OF COMPANIES  
(ACQUISITION OF SHARES) (APPLICATION  
OF LAWS) ACT 1981 - *continued*

"fee" includes tax;

"for", in relation to a fee, includes in respect of;

"lodge" means lodge with the Commission;

(b) Section 3 (1A), (1B):

After section 3 (1), insert:

(1A) In this Act, a reference to the Companies (Acquisition of Shares - Fees) Act 1980 of the Commonwealth includes a reference to the Companies (Acquisition of Shares - Fees: Taxation Component) Act 1989 of the Commonwealth.

(1B) Subject to this section, an expression in section 9, 9A, 9B, 9C or 9D has the same meaning as in the applied provisions.

(2) Sections 9 - 9D:

Omit section 9, insert instead:

**Fees payable**

9. (1) There shall be paid to the State Commission, for and on behalf of the State, for:

- (a) the lodgment of documents under the applied provisions;
- (b) the registration of documents under the applied provisions;
- (c) the inspection or search of registers kept by, or documents in the custody of, the National Commission under the applied provisions;
- (d) the making available by the National Commission, under the applied provisions, of information (whether in the form of a document or otherwise);
- (e) the production by the National Commission, under a subpoena, of such registers or documents;

SCHEDULE 2 - AMENDMENT OF COMPANIES  
(ACQUISITION OF SHARES) (APPLICATION  
OF LAWS) ACT 1981 - *continued*

- (f) the issuing of documents or copies of documents, the granting of licences, consents or approvals, or the doing of other acts, by the Ministerial Council or the National Commission under the applied provisions;
- (g) the making of inquiries of, or applications to, the Ministerial Council or the National Commission in relation to matters arising under the applied provisions; and
- (h) the submission to the National Commission of documents for examination by the National Commission,

such fees (if any) as are prescribed by regulations in force for the time being under the Companies (Acquisition of Shares - Fees) Act 1980 of the Commonwealth and specified in the Schedule to those regulations as if amended as set out in Schedule 3 and as if, unless the contrary intention appears, the expressions used had the same respective meanings as in the applied provisions.

(2) Despite subsection (1), where but for this subsection the fee, or the total of the fees, payable under that subsection for a chargeable matter would exceed \$25,000, so much of that fee, or of that total, as exceeds \$25,000 is not payable.

(3) Where:

- (a) a fee is payable under subsection (1) for the lodgment of a document; and
- (b) the document is submitted for lodgment without payment of the fee,

the document shall be taken not to have been lodged until the fee is paid.

(4) Subsection (3) does not apply where, at the time when the document is submitted for lodgment, the amount of the fee cannot be ascertained, but if the State

SCHEDULE 2 - AMENDMENT OF COMPANIES  
(ACQUISITION OF SHARES) (APPLICATION  
OF LAWS) ACT 1981 - *continued*

Commission, before or at that time, requires under subsection (8) the payment of a deposit on account of the fee, the document shall be taken not to have been lodged until the deposit or the fee has been paid.

(5) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for any matter involving the doing of an act by the Ministerial Council or the National Commission, the Ministerial Council or the National Commission shall not do that act until the fee has been paid.

(6) Subsection (5) does not prohibit the doing of an act at a particular time if, as at that time:

- (a) the amount of the fee cannot be ascertained; and
- (b) if the State Commission has required under subsection (8) the payment of a deposit on account of the fee - the deposit has been paid.

(7) This section has effect notwithstanding anything contained in the applied provisions.

(8) Where the amount of a fee payable under subsection (1) for:

- (a) the lodgment of a document; or
- (b) a matter involving the doing of an act by the Ministerial Council or the National Commission,

cannot be ascertained, the State Commission may:

- (c) before or at the time when the document is submitted for lodgment; or
- (d) before the Ministerial Council or the National Commission does the act,

as the case may be, require the payment to the State Commission, on account of the fee, of a deposit of a specified amount that the State Commission considers it reasonable to expect will be the amount of the fee.



**SCHEDULE 2 - AMENDMENT OF COMPANIES  
(ACQUISITION OF SHARES) (APPLICATION  
OF LAWS) ACT 1981 - *continued***

**Fee not ascertainable when it becomes payable**

9A. (1) This section applies where the amount of a fee under section 9 (1) cannot be ascertained when the fee becomes payable, but at a later time becomes able to be ascertained.

(2) If a person has paid a deposit on account of the fee, the State Commission shall apply towards payment of the fee so much of the deposit as does not exceed the amount of the fee and:

- (a) if the amount of the deposit exceeds the amount of the fee - the State Commission shall refund to the person the amount of the excess; or
- (b) if the amount of the fee exceeds the amount of the deposit - as from the later time, so much of the fee as exceeds the amount of the deposit is a debt due to the State and payable by the person.

(3) Otherwise, the fee is, as from the later time, a debt due to the State and payable by the person whom the State Commission determines in writing to be the person who it is reasonable to expect would have paid the fee had the fee been able to be ascertained when it became payable.

**Waiver and refund of fees**

9B. Nothing in section 9 or 9A prevents the State Commission for and on behalf of the State from:

- (a) waiving or reducing, in a particular case or in particular classes of cases, fees that would otherwise be payable under section 9 or 9A; or
- (b) refunding in whole or in part, in a particular case or in particular classes of cases, fees paid under section 9 or 9A.

**SCHEDULE 2 - AMENDMENT OF COMPANIES  
(ACQUISITION OF SHARES) (APPLICATION  
OF LAWS) ACT 1981 - *continued***

**Debts due to the State**

9C. The State Commission may recover in a court of competent jurisdiction a debt due under section 9 or 9A.

**Payment of fee does not give right to inspect or search**

9D. To avoid doubt, nothing in section 9 or 9A, and nothing done under section 9 or 9A:

- (a) imposes on the National Commission a duty to allow the inspection or search of a register or document, or to make available information; or
- (b) confers a right to inspect or search a register or document or to have information made available,

except so far as such a duty or right would exist under another provision of this Act or under some other law but for the effect of section 9 (5) and (6).

- (3) Section 14 (**Publication of provisions of amended Code or regulations**):

Section 14 (1) (c) (ii):

After "9", insert "or 9A".

- (4) Section 16 (**Amendment of certain provisions in accordance with approval of Ministerial Council**):

After "9" wherever occurring, insert ", 9A, 9B, 9C or 9D".

