

# National Companies and Securities Commission Act 1979

No. 173 of 1979

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## SCHEDULE

# National Companies and Securities Commission Act 1979

No. 173 of 1979

An Act to establish a National Companies and Securities Commission, and for purposes connected therewith.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

## PART I—PRELIMINARY

- |                |   |
|----------------|---|
| Short title    | 1. This Act may be cited as the <i>National Companies and Securities Commission Act 1979</i> . <sup>1</sup>   |
| Commencement   | 2. This Act shall come into operation on a date to be fixed by Proclamation.  |
| Interpretation | 3. (1) In this Act, unless the contrary intention appears—<br>“acting member” means an acting member appointed under sub-section 17 (3);<br>“Agreement” means the agreement made on 22 December 1978 between the Commonwealth and the States a copy of which is set out in the Schedule or, if that agreement is amended, that agreement as amended;<br>“approved bank” means the Reserve Bank of Australia or another bank for the time being approved by the Ministerial Council or by a person authorized by the Ministerial Council to give approvals for the purposes of this definition;<br>“Australia” includes any external Territory to which this Act extends;<br>“Chairman” means the Chairman of the Commission appointed under sub-section 13 (1);<br>“Commission” means the National Companies and Securities Commission established by this Act;<br>“Companies and Securities Law Review Committee” means the Committee referred to in sub-clause 21 (2) of the Agreement;<br>“deal”, in relation to securities, means (whether as principal or agent) acquire, dispose of, subscribe for or underwrite the securities, or make or offer to make, or induce or attempt to induce a person to make or to offer to make, an agreement—<br>(a) for or with respect to acquiring, disposing of, subscribing for or underwriting the securities; or |

- (b) the purpose or purported purpose of which is to secure a profit or gain to a person who acquires, disposes of, subscribes for or underwrites the securities or to any of the parties to the agreement in relation to the securities;
- “Deputy Chairman” means the Deputy Chairman of the Commission appointed under sub-section 13 (2);
- “full-time member” means a member appointed as a full-time member;
- “functions” includes duties;
- “investment contract” means any contract, scheme or arrangement that, in substance and irrespective of the form of the contract, scheme or arrangement, involves the investment of money in or under such circumstances that the investor acquires or may acquire an interest in or right in respect of property, whether in Australia or elsewhere, that, under, or in accordance with, the terms of investment will, or may at the option of the investor, be used or employed in common with any other interest in or right in respect of property, whether in Australia or elsewhere, acquired in or under like circumstances;
- “member” means a member of the Commission;
- “Ministerial Council” means the body known as the Ministerial Council for Companies and Securities that is established by the Agreement;
- “Northern Territory enactment” means an enactment within the meaning of the *Northern Territory (Self-Government) Act 1978*;
- “part-time member” means a member appointed as a part-time member;
- “power” includes an authority;
- “prescribed interest” means any right to participate or interest, whether enforceable or not and whether actual, prospective or contingent—
- (a) in any profits, assets or realization of any financial or business undertaking or scheme whether in Australia or elsewhere;
  - (b) in any common enterprise, whether in Australia or elsewhere, in which the holder of the right or interest is led to expect profits, rent or interest from the efforts of the promoter of the enterprise or a third party; or
  - (c) in any investment contract, whether or not the right or interest is evidenced by a formal document and whether or not the right or interest relates to a physical asset, but does not include—
- (d) any unit of stock or share in the capital of, or debenture (including a debenture that does not constitute a charge on assets) of, a corporation;

- (e) any interest in, or arising out of, a policy of life insurance;
- (f) an interest in a partnership agreement, unless the agreement or proposed agreement—
  - (i) relates to an undertaking, scheme, enterprise or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts, whether or not that person is, or is to become, a party to the agreement or proposed agreement; or
  - (ii) is or would be an agreement, or is or would be within a class of agreements, prescribed by the regulations for the purposes of this sub-paragraph; or
- (g) a right or interest, or a right or interest included in a class or kind of rights or interests, declared by the regulations to be an exempt right or interest, or a class or kind of exempt rights or interests, for the purposes of this definition;

“securities” means—

- (a) debentures, stocks or bonds issued or proposed to be issued by a government;
- (b) debentures (including debentures that do not constitute a charge on assets), stocks, shares, bonds or notes issued or proposed to be issued by a body corporate or unincorporate;
- (c) any right or option in respect of any such debentures, stocks, shares, bonds or notes; or
- (d) a prescribed interest,

but does not include—

- (e) bills of exchange;
- (f) promissory notes; or
- (g) certificates of deposit issued by a bank;

“State Act” includes a Northern Territory enactment;

“State Minister” means a Minister of the Crown of a State who is a member of the Ministerial Council and includes a person holding office under section 36 of the *Northern Territory (Self-Government) Act 1978* who, in accordance with the Agreement, is entitled to participate in proceedings of the Ministerial Council.

(2) A regulation made for the purposes of sub-paragraph (f) (ii) of the definition of “prescribed interest” in sub-section (1) does not apply to an agreement or a class of agreements relating to a partnership—

- (a) being a partnership for the carrying on of a profession or trade where a person carrying on that profession or trade is required by any law of the Commonwealth, of a State or of a Territory to be registered, licensed or otherwise authorized in order to do so; and
  - (b) the business of which does not include any business other than the business of a partnership referred to in paragraph (a).
- (3) In this Act—
- (a) a reference to an Act includes a reference to an Ordinance, regulation or other instrument made under, or by virtue of, an Act but does not include a reference to a Northern Territory enactment or an instrument made under, or by virtue of, such an enactment; and
  - (b) a reference to a State Act includes a reference to a regulation or other instrument made under, or by virtue of, a State Act.
- (4) A reference in this Act to a member of the staff of the Commission shall be read as a reference to—
- (a) an employee of the Commission;
  - (b) a person whose services are available to the Commission by virtue of arrangements made under sub-section 24 (1) or (2); or
  - (c) a person engaged under sub-section 25 (1).
- (5) In this Act, unless the contrary intention appears, a reference to functions or powers of the Commission shall be read as including a reference to any functions or powers conferred or expressed to be conferred upon the Commission by any State Act.

4. This Act extends to such external Territories as are prescribed.

Extension to  
external  
Territories

## PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF COMMISSION

5. (1) There is established by this Act a Commission by the name of the National Companies and Securities Commission.