**SCHEDULE 3 - AMENDMENT OF SECURITIES INDUSTRY  
(APPLICATION OF LAWS) ACT 1981**

(Sec. 5)

- (1) Section 4 (**Definitions**):

- (a) In alphabetical order in section 4 (1), insert:

"act" includes thing;

"chargeable matter" means a matter of a kind referred to in any of paragraphs (a) - (h), inclusive, of section 8 (1);

SCHEDULE 3 - AMENDMENT OF SECURITIES INDUSTRY  
(APPLICATION OF LAWS) ACT 1981 - *continued*

"fee" includes tax;

"for", in relation to a fee, includes in respect of;

"lodge" means lodge with the Commission;

(b) Section 4 (1A), (1B):

After section 4 (1), insert:

(1A) In this Act, a reference to the Securities Industry (Fees) Act 1980 of the Commonwealth includes a reference to the Securities Industry (Fees: Taxation Component) Act 1989 of the Commonwealth.

(1B) Subject to this section, an expression in section 8, 8A, 8B, 8C or 8D has the same meaning as in the applied provisions.

(2) Sections 8 - 8D:

Omit section 8, insert instead:

**Fees payable**

8. (1) There shall be paid to the State Commission, for and on behalf of the State, for:

- (a) the lodgment of documents under the applied provisions;
- (b) the registration of documents under the applied provisions;
- (c) the inspection or search of registers kept by, or documents in the custody of, the National Commission under the applied provisions;
- (d) the making available by the National Commission, under the applied provisions, of information (whether in the form of a document or otherwise);
- (e) the production by the National Commission, under a subpoena, of such registers or documents;



SCHEDULE 3 - AMENDMENT OF SECURITIES INDUSTRY  
(APPLICATION OF LAWS) ACT 1981 - *continued*

- (f) the issuing of documents or copies of documents, the granting of licences, consents or approvals, or the doing of other acts, by the Ministerial Council or the National Commission under the applied provisions;
- (g) the making of inquiries of, or applications to, the Ministerial Council or the National Commission in relation to matters arising under the applied provisions; and
- (h) the submission to the National Commission of documents for examination by the National Commission,

such fees (if any) as are prescribed by regulations in force for the time being under the Securities Industry (Fees) Act 1980 of the Commonwealth and specified in the Schedule to those regulations as if amended as set out in Schedule 3 and as if, unless the contrary intention appears, the expressions used had the same respective meanings as in the applied provisions.

(2) Despite subsection (1), where but for this subsection the fee, or the total of the fees, payable under that subsection for a chargeable matter would exceed \$25,000, so much of that fee, or of that total, as exceeds \$25,000 is not payable.

(3) Where:

- (a) a fee is payable under subsection (1) for the lodgment of a document; and
- (b) the document is submitted for lodgment without payment of the fee,

the document shall be taken not to have been lodged until the fee is paid.

(4) Subsection (3) does not apply where, at the time when the document is submitted for lodgment, the amount of the fee cannot be ascertained, but if the State

SCHEDULE 3 - AMENDMENT OF SECURITIES INDUSTRY  
(APPLICATION OF LAWS) ACT 1981 - *continued*

Commission, before or at that time, requires under subsection (8) the payment of a deposit on account of the fee, the document shall be taken not to have been lodged until the deposit or the fee has been paid.

(5) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for any matter involving the doing of an act by the Ministerial Council or the National Commission, the Ministerial Council or the National Commission shall not do that act until the fee has been paid.

(6) Subsection (5) does not prohibit the doing of an act at a particular time if, as at that time:

- (a) the amount of the fee cannot be ascertained; and
- (b) if the State Commission has required under subsection (8) the payment of a deposit on account of the fee - the deposit has been paid.

(7) This section has effect notwithstanding anything contained in the applied provisions.

(8) Where the amount of a fee payable under subsection (1) for:

- (a) the lodgment of a document; or
- (b) a matter involving the doing of an act by the Ministerial Council or the National Commission,

cannot be ascertained, the State Commission may:

- (c) before or at the time when the document is submitted for lodgment; or
- (d) before the Ministerial Council or the National Commission does the act,

as the case may be, require the payment to the State Commission, on account of the fee, of a deposit of a specified amount that the State Commission considers it reasonable to expect will be the amount of the fee.

**SCHEDULE 3 - AMENDMENT OF SECURITIES INDUSTRY  
(APPLICATION OF LAWS) ACT 1981 - *continued***

**Fee not ascertainable when it becomes payable**

8A. (1) This section applies where the amount of a fee under section 8 (1) cannot be ascertained when the fee becomes payable, but at a later time becomes able to be ascertained.

(2) If a person has paid a deposit on account of the fee, the State Commission shall apply towards payment of the fee so much of the deposit as does not exceed the amount of the fee and:

- (a) if the amount of the deposit exceeds the amount of the fee - the State Commission shall refund to the person the amount of the excess; or
- (b) if the amount of the fee exceeds the amount of the deposit - as from the later time, so much of the fee as exceeds the amount of the deposit is a debt due to the State and payable by the person.

(3) Otherwise, the fee is, as from the later time, a debt due to the State and payable by the person whom the State Commission determines in writing to be the person who it is reasonable to expect would have paid the fee had the fee been able to be ascertained when it became payable.

**Waiver and refund of fees**

8B. Nothing in section 8 or 8A prevents the State Commission for and on behalf of the State from:

- (a) waiving or reducing, in a particular case or in particular classes of cases, fees that would otherwise be payable under section 8 or 8A; or
- (b) refunding in whole or in part, in a particular case or in particular classes of cases, fees paid under section 8 or 8A.



**SCHEDULE 3 - AMENDMENT OF SECURITIES INDUSTRY  
(APPLICATION OF LAWS) ACT 1981 - *continued***

**Debts due to the State**

8c. The State Commission may recover in a court of competent jurisdiction a debt due under section 8 or 8A.

**Payment of fee does not give right to inspect or search**

8D. To avoid doubt, nothing in section 8 or 8A, and nothing done under section 8 or 8A:

- (a) imposes on the National Commission a duty to allow the inspection or search of a register or document, or to make available information; or
- (b) confers a right to inspect or search a register or document or to have information made available,

except so far as such a duty or right would exist under another provision of this Act or under some other law but for the effect of section 8 (5) and (6).

- (3) Section 13 (**Publication of provisions of amended Code or regulations**):

Section 13 (1) (c) (ii):

After "8", insert "or 8A".