Establish-  
ment of  
Commission

(2) In the performance of a function or the exercise of a power under an Act, the Commission represents the Crown in right of the Commonwealth.

(3) Nothing in this Act prevents a State Act providing that, in the performance of a function or the exercise of a power under a State Act, the Commission is to represent the Crown in right of the State or, in the case of a State Act being a Northern Territory enactment, the Crown in right of the Northern Territory.

Functions  
and powers  
of  
Commission

6. (1) The Commission has such functions and powers as are conferred upon it by any Act that is a law of a kind referred to in section 122 of the Constitution.

(2) The Commission shall perform any functions and may exercise any powers that are conferred or expressed to be conferred upon it by any State Act.

(3) The powers of the Commission include the power to make recommendations to the Ministerial Council for new laws, or changes in existing laws, for the Australian Capital Territory relating to companies or the regulation of the securities industry (including recommendations of a kind that the Companies and Securities Law Review Committee also has power to make) being laws or changes in laws that are to have effect in participating States and participating Territories in accordance with the Agreement.

Commission  
to comply  
with  
directions of  
Ministerial  
Council,  
Minister or  
State  
Minister

7. Where the Ministerial Council, the Minister or a State Minister gives to the Commission—

- (a) pursuant to the Agreement; or
- (b) pursuant to a power conferred or expressed to be conferred by an Act or a State Act in accordance with the Agreement,

directions with respect to the performance of any of the functions or the exercise of any of the powers of the Commission, the Commission shall comply with those directions.

Furnishing  
of reports  
and  
information  
by  
Commission

8. The Commission shall furnish to the Ministerial Council such reports relating to the performance of its functions or the exercise of its powers, including reports relating to any policy that the Commission is pursuing or proposes to pursue, as the Ministerial Council requires.

Commission  
to comply  
with  
Agreement

9. The Commission shall perform its functions and exercise its powers in accordance with the Agreement and shall comply in all respects with the provisions of the Agreement that are applicable to it.

### PART III—CONSTITUTION AND MEETINGS OF COMMISSION

Incorpor-  
ation

10. (1) The Commission—

- (a) is a body corporate, with perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue or be sued in its corporate name.

(2) In addition to the common seal of the Commission there shall be such duplicates of that seal as the Commission directs and every document to which such a duplicate seal is affixed shall be deemed to have the common seal of the Commission affixed to it.

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

(4) Every court shall take judicial notice of—

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

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

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

- (a) a federal court and a court of a State or Territory;
- (b) a Judge of a court referred to in paragraph (a); and
- (c) any other person authorized by law or by consent of parties to receive evidence,

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

**11. (1)** The Commission shall consist of not less than 3 nor more than 5 members. Membership  
of  
Commission

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

(3) At least 3 of the members shall be appointed as full-time members and the remaining members (if any) may be appointed either as full-time members or as part-time members.

(4) The performance of the functions or the exercise of the powers of the Commission is not affected by reason only that the number of members, or the number of full-time members, is less than 3 unless a continuous period of 3 months has elapsed since the number of members, or the number of full-time members, as the case may be, fell below 3.

(5) For the purposes of sub-section (4), an acting member shall be deemed to be a member.

(6) The appointment of a person as the Chairman, the Deputy Chairman, a full-time member or a part-time member is not invalidated



and shall not be called in question by reason of a defect or irregularity in or in connection with his nomination or appointment.

(7) The validity of anything done by a person purporting to be the Chairman, the Deputy Chairman, a full-time member or a part-time member shall not be called in question on the ground that his appointment had not taken effect or had ceased to have effect.

Term of  
appointment

**12.** (1) Subject to sub-section (2), a member holds office for such period, not exceeding 5 years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

(2) A person who has attained the age of 65 years shall not be appointed or re-appointed as a full-time member and a person shall not be appointed or re-appointed as a full-time member for a period that extends beyond the date on which he will attain the age of 65 years.

Chairman  
and Deputy  
Chairman of  
Commission

**13.** (1) The Governor-General shall appoint a person who is, or is to be, a full-time member to be Chairman of the Commission.

(2) The Governor-General shall appoint a person who is, or is to be, a full-time member (other than the Chairman) to be Deputy Chairman of the Commission.

(3) The Chairman and the Deputy Chairman shall be appointed on the nomination of the Ministerial Council.

(4) Subject to this section, a person appointed under this section holds office as Chairman or Deputy Chairman until the expiration of his period of appointment as a member or, if he ceases to be a member before the expiration of that period, until he ceases to be a member.

(5) The Chairman or the Deputy Chairman may resign his Office of Chairman or Deputy Chairman by writing signed by him and delivered to the Governor-General.

(6) A person who is or has been the Chairman or the Deputy Chairman is eligible for re-appointment as the Chairman or as the Deputy Chairman, as the case may be.

Remuner-  
ation and  
allowances

**14.** (1) A member shall be paid such remuneration and allowances as are determined by the Ministerial Council.

(2) The Ministerial Council may, for the purpose of assisting it in making determinations under sub-section (1), consult with such tribunal or other body or such tribunals or other bodies as the Ministerial Council considers appropriate, being a tribunal or other body that has, or tribunals or other bodies each of which has, experience in fixing rates of remuneration.

(3) The offices of Chairman, Deputy Chairman and member of the Commission are not public offices for the purposes of Part II of the *Remuneration Tribunals Act 1973*.

**15.** (1) The Ministerial Council may grant to a full-time member leave of absence from duty on such terms and conditions as to remuneration or otherwise as the Ministerial Council specifies. Leave of absence

(2) The Ministerial Council may grant to a part-time member leave of absence from a meeting of the Commission.

**16.** A member may resign his office by writing signed by him and delivered to the Governor-General. Resignation of member

**17.** (1) The Deputy Chairman shall act as Chairman during any period when there is no Chairman or the Chairman is absent from duty or from Australia. Acting appointments

(2) The Governor-General may appoint a member or an acting member (other than the Chairman or a person acting as Chairman) nominated by the Ministerial Council to act as Deputy Chairman—

- (a) during a vacancy in the office of Deputy Chairman, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Deputy Chairman is absent from duty or from Australia or is acting as Chairman.

(3) The Governor-General may—

- (a) appoint a person nominated by the Ministerial Council to act as a full-time member during any period when there are less than 5 persons who are members or are acting as members in accordance with this paragraph or paragraph (b);
- (b) appoint a person nominated by the Ministerial Council to act as a part-time member during any period when there are less than 5 persons who are members or are acting as members in accordance with this paragraph or paragraph (a) and there are at least 3 persons who are full-time members or are acting as members in accordance with paragraph (a); or
- (c) appoint a person nominated by the Ministerial Council to act as a full-time member or as a part-time member during any period when a full-time member (other than the Chairman or the Deputy Chairman) or a part-time member, as the case may be, is absent from duty or from Australia, is acting as Deputy Chairman in accordance with sub-section (2) or, in the case of a part-time member, is, for any reason, unable to perform the functions of his office.

(4) Where a person is acting as Deputy Chairman in accordance with paragraph (2) (b) and the office of Deputy Chairman becomes vacant while that person is so acting, that person may continue so to act until the Governor-General otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(5) The Governor-General may—

- (a) determine the remuneration and allowances of a member or acting member who is acting as Chairman or as Deputy Chairman in accordance with this section;
- (b) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed under sub-section (3); and
- (c) at any time terminate an appointment under sub-section (2) or (3).

(6) The powers of the Governor-General under sub-sections (4) and (5) shall be exercised only in accordance with advice that is consistent with resolutions of the Ministerial Council.

(7) The appointment of a person under this section ceases to have effect if he resigns the appointment by writing signed by him and delivered to the Governor-General.

(8) At any time when a person is acting as Chairman, as Deputy Chairman, as a full-time member or as a part-time member in accordance with this section he has, and may exercise, all the powers, and shall perform all the functions, of the Chairman, of the Deputy Chairman, of a full-time member or of a part-time member, as the case may be.

(9) The validity of anything done by a person purporting to act in accordance with this section shall not be called in question on the ground that the occasion for him to act or for his appointment had not arisen or that the occasion for him to act had passed or his appointment had ceased to have effect.

Termination  
of  
appointment

**18.** (1) The Governor-General may terminate the appointment of a member by reason of misbehaviour or physical or mental incapacity.

(2) If—

- (a) a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration or of part of his property for their benefit;
- (b) a full-time member engages in paid employment outside the duties of his office without the consent of the Ministerial Council;
- (c) a full-time member is absent from duty, except on leave granted by the Ministerial Council in accordance with sub-section 15 (1), for 14 consecutive days, or for 28 days in any period of 12 months;
- (d) a part-time member is absent, except on leave granted by the Ministerial Council in accordance with sub-section 15 (2), from 3 consecutive meetings of the Commission; or

- (e) a member fails to comply with his obligations under section 19, 47, 48, or 49,

the Governor-General may terminate the appointment of that member.

(3) The powers of the Governor-General under this section shall be exercised only in accordance with advice that is consistent with resolutions of the Ministerial Council.

**19.** (1) In this section, “member” means—

- (a) a member or an acting member of the Commission; or  
 (b) a member of the staff of the Commission.

Register of  
financial  
interests

(2) For the purposes of this section—

- (a) a person has a financial interest if he is a director of a body corporate or has a relevant interest in any securities other than securities of a government, of a government authority or of a local government authority; and  
 (b) the question whether a person has a relevant interest in securities shall be determined as prescribed.

(3) The Commission shall maintain a register, to be known as the Register of Financial Interests (in this section referred to as the “Register”), in accordance with the prescribed form, for the purposes of this section.

(4) The Commission shall appoint a member of the staff of the Commission (in this section referred to as the “responsible officer”) to be the person responsible for making entries in the Register in accordance with this section.

(5) Where a person who has a financial interest becomes a member, he shall, within 7 days after the day on which he becomes a member, if he has not already done so, cause written particulars of the interest to be delivered to the responsible officer.

(6) Where there is a change in a financial interest of a member, he shall, within 7 days after the day on which the change occurs, cause written particulars of the change to be delivered to the responsible officer.

(7) A person shall be deemed not to have contravened sub-section (5) or (6) if he establishes that—

- (a) he was not, at the time when he became a member, aware that he had a financial interest or he was not, at the time when the change occurred, aware of the change, as the case may be; and  
 (b) he caused written particulars of the financial interest or of the change, as the case may be, to be delivered to the responsible officer within 7 days after the day on which he became aware that he had the financial interest or that the change had occurred, as the case may be.

(8) For the purposes of this section, where a member commences or ceases to have a financial interest, there shall be deemed to be a change in that financial interest of the member.

(9) Where a member is required by this section to cause to be delivered to the responsible officer particulars of a financial interest, or particulars of a change in a financial interest, the particulars to be so delivered shall include—

- (a) the date on which he commenced or ceased to have the financial interest or on which the change occurred; and
- (b) particulars of the nature of the financial interest and, in the case of a financial interest being a relevant interest in securities, particulars of the extent of that relevant interest.

(10) Where, in accordance with this section, particulars of a financial interest, or of a change in a financial interest, of a member are delivered to the responsible officer, that officer shall cause the particulars, or such of the particulars as are appropriate having regard to the form of the Register, to be entered in the Register as particulars of a financial interest, or of a change in a financial interest, of that member.

(11) The Commission shall keep the Register at the principal place of business of the Commission and shall ensure that the Register is open for public inspection during normal business hours without payment of any fee.

**Meetings of  
Commission**

**20.** (1) The Chairman may, at any time, convene a meeting of the Commission to be held at a place and time determined by him.

(2) The Chairman shall convene such meetings of the Commission as, in his opinion, are necessary for the efficient performance of its functions.

(3) The Chairman shall, on receipt of a request in writing signed by a majority of the members, convene a meeting of the Commission.

(4) At a meeting of the Commission, a quorum is formed—

- (a) where the Commission consists of more than 3 members—by 3 members; or
- (b) in any other case—by 2 members.

(5) The Chairman shall preside at all meetings of the Commission at which he is present.

(6) If the Chairman is not present at a meeting of the Commission but the Deputy Chairman is present, the Deputy Chairman shall preside.

(7) Questions arising at a meeting of the Commission shall be determined by a majority of the votes of the members present.

(8) The member presiding at a meeting of the Commission has a deliberative vote but does not have a casting vote.

(9) In relation to a time when a person is acting as Chairman, references in this section to the Chairman shall be read as references to that person.

(10) In relation to a time when a person is acting as Deputy Chairman, references in this section to the Deputy Chairman shall be read as references to that person.

(11) In this section, a reference to a member shall be read as including a reference to an acting member.