- (4) Section 15 (**Amendment of certain provisions in accordance with approval of Ministerial Council**):

After "8" wherever occurring, insert ", 8A, 8B, 8C or 8D".

**SCHEDULE 4 - AMENDMENT OF FUTURES INDUSTRY  
(APPLICATION OF LAWS) ACT 1986**

(Sec. 6)

- (1) Section 3 (**Definitions**):

- (a) In alphabetical order in section 3 (1), insert:

"act" includes thing;

"chargeable matter" means a matter of a kind referred to in any of paragraphs (a) - (h), inclusive, of section 7 (1);

SCHEDULE 4 - AMENDMENT OF FUTURES INDUSTRY  
(APPLICATION OF LAWS) ACT 1986 - *continued*

"fee" includes tax;

"for", in relation to a fee, includes in respect of;

"lodge" means lodge with the Commission;

(b) Section 3 (1A), (1B):

After section 3 (1), insert:

(1A) In this Act, a reference to the Futures Industry (Fees) Act 1986 of the Commonwealth includes a reference to the Futures Industry (Fees: Taxation Component) Act 1989 of the Commonwealth.

(1B) Subject to this section, an expression in section 7, 7A, 7B, 7C or 7D has the same meaning as in the applied provisions.

(2) Sections 7 - 7D:

Omit section 7, insert instead:

**Fees payable**

7. (1) There shall be paid to the State Commission, for and on behalf of the State, for:

- (a) the lodgment of documents under the applied provisions;
- (b) the registration of documents under the applied provisions;
- (c) the inspection or search of registers kept by, or documents in the custody of, the National Commission under the applied provisions;
- (d) the making available by the National Commission, under the applied provisions, of information (whether in the form of a document or otherwise);
- (e) the production by the National Commission, under a subpoena, of such registers or documents;

SCHEDULE 4 - AMENDMENT OF FUTURES INDUSTRY  
(APPLICATION OF LAWS) ACT 1986 - *continued*

- (f) the issuing of documents or copies of documents, the granting of licences, consents or approvals, or the doing of other acts, by the Ministerial Council or the National Commission under the applied provisions;
- (g) the making of inquiries of, or applications to, the Ministerial Council or the National Commission in relation to matters arising under the applied provisions; and
- (h) the submission to the National Commission of documents for examination by the National Commission,

such fees (if any) as are prescribed by regulations in force for the time being under the Futures Industry (Fees) Act 1986 of the Commonwealth and specified in the Schedule to those regulations as if amended as set out in Schedule 3 and as if, unless the contrary intention appears, the expressions used had the same respective meanings as in the applied provisions.

(2) Despite subsection (1), where but for this subsection the fee, or the total of the fees, payable under that subsection for a chargeable matter would exceed \$25,000, so much of that fee, or of that total, as exceeds \$25,000 is not payable.

(3) Where:

- (a) a fee is payable under subsection (1) for the lodgment of a document; and
- (b) the document is submitted for lodgment without payment of the fee,

the document shall be taken not to have been lodged until the fee is paid.

(4) Subsection (3) does not apply where, at the time when the document is submitted for lodgment, the amount of the fee cannot be ascertained, but if the State



SCHEDULE 4 - AMENDMENT OF FUTURES INDUSTRY  
(APPLICATION OF LAWS) ACT 1986 - *continued*

Commission, before or at that time, requires under subsection (8) the payment of a deposit on account of the fee, the document shall be taken not to have been lodged until the deposit or the fee has been paid.

(5) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for any matter involving the doing of an act by the Ministerial Council or the National Commission, the Ministerial Council or the National Commission shall not do that act until the fee has been paid.

(6) Subsection (5) does not prohibit the doing of an act at a particular time if, as at that time:

- (a) the amount of the fee cannot be ascertained; and
- (b) if the State Commission has required under subsection (8) the payment of a deposit on account of the fee - the deposit has been paid.

(7) This section has effect notwithstanding anything contained in the applied provisions.

(8) Where the amount of a fee payable under subsection (1) for:

- (a) the lodgment of a document; or
- (b) a matter involving the doing of an act by the Ministerial Council or the National Commission,

cannot be ascertained, the State Commission may:

- (c) before or at the time when the document is submitted for lodgment; or
- (d) before the Ministerial Council or the National Commission does the act,

as the case may be, require the payment to the State Commission, on account of the fee, of a deposit of a specified amount that the State Commission considers it reasonable to expect will be the amount of the fee.

SCHEDULE 4 - AMENDMENT OF FUTURES INDUSTRY  
(APPLICATION OF LAWS) ACT 1986 - *continued*

**Fee not ascertainable when it becomes payable**

7A (1) This section applies where the amount of a fee under section 7 (1) cannot be ascertained when the fee becomes payable, but at a later time becomes able to be ascertained.

(2) If a person has paid a deposit on account of the fee, the State Commission shall apply towards payment of the fee so much of the deposit as does not exceed the amount of the fee and:

- (a) if the amount of the deposit exceeds the amount of the fee - the State Commission shall refund to the person the amount of the excess; or
- (b) if the amount of the fee exceeds the amount of the deposit - as from the later time, so much of the fee as exceeds the amount of the deposit is a debt due to the State and payable by the person.

(3) Otherwise, the fee is, as from the later time, a debt due to the State and payable by the person whom the State Commission determines in writing to be the person who it is reasonable to expect would have paid the fee had the fee been able to be ascertained when it became payable.

**Waiver and refund of fees**

7B. Nothing in section 7 or 7A prevents the State Commission for and on behalf of the State from:

- (a) waiving or reducing, in a particular case or in particular classes of cases, fees that would otherwise be payable under section 7 or 7A; or
- (b) refunding in whole or in part, in a particular case or in particular classes of cases, fees paid under section 7 or 7A.

SCHEDULE 4 - AMENDMENT OF FUTURES INDUSTRY  
(APPLICATION OF LAWS) ACT 1986 - *continued*

**Debts due to the State**

7c. The State Commission may recover in a court of competent jurisdiction a debt due under section 7 or 7A.

**Payment of fee does not give right to inspect or search**

7D. To avoid doubt, nothing in section 7 or 7A, and nothing done under section 7 or 7A:

- (a) imposes on the National Commission a duty to allow the inspection or search of a register or document, or to make available information; or
- (b) confers a right to inspect or search a register or document or to have information made available,

except so far as such a duty or right would exist under another provision of this Act or under some other law but for the effect of section 7 (5) and (6).

- (3) Section 12 (**Publication of provisions of amended Code or regulations**):

Section 12 (1) (c) (ii):

After "7", insert "or 7A".

- (4) Section 14 (**Amendment of certain provisions in accordance with approval of Ministerial Council**):

After "7" wherever occurring, insert ", 7A, 7B, 7C or 7D".

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[*Minister's second reading speech made in -  
Legislative Assembly on 26 July 1989  
Legislative Council on 9 August 1989*]









FIRST PRINT

**COMPANIES AND SECURITIES LEGISLATION (AMENDMENT)  
BILL 1989**

NEW SOUTH WALES



**EXPLANATORY NOTE**

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

The object of this Bill is to amend the Companies (Application of Laws) Act 1981, the Companies (Acquisition of Shares) (Application of Laws) Act 1981, the Securities Industry (Application of Laws) Act 1981 and the Futures Industry (Application of Laws) Act 1986 to give effect in New South Wales to certain amendments to be made by the proposed Co-operative Scheme Legislation Amendment Act 1989 of the Commonwealth.

The amendments to be made by the Commonwealth Act relate to the fees payable under the Commonwealth enactments that apply in New South Wales as the Companies (New South Wales) Code, the Companies (Acquisition of Shares) (New South Wales) Code, the Securities Industry (New South Wales) Code and the Futures Industry (New South Wales) Code.

The effect of the amendments is the same for each Code, as follows:

- fees fixed for the purposes of a Code will be authorised to comprise a component that is in the nature of a tax;
- fees will be able to be fixed for the making available by the National Companies and Securities Commission of information under a Code (this is in addition to the list of matters for which fees can currently be fixed);
- the fee (or the total fees) payable in relation to a specific matter will be limited to a maximum of \$25,000;
- provision will be made for the payment of a deposit on account of a fee that cannot be ascertained at the time it is required to be paid (to avoid the result that the lodgment of a document or the taking of administrative action for which the fee is payable is impeded or prevented merely because the fee cannot then be ascertained or paid);

*Companies and Securities Legislation (Amendment) 1989*

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- if a deposit is paid on account of a fee, provision will be made for a refund of any excess and for any shortfall to be a debt due to the State and recoverable in a court of competent jurisdiction;
- it will be made clear that the mere payment of a fee does not impose a duty on the National Companies and Securities Commission, or confer a right on any person, concerning the inspection or search of registers or documents or the availability of information;
- minor and consequential amendments are made.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on the commencement of the relevant provisions of the proposed Commonwealth amending Act.

Clauses 3 - 6 give effect to the Schedules of amendments that contain the amendments described above.

Schedule 1 contains the amendments to the Companies (Application of Laws) Act 1981.

Schedule 2 contains the amendments to the Companies (Acquisition of Shares) (Application of Laws) Act 1981.

Schedule 3 contains the amendments to the Securities Industry (Application of Laws) Act 1981.

Schedule 4 contains the amendments to the Futures Industry (Application of Laws) Act 1986.

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FIRST PRINT

**COMPANIES AND SECURITIES LEGISLATION (AMENDMENT)  
BILL 1989**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
  2. Commencement
  3. Amendment of Companies (Application of Laws) Act 1981 No. 122
  4. Amendment of Companies (Acquisition of Shares) (Application of Laws) Act 1981 No. 62
  5. Amendment of Securities Industry (Application of Laws) Act 1981 No. 61
  6. Amendment of Futures Industry (Application of Laws) Act 1986 No. 66
- SCHEDULE 1 - AMENDMENT OF COMPANIES (APPLICATION OF LAWS) ACT 1981
- SCHEDULE 2 - AMENDMENT OF COMPANIES (ACQUISITION OF SHARES) (APPLICATION OF LAWS) ACT 1981
- SCHEDULE 3 - AMENDMENT OF SECURITIES INDUSTRY (APPLICATION OF LAWS) ACT 1981
- SCHEDULE 4 - AMENDMENT OF FUTURES INDUSTRY (APPLICATION OF LAWS) ACT 1986
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**COMPANIES AND SECURITIES LEGISLATION (AMENDMENT)  
BILL 1989**

NEW SOUTH WALES



No. , 1989

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**A BILL FOR**

An Act to amend the Companies (Application of Laws) Act 1981, the Companies (Acquisition of Shares) (Application of Laws) Act 1981, the Securities Industry (Application of Laws) Act 1981 and the Futures Industry (Application of Laws) Act 1986 as a consequence of the Co-operative Scheme Legislation Amendment Act 1989 of the Commonwealth.

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Companies and Securities Legislation (Amendment) Act 1989.

**Commencement**

2. This Act commences on the day on which Part 9 of the Co-operative Scheme Legislation Amendment Act 1989 of the Commonwealth commences.

**Amendment of Companies (Application of Laws) Act 1981 No. 122**

3. The Companies (Application of Laws) Act 1981 is amended as set out in Schedule 1.

**Amendment of Companies (Acquisition of Shares) (Application of Laws) Act 1981 No. 62**

4. The Companies (Acquisition of Shares) (Application of Laws) Act 1981 is amended as set out in Schedule 2.

**Amendment of Securities Industry (Application of Laws) Act 1981 No. 61**

5. The Securities Industry (Application of Laws) Act 1981 is amended as set out in Schedule 3.

**Amendment of Futures Industry (Application of Laws) Act 1986 No. 66**

6. The Futures Industry (Application of Laws) Act 1986 is amended as set out in Schedule 4.

**SCHEDULE 1 - AMENDMENT OF COMPANIES (APPLICATION OF LAWS) ACT 1981**

(Sec. 3)

(1) Section 4 (**Definitions**):

(a) In alphabetical order in section 4 (1), insert:

"act" includes thing;

"chargeable matter" means a matter of a kind referred to in any of paragraphs (a) - (h), inclusive, of section 8 (1);

"fee" includes tax;

"for", in relation to a fee, includes in respect of;

"lodge" means lodge with the Commission;

(b) Section 4 (1A), (1B):

After section 4 (1), insert:

(1A) In this Act, a reference to the Companies (Fees) Act 1981 of the Commonwealth includes a reference to the Companies (Fees: Taxation Component) Act 1989 of the Commonwealth.

(1B) Subject to this section, an expression in section 8, 8A, 8B, 8C or 8D has the same meaning as in the applied provisions.