**21.** (1) The Commission may, by resolution, direct that the functions or powers of the Commission in relation to a matter shall be performed or exercised by a Division of the Commission, constituted by the Chairman and such other members (not being less than 2 in number) as are specified in the resolution. Divisions of  
Commission

(2) Where the Commission has given a direction under sub-section (1), it may, by resolution, at any time before the Division of the Commission specified in the direction has made a determination in relation to the matter, revoke the direction or amend the direction in relation to the membership of the Division or in any other respect, and where the membership of a Division of the Commission is changed, the Division as constituted after the change may complete the determination of the matter.

(3) The Commission shall—

- (a) as soon as practicable after it gives a direction under sub-section (1) or amends a direction under sub-section (2), furnish to the Ministerial Council particulars of the direction or of the amendment, as the case may be; and
- (b) as soon as practicable after it revokes a direction under sub-section (2), notify the Ministerial Council of the revocation of the direction.

(4) For the purposes of the determination of a matter specified in a direction given under sub-section (1), the Commission shall be deemed to consist of the Division of the Commission specified in the direction and a meeting of the Division shall be taken to be a meeting of the Commission.

(5) Notwithstanding sub-section 20 (4), at a meeting of a Division of the Commission, 2 members form a quorum.

(6) A Division of the Commission may perform functions or exercise powers of the Commission notwithstanding that another Division of the Commission is performing functions or exercising powers of the Commission at the same time.

(7) In relation to a time when a person is acting as Chairman, a reference in this section to the Chairman shall be read as a reference to that person.

(8) In this section, a reference to a member shall be read as including a reference to an acting member.

#### PART IV—STAFF OF COMMISSION

**Employees**           **22.** The Commission may engage such employees as it thinks necessary for the purposes of this Act.

**Terms and conditions of employment**           **23.** (1) The terms and conditions of employment of employees engaged in accordance with section 22 are such as are, subject to the approval of the Public Service Board, determined by the Commission.

(2) In this section, “terms and conditions” include conditions with respect to the duration of employment or with respect to dismissal from employment.

**Arrangements relating to staff**           **24.** (1) The Commission may arrange with the Permanent Head of any Department of the Australian Public Service, or with a body established by an Act, for the services of officers or employees of the Department or of the body to be made available to the Commission.

(2) The Commission may enter into an arrangement with the appropriate authority of a State or of a Territory for the services of officers or employees of the Public Service of the State or Territory or of an authority of the State or Territory to be made available to the Commission.

(3) The Commission may arrange for the services of a member of the staff of the Commission to be made available to a State or Territory or to an authority of a State or of a Territory for purposes of matters of policy and administration with respect to laws of the State or Territory relating to companies or the regulation of the securities industry.

**Engagement of consultants**           **25.** (1) The Commission may engage persons to furnish advice to, or perform services for, the Commission otherwise than as employees of the Commission.

(2) The terms and conditions of engagement of persons engaged under sub-section (1) are such as are, with the approval of the Public Service Board, determined by the Commission.

#### PART V—FINANCE

**Payments to Commission by Commonwealth**           **26.** There shall be paid to the Commission, out of moneys appropriated by the Parliament for the purposes of the Commission, such amounts as are payable in accordance with directions from time to time given by the Minister for Finance.

**27.** The Commission may receive moneys paid to it by a State or by a Territory.

Payments to  
Commission  
by States or  
Territories

**28.** The moneys of the Commission shall consist of—

Moneys of  
Commission

- (a) moneys paid to the Commission under section 26;
- (b) moneys received by the Commission in accordance with section 27; and
- (c) any other moneys paid to the Commission.

**29.** (1) Subject to sub-section (2), the moneys of the Commission may be applied only—

Application  
of moneys

- (a) in payment or discharge of the expenses, charges, obligations or liabilities incurred or undertaken by the Commission or by the Companies and Securities Law Review Committee in or in connection with the performance of the functions or the exercise of the powers of the Commission or the performance of the functions of that Committee, as the case may be;
- (b) in payment of any remuneration or allowances payable under this Act or payable to members of the Companies and Securities Law Review Committee; and
- (c) in making any payments that the Commission is authorized or required to make to the Commonwealth, a State or a Territory in accordance with the Agreement or in accordance with arrangements made under the Agreement.

(2) Moneys of the Commission not immediately required for the purposes of the Commission may be invested—

- (a) on deposit with an approved bank; or
- (b) in any other manner approved by the Ministerial Council.

**30.** (1) The Commission may open and maintain an account or accounts with an approved bank or approved banks and shall maintain at all times at least one such account.

Bank  
Accounts

(2) The Commission shall pay all moneys received by it into an account referred to in this section.

**31.** (1) The Commission shall prepare estimates, in such form as the Ministerial Council directs, of its receipts and expenditure for each financial year and, if the Ministerial Council so directs, for any other period specified by the Ministerial Council, and the Commission shall submit estimates so prepared to the Ministerial Council not later than such date as the Ministerial Council directs.

Estimates

(2) Except with the consent of the Ministerial Council, the moneys of the Commission shall not be expended otherwise than in accordance with estimates of expenditure approved by the Ministerial Council.



**Accounts  
and records**

**32.** The Commission shall cause to be kept proper accounts and records of the transactions and affairs of the Commission and shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorized and that adequate control is maintained over the assets of, or in the custody of, the Commission and over the incurring of liabilities by the Commission.

**Limitation  
on contracts  
and leases**

**33.** Except as otherwise provided by the regulations, the Commission shall not, without the approval of the Ministerial Council—

- (a) enter into a contract under which the Commission is to pay or receive an amount exceeding \$50,000 or, if a higher amount is prescribed, that higher amount; or
- (b) enter into a lease of land for a period exceeding 10 years.

**Audit**

**34.** (1) The Auditor-General shall inspect and audit the accounts and records of financial transactions of the Commission and records relating to assets of, or in the custody of, the Commission and shall forthwith draw the attention of the Ministerial Council to any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his so doing.

(2) The Auditor-General may, at his discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in sub-section (1).

(3) The Auditor-General shall, at least once in each year, report to the Ministerial Council the results of the inspection and audit carried out under sub-section (1).

(4) The Auditor-General or a person authorized by him is entitled at all reasonable times to full and free access to all accounts and records of the Commission relating directly or indirectly to the receipt or payment of moneys by the Commission or to the acquisition, receipt, custody or disposal of assets by the Commission.

(5) The Auditor-General or a person authorized by him may make copies of, or take extracts from, any such accounts or records.

(6) The Auditor-General or a person authorized by him may require any person to furnish him with such information in the possession of the person, or to which the person has access, as the Auditor-General or authorized person considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.

(7) A person who contravenes sub-section (6) is guilty of an offence and is punishable, upon conviction, by a fine not exceeding \$200.

**Liability to  
taxation**

**35.** (1) Subject to sub-section (2), the Commission is not subject to taxation under any law of the Commonwealth or of a State or Territory.

(2) The regulations may provide that sub-section (1) does not apply in relation to taxation under a specified law.

## PART VI—HEARINGS BEFORE COMMISSION

36. (1) The Commission may hold hearings for the purpose of the performance of any of its functions or the exercise of any of its powers. Hearings  
before  
commission

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

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

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

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

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

- (a) direct that the hearing or a part of the hearing take place in private and give directions as to the persons who may be present; or
- (b) give directions preventing or restricting the publication of evidence given before the Commission or of matters contained in documents lodged with the Commission.

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

- (a) a person who is entitled under an Act or a State Act to be afforded the opportunity to appear at that hearing;
- (b) a person representing, pursuant to sub-section 38 (2), a person referred to in paragraph (a); or
- (c) a person representing, pursuant to sub-section 38 (2), a person who, by reason of a direction given by the Commission under sub-section (5) or paragraph (6) (a), is entitled to be present at the hearing.

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

member or an acting member, or a member of the staff of the Commission approved by the Commission) shall not be present at the hearing unless he is entitled to be present by virtue of the direction or by virtue of sub-section (7).

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

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

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

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

Power to  
summon  
witnesses  
and take  
evidence

**37.** (1) A member or an acting member may summon a person to appear before the Commission at a hearing to give evidence and to produce such documents (if any) as are referred to in the summons.

(2) The Commission may, at a hearing, take evidence on oath or affirmation and for that purpose a member or an acting member may—

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

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

Proceedings  
at hearings

**38.** (1) At a hearing before the Commission—

- (a) the proceedings shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of any relevant Act or State Act and a proper consideration of the matters before the Commission permit;
- (b) the Commission is not bound by the rules of evidence;
- (c) the Commission may, upon such conditions as it thinks fit, permit a person to intervene in the proceedings;
- (d) the Commission shall observe the rules of natural justice; and
- (e) section 20 applies, so far as it is capable of application, as if the hearing were a meeting of the Commission.

(2) At a hearing before the Commission—

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

(3) A person who attends at a hearing before the Commission pursuant to a summons issued under section 37 is entitled to be paid—

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

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

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

39. (1) A person served, as prescribed, with a summons to appear as a witness at a hearing before the Commission shall not, without reasonable excuse—

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

Failure  
of  
witnesses  
to attend  
and answer  
questions

(2) A person appearing as a witness at a hearing before the Commission shall not, without reasonable excuse—

- (a) when required pursuant to section 37 either to take an oath or make an affirmation—refuse or fail to comply with the requirement;
- (b) refuse or fail to answer a question that he is required to answer by the member or acting member presiding at the hearing; or
- (c) refuse or fail to produce a document that he was required to produce by a summons under this Act served on him as prescribed.

(3) A person shall not, at a hearing before the Commission, give evidence that is false or misleading.

(4) Where—

- (a) a duly qualified legal practitioner is required to answer a question or produce a document at a hearing before the Commission; and

- (b) the answer to the question would disclose, or the document contains, a privileged communication made by or to the legal practitioner in his capacity as a legal practitioner,

the legal practitioner is entitled to refuse to comply with the requirement unless the person to whom or by whom the communication was made agrees to the legal practitioner complying with the requirement but, where the legal practitioner refuses to comply with the requirement, he shall, if so required by the member or acting member presiding at the hearing, furnish to the Commission the name and address of the person to whom or by whom the communication was made.

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

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

(7) Where the Commission is satisfied that—

- (a) a person served, as prescribed, with a summons to appear as a witness at a hearing before the Commission has, without reasonable excuse, failed to attend as required by paragraph (1) (a) or (b); or

(b) a person appearing as a witness at a hearing before the Commission has, without reasonable excuse—

- (i) when required pursuant to section 37 either to take an oath or make an affirmation;

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

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

refused or failed to comply with the requirement,

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

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

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

**40. A person shall not—**

Contempt of  
Commission

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

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

**41. (1)** A member or an acting member has, in the performance of his functions or the exercise of his powers as a member or acting member in relation to a hearing before the Commission, the same protection and immunity as a Justice of the High Court.

Protection  
of members,  
&c.

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

(3) Subject to this Act, a person summoned to attend or appearing before the Commission as a witness has the same protection as a witness in proceedings in the High Court.

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

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

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

Hearings  
deemed to  
be judicial  
proceedings

**42.** A hearing before the Commission shall, for the purposes of Part III of the *Crimes Act* 1914, be deemed to be a judicial proceeding.

#### PART VII—MISCELLANEOUS

Trust  
moneys

**43.** (1) The Commission may accept gifts, bequests and devises made to the Commission on trust and may act as trustee of moneys or other property vested in the Commission on trust.

(2) The Commission shall ensure that any moneys received or held by the Commission on trust are paid into an account referred to in section 30 that does not, or accounts referred to in that section that do not, contain any moneys of the Commission not held on trust.

(3) Notwithstanding section 29—

(a) moneys or other property held by the Commission on trust shall be applied or dealt with only in accordance with the powers and duties of the Commission as trustee; and

(b) moneys held by the Commission on trust may be invested—

(i) in any manner in which the Commission is authorized to invest those moneys by the terms of the trust; or

(ii) in any manner in which trust moneys may, for the time being, be invested under law,

but not otherwise.

(4) Section 32 has effect as if—

(a) the reference in that section to the transactions and affairs of the Commission included a reference to transactions and affairs relating to moneys or property received or held by the Commission on trust; and

(b) the reference in that section to payments out of the moneys of the Commission included a reference to payments out of moneys held by the Commission on trust.

(5) Section 34 has effect as if—

(a) the reference in sub-section 34 (1) to financial transactions of the Commission included a reference to transactions relating to moneys received or held by the Commission on trust;

(b) the reference in sub-section 34 (4) to the receipt or payment of moneys by the Commission included a reference to the receipt or payment by the Commission of moneys received or held by the Commission on trust; and

- (c) the reference in sub-section 34 (4) to the acquisition, receipt, custody or disposal of assets by the Commission included a reference to the acquisition, receipt, custody or disposal by the Commission of assets received or held by the Commission on trust.