(2) Sections 8 - 8D:

Omit section 8, insert instead:

**Fees payable**

8. (1) There shall be paid to the State Commission, for and on behalf of the State, for:

- (a) the lodgment of documents under the applied provisions;



SCHEDULE 1 - AMENDMENT OF COMPANIES  
(APPLICATION OF LAWS) ACT 1981 - *continued*

- (b) the registration of documents under the applied provisions;
- (c) the inspection or search of registers kept by, or documents in the custody of, the National Commission under the applied provisions;
- (d) the making available by the National Commission, under the applied provisions, of information (whether in the form of a document or otherwise);
- (e) the production by the National Commission, under a subpoena, of such registers or documents;
- (f) the issuing of documents or copies of documents, the granting of licences, consents or approvals, or the doing of other acts, by the Ministerial Council or the National Commission under the applied provisions;
- (g) the making of inquiries of, or applications to, the Ministerial Council or the National Commission in relation to matters arising under the applied provisions; and
- (h) the submission to the National Commission of documents for examination by the National Commission,

such fees (if any) as are prescribed by regulations in force for the time being under the Companies (Fees) Act 1981 of the Commonwealth and specified in the Schedule to those regulations as if amended as set out in Schedule 3 and as if, unless the contrary intention appears, the expressions used had the same respective meanings as in the applied provisions.

(2) Despite subsection (1), where but for this subsection the fee, or the total of the fees, payable under that subsection for a chargeable matter would exceed \$25,000, so much of that fee, or of that total, as exceeds \$25,000 is not payable.



SCHEDULE 1 - AMENDMENT OF COMPANIES  
(APPLICATION OF LAWS) ACT 1981 - *continued*

(3) Where:

- (a) because of section 265A of the Companies (New South Wales) Code, a company is taken, for the purposes of that Code, to lodge a document at a particular time; and
- (b) if the company had in fact lodged the document at that time, a fee would have been payable to the State Commission under subsection (1) for the lodgment,

then:

- (c) the company shall be taken, for the purposes of this section (other than subsection (4)), to lodge the document at that time; and
- (d) as from that time, the fee that, because of paragraph (c), is payable under subsection (1) for the lodgment of the document is a debt due to the State and payable by the company.

(4) Where:

- (a) a fee is payable under subsection (1) for the lodgment of a document; and
- (b) the document is submitted for lodgment without payment of the fee,

the document shall be taken not to have been lodged until the fee is paid.

(5) Subsection (4) does not apply where, at the time when the document is submitted for lodgment, the amount of the fee cannot be ascertained, but if the State Commission, before or at that time, requires under subsection (9) the payment of a deposit on account of the fee, the document shall be taken not to have been lodged until the deposit or the fee has been paid.

(6) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for any

SCHEDULE 1 - AMENDMENT OF COMPANIES  
(APPLICATION OF LAWS) ACT 1981 - *continued*

matter involving the doing of an act by the Ministerial Council or the National Commission, the Ministerial Council or the National Commission shall not do that act until the fee has been paid.

(7) Subsection (6) does not prohibit the doing of an act at a particular time if, as at that time:

- (a) the amount of the fee cannot be ascertained; and
- (b) if the State Commission has required under subsection (9) the payment of a deposit on account of the fee - the deposit has been paid.

(8) This section has effect notwithstanding anything contained in the applied provisions.

(9) Where the amount of a fee payable under subsection (1) for:

- (a) the lodgment of a document; or
- (b) a matter involving the doing of an act by the Ministerial Council or the National Commission,

cannot be ascertained, the State Commission may:

- (c) before or at the time when the document is submitted for lodgment; or
- (d) before the Ministerial Council or the National Commission does the act,

as the case may be, require the payment to the State Commission, on account of the fee, of a deposit of a specified amount that the State Commission considers it reasonable to expect will be the amount of the fee.

**Fee not ascertainable when it becomes payable**

8A. (1) This section applies where the amount of a fee under section 8 (1) cannot be ascertained when the fee becomes payable, but at a later time becomes able to be ascertained.

**SCHEDULE 1 - AMENDMENT OF COMPANIES  
(APPLICATION OF LAWS) ACT 1981 - *continued***

(2) If a person has paid a deposit on account of the fee, the State Commission shall apply towards payment of the fee so much of the deposit as does not exceed the amount of the fee and:

- (a) if the amount of the deposit exceeds the amount of the fee - the State Commission shall refund to the person the amount of the excess; or
- (b) if the amount of the fee exceeds the amount of the deposit - as from the later time, so much of the fee as exceeds the amount of the deposit is a debt due to the State and payable by the person.

(3) Otherwise, the fee is, as from the later time, a debt due to the State and payable by the person whom the State Commission determines in writing to be the person who it is reasonable to expect would have paid the fee had the fee been able to be ascertained when it became payable.

**Waiver and refund of fees**

8B. Nothing in section 8 or 8A prevents the State Commission for and on behalf of the State from:

- (a) waiving or reducing, in a particular case or in particular classes of cases, fees that would otherwise be payable under section 8 or 8A; or
- (b) refunding in whole or in part, in a particular case or in particular classes of cases, fees paid under section 8 or 8A.

**Debts due to the State**

8c. The State Commission may recover in a court of competent jurisdiction a debt due under section 8 or 8A.

**Payment of fee does not give right to inspect or search**

8D. To avoid doubt, nothing in section 8 or 8A, and nothing done under section 8 or 8A:



**SCHEDULE 1 - AMENDMENT OF COMPANIES  
(APPLICATION OF LAWS) ACT 1981 - *continued***

- (a) imposes on the National Commission a duty to allow the inspection or search of a register or document, or to make available information; or
  - (b) confers a right to inspect or search a register or document or to have information made available, except so far as such a duty or right would exist under another provision of this Act or under some other law but for the effect of section 8 (6) and (7).
- (3) **Section 13 (Publication of provisions of amended Code or regulations):**  
Section 13 (1) (c) (ii):  
After "8", insert "or 8A".
- (4) **Section 15 (Amendment of certain provisions in accordance with approval of Ministerial Council):**  
After "8" wherever occurring, insert ", 8A, 8B, 8C or 8D".