**44.** For the purpose of the performance of the functions of the Companies and Securities Law Review Committee, the Commission shall provide to the Committee such staff and facilities as are approved by the Ministerial Council.

Companies  
and  
Securities  
Law Review  
Committee

**45.** (1) The Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to any person, being an authority of a State or Territory or an officer of a State or Territory or of such an authority, any functions or powers that are conferred or expressed to be conferred on it by or under any Act or State Act (other than functions or powers the delegation of which is prohibited by the Act or State Act concerned).

Delegation  
by  
Commission

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

(3) A delegation under sub-section (1) may be to—

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

(4) A person to whom a function or power has been delegated under sub-section (1) may—

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

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

(5) An authority under sub-section (4) may be given to—

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

(6) Any act or thing done in the performance of a function or the exercise of a power by a person to whom that function or that power has been delegated by the Commission under sub-section (1) or by a person authorized by a delegate of the Commission under sub-section (4) to perform that function or exercise that power has the same force and effect as if it had been done by the Commission but, for the purposes of



any prescribed Act, shall not be taken to have been done by the Commission.

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

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

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

(10) Where a person purports to perform a function or exercise a power conferred or expressed to be conferred on the Commission by or under any Act or any State Act, it shall be presumed, unless the contrary is established, that the person is duly authorized by a delegation under sub-section (1), or by an authority under sub-section (4) given pursuant to such a delegation, to perform the function or exercise the power.

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

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

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

- (a) Part VI (other than paragraph 38 (1) (e)) applies for the purpose of the performance of the function or the exercise of the power by the person in like manner as it would apply if the function were being performed or the power were being exercised by the Commission; and

- (b) for the purpose of the application of that Part in accordance with paragraph (a), references in that Part to the Commission or to a member or acting member other than—
- (i) the references to the Commission first and second occurring in sub-section 36 (3) and first, second and third occurring in sub-section 36 (9); and
  - (ii) the reference to the Commission in paragraph 38 (3) (b),
- shall be construed as references to the person.

**46.** Where the Commission has delegated a function or power to a person under section 45—

Directions  
by  
Commission

- (a) the Commission may give directions to the delegate with respect to the performance of that function or the exercise of that power; and
- (b) if the delegate has under sub-section 45 (4) authorized another person to perform that function or exercise that power, the delegate—
  - (i) shall, if the Commission has given a direction to the delegate under paragraph (a) with respect to the performance of that function or the exercise of that power, give a corresponding direction to the other person; and
  - (ii) may, subject to any direction given to the delegate by the Commission under paragraph (a), give directions to the other person with respect to the performance of that function or the exercise of that power.

**47.** (1) Subject to this section, a person who is, or has at any time been—

Secrecy

- (a) appointed for the purposes of this Act or any other prescribed Act;
- (b) engaged as a member of the staff of the Commission; or
- (c) authorized to perform or exercise any function or power of the Commission or any function or power on behalf of the Commission,

shall not, except to the extent necessary to perform his official duties, or to perform or exercise such a function or power, either directly or indirectly, make a record of, or divulge or communicate to any person, any information that is or was acquired by him by reason of his being or having been so appointed, engaged or authorized, or make use of any such information, for any purpose other than the performance of his official duties or the performance or exercise of that function or power.

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

- (2) Nothing in sub-section (1) precludes a person from—
- (a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under this Act, any other prescribed Act or any prescribed State Act;
  - (b) divulging or communicating to a court in the course of any proceedings referred to in paragraph (a) any matter or thing coming under his notice in the performance of his official duties or in the performance of a function or the exercise of a power referred to in that sub-section;
  - (c) producing a document or divulging or communicating information to a person to whom, in the opinion of the Commission, it is in the public interest that the document be produced or the information be divulged or communicated; or
  - (d) producing a document or divulging or communicating information that is required or permitted by any Act or State Act to be produced, divulged or communicated, as the case may be.

Restrictions  
on dealings  
in securities

- 48.** (1) A person who is, or has at any time been—
- (a) appointed for the purposes of this Act or any other prescribed Act;
  - (b) engaged as a member of the staff of the Commission; or
  - (c) authorized to perform or exercise any function or power of the Commission or any function or power on behalf of the Commission,

and has, by reason that he is, or has at any time been, so appointed, engaged or authorized, information that is not generally available but, if it were, would be likely materially to affect the price of any securities shall not deal in, or cause or procure any other person to deal in, those securities.

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

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

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

- (a) in a case to which paragraph (b) does not apply—the amount of the loss sustained by the person claiming the compensation; or
- (b) if the first-mentioned person has been found by a court to be liable to pay an amount or amounts to any other person or persons under sub-section (2) or under any other Act or State Act by reason of the same act or transaction—the amount of that loss

less the amount or the sum of the amounts that the first-mentioned person has been so found to be liable to pay.

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

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

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

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

**49.** (1) A person (other than a member or an acting member of the Commission or a member of the staff of the Commission) who is appointed for the purposes of this Act or any other prescribed Act or is authorized to perform or exercise any function or power of the Commission or any function or power on behalf of the Commission and who, in the course of his official duties or the performance or exercise of the function or power, is required to consider any matter relating to—

Notification  
of interests

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

shall forthwith so inform the Commission in writing.

(2) A member or acting member of the Commission or a member of the staff of the Commission who, in the course of his official duties is required to consider any matter relating to—

- (a) a person or body—
  - (i) by whom or by which he is employed or has been employed at any time during the immediately preceding 3 years; or

- (ii) with whom or with which he is associated; or
- (b) a body corporate that is related to a body corporate by which he is employed or has been employed at any time during the immediately preceding 3 years,

shall forthwith so inform the Commission in writing.

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

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

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

Rights of  
public  
servants

**50.** If a full-time member, or an employee of the Commission, was, immediately before he was appointed as a full-time member or engaged as an employee, an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act 1928* applied—

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service as a full-time member or as an employee shall be taken into account as if it were service in the Australian Public Service; and
- (c) the *Officers' Rights Declaration Act 1928* applies as if this Act and this section had been specified in the Schedule to that Act.

Provisions  
relating to  
Ministerial  
Council

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

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

(3) A function or power conferred by an Act on the Ministerial Council may, if the Ministerial Council has authorized a member of the

Ministerial Council, or has authorized the Commission, to perform or exercise that function or power, be performed or exercised by that member or by the Commission, as the case may be.

**52.** (1) The Commission shall, as soon as practicable after 30 June and not later than 31 October in each year—

Annual  
report and  
financial  
statements

(a) prepare a report of its operations during the year that ended on that 30 June together with financial statements in respect of that year in such form as the Ministerial Council approves; and

(b) submit the financial statements to the Auditor-General.

(2) The Auditor-General shall report to the Ministerial Council—

(a) whether, in his opinion, the statements are based on proper accounts and records;

(b) whether the statements are in agreement with the accounts and records;

(c) whether, in his opinion, the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Commission during the year have been in accordance with this Act; and

(d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Ministerial Council.

(3) The Auditor-General shall send to the Commission his report under sub-section (2) and the Commission shall, as soon as practicable after receiving the report—

(a) submit its report and financial statements together with the report of the Auditor-General to the Ministerial Council; and

(b) submit to the Minister and to each State Minister a copy of its report and financial statements together with a copy of the report of the Auditor-General.

(4) The Minister shall cause copies of the report and financial statements of the Commission together with a copy of the report of the Auditor-General to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by him.

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

Regulations

(2) Regulations providing for allowances and expenses for the purposes of sub-section 38 (3) may provide for those allowances and expenses by reference to a scale of expenses for witnesses who attend before a court specified in the regulations, being a federal court or the Supreme Court of a State or Territory.

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

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

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## SCHEDULE

Sub-section 3 (1)

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

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

### WHEREAS—

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

## SCHEDULE—continued

NOW IT IS HEREBY AGREED as follows:

## PART I—INTERPRETATION

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

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

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

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

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

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

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

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

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

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

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

## PART II—OPERATION OF AGREEMENT

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

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

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

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

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



## SCHEDULE—continued

## PART III—ESTABLISHMENT OF SCHEME

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

## PART IV—INITIAL LEGISLATION

8. (1) The Commonwealth will—

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

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

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

## SCHEDULE—continued

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

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

## PART V—NAMES AND REGISTRATION

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

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

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

- (a) a body which immediately before the legislation provided for by clauses 8 and 9 comes into force is—
  - (i) a company incorporated in a State or Territory;
  - (ii) a body formed outside Australia and registered as a foreign company in a State or Territory;
  - (iii) a body formed within Australia other than a company and registered as a foreign company in any State or Territory,

may carry on business or establish a place of business under the name by which, and in any State or Territory in which, it is so incorporated or is registered as a foreign company or in which it is a recognised company and has reserved that name;

- (b) a company incorporated in any State or Territory and a body formed outside Australia which is registered as a foreign company in any State or Territory may reserve its name in any other State or Territory if its name is, in that other State or Territory, not undesirable and not a name of a kind which the Ministerial Council has directed to be unacceptable;
- (c) a company or a body which has reserved its name in a State or Territory other than the State or Territory of its incorporation or formation will not be required—
  - (i) to register in that other State or Territory in order to carry on business or establish a place of business in that other State or Territory; or
  - (ii) to lodge any documents in that other State or Territory for the purpose of carrying on business or establishing a place of business in that other State or Territory; and
- (d) a body formed within Australia other than a company shall not be entitled to carry on business or establish a place of business in any State or Territory other than the State or Territory in which it is formed unless it is registered in that other State or Territory as a foreign company.

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

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

## SCHEDULE—continued

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

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

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

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

15. In this Part—

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

## PART VI—SPECIAL INVESTIGATIONS

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

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

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

- (a) the Minister responsible for the administration of the State Acts in respect of a State or the Commonwealth Acts in respect of a Territory shall be empowered to order a special investigation where it appears to that Minister in the public interest in respect of the State or the Territory to do so;
- (b) the Minister responsible for the administration of the Commonwealth Acts shall be empowered to order a special investigation where it appears to the Minister to be in the national interest to do so;
- (c) the Ministerial Council shall be empowered to order a special investigation where in the circumstances it thinks fit;
- (d) the National Commission, in performing its function as appointing authority either where it will undertake the special investigation or will appoint an inspector to do so, will be required—
  - (i) where the special investigation has been ordered by a Minister without any request by the National Commission for the Minister to do so, to act in accordance with the wishes of that Minister as to the identity of the inspector and the terms and conditions of the appointment;
  - (ii) in any other case, to have regard to the views of the individual Minister or of the Ministerial Council, as the authority by which the special investigation was ordered, as to the identity of the inspector and the terms and conditions of the appointment; and

## SCHEDULE—continued

- (iii) in the event of a disagreement with the Minister or the Ministerial Council on a matter coming within sub-paragraph (ii), to accept the decision of the Ministerial Council in the relevant respect;
- (e) the National Commission shall be entitled to request an individual Minister or the Ministerial Council, as the appropriate authority, to order a special investigation;
- (f) the power to publish the report of an inspector shall reside—
  - (i) in a case where the costs of the investigation are to be met by the National Commission—in the Ministerial Council;
  - (ii) in any other case—in the Minister who ordered the investigation,
 but, where an opinion of the relevant Law Officer of the Commonwealth or of a State advising that the publication of the report would be prejudicial to the administration of justice in a Territory or the State has been made available to the Ministerial Council or the Minister having the power to publish the report as the case may be, the power shall not be exercised until a further opinion by the relevant Law Officer is similarly made available to the effect that publication would be no longer prejudicial to that administration of justice;
- (g) where a special investigation has been ordered by a Minister without any request by the National Commission for the Minister to do so, that Minister, not the National Commission, shall, unless and until the Ministerial Council subsequently approves the investigation, have in relation to that investigation those powers and functions of “the Minister” presently expressed in Part VIA of the Companies Act 1961 or Division 2 of Part II of the Securities Industry Act 1975 of the State of New South Wales, whichever is relevant, which are referred to in Part 2 of the First Schedule.

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

- (a) where the investigation was ordered by—
  - (i) the Ministerial Council;
  - (ii) an individual Minister at the request of the National Commission; or
  - (iii) an individual Minister but subsequently approved by the Ministerial Council, by the National Commission;
- (b) in all other cases—by the party to this agreement whose Minister ordered the investigation.