**SCHEDULE 2 - AMENDMENT OF COMPANIES (ACQUISITION OF SHARES) (APPLICATION OF LAWS) ACT 1981**

(Sec. 4)

- (1) **Section 3 (Definitions):**
- (a) In alphabetical order in section 3 (1), insert:
    - "act" includes thing;
    - "chargeable matter" means a matter of a kind referred to in any of paragraphs (a) - (h), inclusive, of section 9 (1);



SCHEDULE 2 - AMENDMENT OF COMPANIES  
(ACQUISITION OF SHARES) (APPLICATION  
OF LAWS) ACT 1981 - *continued*

"fee" includes tax;

"for", in relation to a fee, includes in respect of;

"lodge" means lodge with the Commission;

(b) Section 3 (1A), (1B):

After section 3 (1), insert:

(1A) In this Act, a reference to the Companies (Acquisition of Shares - Fees) Act 1980 of the Commonwealth includes a reference to the Companies (Acquisition of Shares - Fees: Taxation Component) Act 1989 of the Commonwealth.

(1B) Subject to this section, an expression in section 9, 9A, 9B, 9C or 9D has the same meaning as in the applied provisions.

(2) Sections 9 - 9D:

Omit section 9, insert instead:

**Fees payable**

9. (1) There shall be paid to the State Commission, for and on behalf of the State, for:

- (a) the lodgment of documents under the applied provisions;
- (b) the registration of documents under the applied provisions;
- (c) the inspection or search of registers kept by, or documents in the custody of, the National Commission under the applied provisions;
- (d) the making available by the National Commission, under the applied provisions, of information (whether in the form of a document or otherwise);
- (e) the production by the National Commission, under a subpoena, of such registers or documents;

SCHEDULE 2 - AMENDMENT OF COMPANIES  
(ACQUISITION OF SHARES) (APPLICATION  
OF LAWS) ACT 1981 - *continued*

- (f) the issuing of documents or copies of documents, the granting of licences, consents or approvals, or the doing of other acts, by the Ministerial Council or the National Commission under the applied provisions;
- (g) the making of inquiries of, or applications to, the Ministerial Council or the National Commission in relation to matters arising under the applied provisions; and
- (h) the submission to the National Commission of documents for examination by the National Commission,

such fees (if any) as are prescribed by regulations in force for the time being under the Companies (Acquisition of Shares - Fees) Act 1980 of the Commonwealth and specified in the Schedule to those regulations as if amended as set out in Schedule 3 and as if, unless the contrary intention appears, the expressions used had the same respective meanings as in the applied provisions.

(2) Despite subsection (1), where but for this subsection the fee, or the total of the fees, payable under that subsection for a chargeable matter would exceed \$25,000, so much of that fee, or of that total, as exceeds \$25,000 is not payable.

(3) Where:

- (a) a fee is payable under subsection (1) for the lodgment of a document; and
- (b) the document is submitted for lodgment without payment of the fee,

the document shall be taken not to have been lodged until the fee is paid.

(4) Subsection (3) does not apply where, at the time when the document is submitted for lodgment, the amount of the fee cannot be ascertained, but if the State

SCHEDULE 2 - AMENDMENT OF COMPANIES  
(ACQUISITION OF SHARES) (APPLICATION  
OF LAWS) ACT 1981 - *continued*

Commission, before or at that time, requires under subsection (8) the payment of a deposit on account of the fee, the document shall be taken not to have been lodged until the deposit or the fee has been paid.

(5) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for any matter involving the doing of an act by the Ministerial Council or the National Commission, the Ministerial Council or the National Commission shall not do that act until the fee has been paid.

(6) Subsection (5) does not prohibit the doing of an act at a particular time if, as at that time:

- (a) the amount of the fee cannot be ascertained; and
- (b) if the State Commission has required under subsection (8) the payment of a deposit on account of the fee - the deposit has been paid.

(7) This section has effect notwithstanding anything contained in the applied provisions.

(8) Where the amount of a fee payable under subsection (1) for:

- (a) the lodgment of a document; or
- (b) a matter involving the doing of an act by the Ministerial Council or the National Commission,

cannot be ascertained, the State Commission may:

- (c) before or at the time when the document is submitted for lodgment; or
- (d) before the Ministerial Council or the National Commission does the act,

as the case may be, require the payment to the State Commission, on account of the fee, of a deposit of a specified amount that the State Commission considers it reasonable to expect will be the amount of the fee.



SCHEDULE 2 - AMENDMENT OF COMPANIES  
(ACQUISITION OF SHARES) (APPLICATION  
OF LAWS) ACT 1981 - *continued*

**Fee not ascertainable when it becomes payable**

9A (1) This section applies where the amount of a fee under section 9 (1) cannot be ascertained when the fee becomes payable, but at a later time becomes able to be ascertained.

(2) If a person has paid a deposit on account of the fee, the State Commission shall apply towards payment of the fee so much of the deposit as does not exceed the amount of the fee and:

- (a) if the amount of the deposit exceeds the amount of the fee - the State Commission shall refund to the person the amount of the excess; or
- (b) if the amount of the fee exceeds the amount of the deposit - as from the later time, so much of the fee as exceeds the amount of the deposit is a debt due to the State and payable by the person.

(3) Otherwise, the fee is, as from the later time, a debt due to the State and payable by the person whom the State Commission determines in writing to be the person who it is reasonable to expect would have paid the fee had the fee been able to be ascertained when it became payable.

**Waiver and refund of fees**

9B. Nothing in section 9 or 9A prevents the State Commission for and on behalf of the State from:

- (a) waiving or reducing, in a particular case or in particular classes of cases, fees that would otherwise be payable under section 9 or 9A; or
- (b) refunding in whole or in part, in a particular case or in particular classes of cases, fees paid under section 9 or 9A.



**SCHEDULE 2 - AMENDMENT OF COMPANIES  
(ACQUISITION OF SHARES) (APPLICATION  
OF LAWS) ACT 1981 - *continued***

**Debts due to the State**

9c. The State Commission may recover in a court of competent jurisdiction a debt due under section 9 or 9A.

**Payment of fee does not give right to inspect or search**

9d. To avoid doubt, nothing in section 9 or 9A, and nothing done under section 9 or 9A:

- (a) imposes on the National Commission a duty to allow the inspection or search of a register or document, or to make available information; or
- (b) confers a right to inspect or search a register or document or to have information made available,

except so far as such a duty or right would exist under another provision of this Act or under some other law but for the effect of section 9 (5) and (6).

- (3) **Section 14 (Publication of provisions of amended Code or regulations):**

Section 14 (1) (c) (ii):

After "9", insert "or 9A".