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

## PART VII—ESTABLISHMENT OF MINISTERIAL COUNCIL

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

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

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

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

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

## SCHEDULE—continued

## PART VIII—FUNCTIONS OF MINISTERIAL COUNCIL

21. (1) The functions of the Ministerial Council shall be—
- (a) to consider and to keep under review the formulation and operation of the legislation and regulations provided for by this agreement; and
  - (b) to exercise general oversight and control over the implementation and operation of the scheme.
- (2) To assist the Ministerial Council in discharging its functions under paragraph (a) of the previous sub-clause, there shall be a Companies and Securities Law Review Committee—
- (a) to carry out research into and advise on law reform in relation to the legislation and regulations referred to in that paragraph;
  - (b) the number of the members of which is to be determined from time to time by the Ministerial Council;
  - (c) the members of which are to be appointed and may be removed by the Ministerial Council and will be engaged on terms and conditions determined by the Ministerial Council.
22. (1) Without prejudice to the generality of clause 21, the functions of the Ministerial Council shall include—
- (a) consideration and approval of the Bills which will comprise the Commonwealth legislation referred to in clause 8 and of the regulations under that legislation;
  - (b) consideration and approval of the Bills of each State which will comprise the State legislation referred to in clause 9 and of any regulations under that legislation;
  - (c) consideration and approval of any amendments of, or of any legislation proposed to supplement or be substituted for, the Commonwealth Acts and the regulations for the time being in force thereunder;
  - (d) consideration and approval of any amendments of, or of any legislation proposed to supplement or be substituted for, the State Acts and any regulations for the time being in force thereunder;
  - (e) general oversight, including budgetary control, over the functioning of the National Commission; and
  - (f) giving directions to the National Commission in respect of any policy or matter that comes within the functions of the National Commission under the Commonwealth Acts or the State Acts.
- (2) Subject to Part VI and clause 39, the functions of the Ministerial Council under paragraph (f) of sub-clause (1) shall be an exclusive function and the National Commission shall not be required to recognize or acknowledge any other person or authority as empowered to give directions to it in that respect.
23. The Ministerial Council shall be entitled to require the National Commission to furnish a report to the Ministerial Council in relation to—
- (a) any policy which the National Commission is pursuing, or proposes to pursue, including a report of the estimated financial effect on State and Territory administrations of any policy or change in policy which the National Commission proposes to pursue; and
  - (b) any other matter within the functions of the Ministerial Council or of the National Commission.
24. The functions of the Ministerial Council shall not, except as provided in clause 25, be able to be, and shall not be, delegated to any Minister or to any other person or authority.
25. The Ministerial Council may itself exercise and, without derogation from its power in that respect at any time, may from time to time and for such time as it may determine, authorize any one or more of its members or the National Commission to exercise a discretion arising out of or relating to a matter or to matters specified in, and subject to, Part I of the First Schedule to this agreement.

## SCHEDULE—continued

## PART IX—PROCEEDINGS OF MINISTERIAL COUNCIL

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

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

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

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

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

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

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

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

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

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

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

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

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

## PART X—NATIONAL COMPANIES AND SECURITIES COMMISSION

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

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

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

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

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

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

## SCHEDULE—continued

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

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

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

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

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

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

(4) The person presiding at a meeting shall have a deliberate but not a casting vote.

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

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

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

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

## PART XI—STATE AND TERRITORY ADMINISTRATIONS

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

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

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

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

39. The Minister of the Commonwealth or of a State who has administrative responsibility for company law and regulation of the securities industry in a State or Territory shall be

## SCHEDULE—continued

entitled to be notified of, and to be given information concerning, any matter being dealt with by the National Commission or the administration of the State or the Territory and shall have the right to refer any matter arising out of or in connexion with the Minister's responsibilities directly to the National Commission or to the Ministerial Council for consideration.

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

## PART XII—FUNDING OF NATIONAL COMMISSION

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

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

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

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

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

## PART XIII—REPORTS AND STATEMENTS

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

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

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

## PART XIV—AMENDMENT OF LEGISLATION

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

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



## SCHEDULE—continued

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

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

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

(3) If upon the expiration of six months from the date on which any such amending regulation was approved by the Ministerial Council the amending regulation has not been made or, having been made, is subject to disallowance or has ceased to be in force by disallowance or for any other reason, any State may cause a regulation to be made which amends the regulations made under the State Act of the State in accordance with the amending regulation that was approved by the Ministerial Council.

46. The Commonwealth will not—

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

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

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

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

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

## PART XV—ACCESSION OF NEW STATES AND TERRITORIES

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

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

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

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

## SCHEDULE—continued

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

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

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

50. If the Minister of State of the Commonwealth responsible for the administration of company law and the regulation of the securities industry considers that the operation of this agreement should be extended to the administration of company law and the regulation of the securities industry in an external Territory of the Commonwealth he may notify the Ministerial Council in writing to that effect and, subject to the passage by the Commonwealth Parliament of such legislation and the making of such regulations as are necessary to achieve that result, the provisions of this agreement shall apply to that Territory in the same manner and to the same effect as they apply to the Australian Capital Territory.

## PART XVI—WITHDRAWAL OF A PARTY

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

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

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

## FIRST SCHEDULE

## PART 1

Clause 25

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

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

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

## PART 2

Clause 32 (3)

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

- (a) sections 24, 79, 179, 179B, 180 180V, 186, 374D and 374E, sub-sections 44 (3), 80 (1A), 88 (1), 176 (5), 178 (1), 178 (1A), 178 (2), 178 (3), 178 (5), 178 (6), 178 (7), 178 (8), 178 (9), 178 (10), 224 (3), 334 (2) and 374 (2) and paragraphs 38 (7) (b), 74 (1) (e), 171 (1) (b) and 339 (b) of the Companies Act 1961 of the State of New South Wales; and

## SCHEDULE—continued

- (b) sections 21 (other than sub-section (4)), 22, 24, 26 and 129, sub-section 19 (5) and paragraph 17 (2) (a) of the Securities Industry Act 1975 of the State of New South Wales.

## SECOND SCHEDULE

## STATE LEGISLATION

Clause 9 (a)

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

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

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

WAL FIFE

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

B. DALE

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

K. D. GREEN

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

H. J. TRELOAR

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

BRUCE GUERIN

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

BRIAN V. JOHNSON

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

D. EWART

## NOTE

1. Act No. 173, 1979; assented to 4 December 1979.