- (4) **Section 16 (Amendment of certain provisions in accordance with approval of Ministerial Council):**

After "9" wherever occurring, insert ", 9A, 9B, 9C or 9D".

**SCHEDULE 3 - AMENDMENT OF SECURITIES INDUSTRY  
(APPLICATION OF LAWS) ACT 1981**

(Sec. 5)

- (1) **Section 4 (Definitions):**

- (a) In alphabetical order in section 4 (1), insert:

"act" includes thing;

"chargeable matter" means a matter of a kind referred to in any of paragraphs (a) - (h), inclusive, of section 8 (1);

SCHEDULE 3 - AMENDMENT OF SECURITIES INDUSTRY  
(APPLICATION OF LAWS) ACT 1981 - *continued*

"fee" includes tax;

"for", in relation to a fee, includes in respect of;

"lodge" means lodge with the Commission;

(b) Section 4 (1A), (1B):

After section 4 (1), insert:

(1A) In this Act, a reference to the Securities Industry (Fees) Act 1980 of the Commonwealth includes a reference to the Securities Industry (Fees: Taxation Component) Act 1989 of the Commonwealth.

(1B) Subject to this section, an expression in section 8, 8A, 8B, 8C or 8D has the same meaning as in the applied provisions.

(2) Sections 8 - 8D:

Omit section 8, insert instead:

**Fees payable**

8. (1) There shall be paid to the State Commission, for and on behalf of the State, for:

- (a) the lodgment of documents under the applied provisions;
- (b) the registration of documents under the applied provisions;
- (c) the inspection or search of registers kept by, or documents in the custody of, the National Commission under the applied provisions;
- (d) the making available by the National Commission, under the applied provisions, of information (whether in the form of a document or otherwise);
- (e) the production by the National Commission, under a subpoena, of such registers or documents;

SCHEDULE 3 - AMENDMENT OF SECURITIES INDUSTRY  
(APPLICATION OF LAWS) ACT 1981 - *continued*

- (f) the issuing of documents or copies of documents, the granting of licences, consents or approvals, or the doing of other acts, by the Ministerial Council or the National Commission under the applied provisions;
- (g) the making of inquiries of, or applications to, the Ministerial Council or the National Commission in relation to matters arising under the applied provisions; and
- (h) the submission to the National Commission of documents for examination by the National Commission,

such fees (if any) as are prescribed by regulations in force for the time being under the Securities Industry (Fees) Act 1980 of the Commonwealth and specified in the Schedule to those regulations as if amended as set out in Schedule 3 and as if, unless the contrary intention appears, the expressions used had the same respective meanings as in the applied provisions.

(2) Despite subsection (1), where but for this subsection the fee, or the total of the fees, payable under that subsection for a chargeable matter would exceed \$25,000, so much of that fee, or of that total, as exceeds \$25,000 is not payable.

(3) Where:

- (a) a fee is payable under subsection (1) for the lodgment of a document; and
- (b) the document is submitted for lodgment without payment of the fee,

the document shall be taken not to have been lodged until the fee is paid.

(4) Subsection (3) does not apply where, at the time when the document is submitted for lodgment, the amount of the fee cannot be ascertained, but if the State



SCHEDULE 3 - AMENDMENT OF SECURITIES INDUSTRY  
(APPLICATION OF LAWS) ACT 1981 - *continued*

Commission, before or at that time, requires under subsection (8) the payment of a deposit on account of the fee, the document shall be taken not to have been lodged until the deposit or the fee has been paid.

(5) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for any matter involving the doing of an act by the Ministerial Council or the National Commission, the Ministerial Council or the National Commission shall not do that act until the fee has been paid.

(6) Subsection (5) does not prohibit the doing of an act at a particular time if, as at that time:

- (a) the amount of the fee cannot be ascertained; and
- (b) if the State Commission has required under subsection (8) the payment of a deposit on account of the fee - the deposit has been paid.

(7) This section has effect notwithstanding anything contained in the applied provisions.

(8) Where the amount of a fee payable under subsection (1) for:

- (a) the lodgment of a document; or
- (b) a matter involving the doing of an act by the Ministerial Council or the National Commission,

cannot be ascertained, the State Commission may:

- (c) before or at the time when the document is submitted for lodgment; or
- (d) before the Ministerial Council or the National Commission does the act,

as the case may be, require the payment to the State Commission, on account of the fee, of a deposit of a specified amount that the State Commission considers it reasonable to expect will be the amount of the fee.

SCHEDULE 3 - AMENDMENT OF SECURITIES INDUSTRY  
(APPLICATION OF LAWS) ACT 1981 - *continued*

**Fee not ascertainable when it becomes payable**

8A. (1) This section applies where the amount of a fee under section 8 (1) cannot be ascertained when the fee becomes payable, but at a later time becomes able to be ascertained.

(2) If a person has paid a deposit on account of the fee, the State Commission shall apply towards payment of the fee so much of the deposit as does not exceed the amount of the fee and:

- (a) if the amount of the deposit exceeds the amount of the fee - the State Commission shall refund to the person the amount of the excess; or
- (b) if the amount of the fee exceeds the amount of the deposit - as from the later time, so much of the fee as exceeds the amount of the deposit is a debt due to the State and payable by the person.

(3) Otherwise, the fee is, as from the later time, a debt due to the State and payable by the person whom the State Commission determines in writing to be the person who it is reasonable to expect would have paid the fee had the fee been able to be ascertained when it became payable.

**Waiver and refund of fees**

8B. Nothing in section 8 or 8A prevents the State Commission for and on behalf of the State from:

- (a) waiving or reducing, in a particular case or in particular classes of cases, fees that would otherwise be payable under section 8 or 8A; or
- (b) refunding in whole or in part, in a particular case or in particular classes of cases, fees paid under section 8 or 8A.

**SCHEDULE 3 - AMENDMENT OF SECURITIES INDUSTRY  
(APPLICATION OF LAWS) ACT 1981 - *continued***

**Debts due to the State**

8c. The State Commission may recover in a court of competent jurisdiction a debt due under section 8 or 8A.

**Payment of fee does not give right to inspect or search**

8D. To avoid doubt, nothing in section 8 or 8A, and nothing done under section 8 or 8A:

- (a) imposes on the National Commission a duty to allow the inspection or search of a register or document, or to make available information; or
- (b) confers a right to inspect or search a register or document or to have information made available,

except so far as such a duty or right would exist under another provision of this Act or under some other law but for the effect of section 8 (5) and (6).

- (3) **Section 13 (Publication of provisions of amended Code or regulations):**

Section 13 (1) (c) (ii):

After "8", insert "or 8A".

- (4) **Section 15 (Amendment of certain provisions in accordance with approval of Ministerial Council):**

After "8" wherever occurring, insert ", 8A, 8B, 8c or 8D".

**SCHEDULE 4 - AMENDMENT OF FUTURES INDUSTRY  
(APPLICATION OF LAWS) ACT 1986**

(Sec. 6)

- (1) **Section 3 (Definitions):**

- (a) In alphabetical order in section 3 (1), insert:

"act" includes thing;

"chargeable matter" means a matter of a kind referred to in any of paragraphs (a) - (h), inclusive, of section 7 (1);



SCHEDULE 4 - AMENDMENT OF FUTURES INDUSTRY  
(APPLICATION OF LAWS) ACT 1986 - *continued*

"fee" includes tax;

"for", in relation to a fee, includes in respect of;

"lodge" means lodge with the Commission;

(b) Section 3 (1A), (1B):

After section 3 (1), insert:

(1A) In this Act, a reference to the Futures Industry (Fees) Act 1986 of the Commonwealth includes a reference to the Futures Industry (Fees: Taxation Component) Act 1989 of the Commonwealth.

(1B) Subject to this section, an expression in section 7, 7A, 7B, 7C or 7D has the same meaning as in the applied provisions.

(2) Sections 7 - 7D:

Omit section 7, insert instead:

**Fees payable**

7. (1) There shall be paid to the State Commission, for and on behalf of the State, for:

- (a) the lodgment of documents under the applied provisions;
- (b) the registration of documents under the applied provisions;
- (c) the inspection or search of registers kept by, or documents in the custody of, the National Commission under the applied provisions;
- (d) the making available by the National Commission, under the applied provisions, of information (whether in the form of a document or otherwise);
- (e) the production by the National Commission, under a subpoena, of such registers or documents;

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- (f) the issuing of documents or copies of documents, the granting of licences, consents or approvals, or the doing of other acts, by the Ministerial Council or the National Commission under the applied provisions;
- (g) the making of inquiries of, or applications to, the Ministerial Council or the National Commission in relation to matters arising under the applied provisions; and
- (h) the submission to the National Commission of documents for examination by the National Commission,

such fees (if any) as are prescribed by regulations in force for the time being under the Futures Industry (Fees) Act 1986 of the Commonwealth and specified in the Schedule to those regulations as if amended as set out in Schedule 3 and as if, unless the contrary intention appears, the expressions used had the same respective meanings as in the applied provisions.

(2) Despite subsection (1), where but for this subsection the fee, or the total of the fees, payable under that subsection for a chargeable matter would exceed \$25,000, so much of that fee, or of that total, as exceeds \$25,000 is not payable.

(3) Where:

- (a) a fee is payable under subsection (1) for the lodgment of a document; and
- (b) the document is submitted for lodgment without payment of the fee,

the document shall be taken not to have been lodged until the fee is paid.

(4) Subsection (3) does not apply where, at the time when the document is submitted for lodgment, the amount of the fee cannot be ascertained, but if the State

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Commission, before or at that time, requires under subsection (8) the payment of a deposit on account of the fee, the document shall be taken not to have been lodged until the deposit or the fee has been paid.

(5) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for any matter involving the doing of an act by the Ministerial Council or the National Commission, the Ministerial Council or the National Commission shall not do that act until the fee has been paid.

(6) Subsection (5) does not prohibit the doing of an act at a particular time if, as at that time:

- (a) the amount of the fee cannot be ascertained; and
- (b) if the State Commission has required under subsection (8) the payment of a deposit on account of the fee - the deposit has been paid.

(7) This section has effect notwithstanding anything contained in the applied provisions.

(8) Where the amount of a fee payable under subsection (1) for:

- (a) the lodgment of a document; or
- (b) a matter involving the doing of an act by the Ministerial Council or the National Commission,

cannot be ascertained, the State Commission may:

- (c) before or at the time when the document is submitted for lodgment; or
- (d) before the Ministerial Council or the National Commission does the act,

as the case may be, require the payment to the State Commission, on account of the fee, of a deposit of a specified amount that the State Commission considers it reasonable to expect will be the amount of the fee.



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**Fee not ascertainable when it becomes payable**

7A (1) This section applies where the amount of a fee under section 7 (1) cannot be ascertained when the fee becomes payable, but at a later time becomes able to be ascertained.

(2) If a person has paid a deposit on account of the fee, the State Commission shall apply towards payment of the fee so much of the deposit as does not exceed the amount of the fee and:

- (a) if the amount of the deposit exceeds the amount of the fee - the State Commission shall refund to the person the amount of the excess; or
- (b) if the amount of the fee exceeds the amount of the deposit - as from the later time, so much of the fee as exceeds the amount of the deposit is a debt due to the State and payable by the person.

(3) Otherwise, the fee is, as from the later time, a debt due to the State and payable by the person whom the State Commission determines in writing to be the person who it is reasonable to expect would have paid the fee had the fee been able to be ascertained when it became payable.

**Waiver and refund of fees**

7B. Nothing in section 7 or 7A prevents the State Commission for and on behalf of the State from:

- (a) waiving or reducing, in a particular case or in particular classes of cases, fees that would otherwise be payable under section 7 or 7A; or
- (b) refunding in whole or in part, in a particular case or in particular classes of cases, fees paid under section 7 or 7A.

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**Debts due to the State**

7c. The State Commission may recover in a court of competent jurisdiction a debt due under section 7 or 7A.

**Payment of fee does not give right to inspect or search**

7D. To avoid doubt, nothing in section 7 or 7A, and nothing done under section 7 or 7A:

- (a) imposes on the National Commission a duty to allow the inspection or search of a register or document, or to make available information; or
- (b) confers a right to inspect or search a register or document or to have information made available,

except so far as such a duty or right would exist under another provision of this Act or under some other law but for the effect of section 7 (5) and (6).

- (3) **Section 12 (Publication of provisions of amended Code or regulations):**

Section 12 (1) (c) (ii):

After "7", insert "or 7A".

- (4) **Section 14 (Amendment of certain provisions in accordance with approval of Ministerial Council):**

After "7" wherever occurring, insert ", 7A, 7B, 7C or 7D".

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