



Companies and Securities Legislation (Miscellaneous Amendments) Act 1983

No. 108 of 1983

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SCHEDULE 1

FURTHER AMENDMENTS OF COMPANIES ACT 1981

SCHEDULE 2

FURTHER AMENDMENTS OF SECURITIES INDUSTRY ACT 1980



Companies and Securities Legislation (Miscellaneous Amendments) Act 1983

No. 108 of 1983

An Act to amend laws relating to companies and securities

[Assented to 8 December 1983]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1983*.

Commencement

2. (1) Part I shall come into operation on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act shall come into operation on such date as is, or on such respective dates as are, fixed by Proclamation.

**PART II—AMENDMENTS OF COMPANIES (ACQUISITION OF
SHARES) ACT 1980**

Principal Act

3. The *Companies (Acquisition of Shares) Act 1980*¹ is in this Part referred to as the Principal Act.

Other interpretative and evidentiary provisions

4. Section 8 of the Principal Act is amended—

- (a) by omitting from sub-section (10) “a servant” and substituting “an employee”; and
- (b) by omitting from sub-section (10) “master” and substituting “employer”.

Take-over offers

5. Section 16 of the Principal Act is amended by omitting sub-sub-paragraph (2) (f) (viii) (B) and substituting the following sub-sub-paragraph:

- “(B) if the target company has, not later than 14 days after receipt of that Part A statement, given to the offeror a Part B statement in relation to the offers—a copy of that Part B statement and a copy of any report that accompanied that Part B statement.”.

Part B statement

6. Section 22 of the Principal Act is amended by omitting paragraph (1) (b) and substituting the following paragraph:

- “(b) not later than 14 days after receipt of a notice served pursuant to sub-section 24 (1)—
- (i) give a Part B statement to the offeror; and
 - (ii) give, or cause to be given, a copy of that statement to each person to whom an offer to which the Part A statement relates was made.”.

Offeror connected with target company

7. Section 23 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “stating whether” and substituting “setting out the particulars referred to in sub-section (1A), stating whether,”; and
- (b) by inserting after sub-section (1) the following sub-section:

“(1A) The particulars that are required by sub-section (1) to be set out in a report made by an expert in relation to take-over offers are—

 - (a) particulars of any relationship of the expert with the offeror, the target company or any person (in this paragraph referred to as a ‘relevant associate’) who is associated with the offeror or the target company, including, without limiting the generality

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of the foregoing, particulars of any circumstances in which the expert furnishes advice to or acts on behalf of the offeror, the target company or a relevant associate in the proper performance of the functions attaching to the expert's professional capacity or to the expert's business relationship with the offeror, the target company or the relevant associate;

- (b) particulars of any pecuniary or other interest of the expert that could reasonably be regarded as being capable of affecting the expert's ability to give an unbiased opinion in relation to the take-over offers; and
- (c) particulars of—
 - (i) any fee; and
 - (ii) any pecuniary or other benefit, whether direct or indirect,

that the expert has received or will or may receive for or in connection with the making of the report.”.

Provisions relating to dissenting shareholders

8. Section 42 of the Principal Act is amended by omitting sub-section (5) and substituting the following sub-sections:

“(5) An offeror to whom sub-section (2) applies in relation to a particular company shall, on the first day on which he gives a notice under sub-section (2) in relation to that company, lodge with the Commission a copy of that notice or, if on that first day he gives 2 or more notices under sub-section (2) in relation to that company, a copy of any one of those notices.

“(5A) An on-market offeror to whom sub-section (3) applies in relation to a particular company shall, on the first day on which he gives a notice under sub-section (3) in relation to that company, lodge with the Commission a copy of that notice or, if on that first day he gives 2 or more notices under sub-section (3) in relation to that company, a copy of any one of those notices.”.

Rights of remaining shareholders and holders of options and notes

9. Section 43 of the Principal Act is amended by omitting sub-section (5) and substituting the following sub-sections:

“(5) A notice given under sub-section (4) shall not propose terms for the acquisition by the offeror or on-market offeror of the shares, renounceable option or convertible note to which the notice relates unless the notice is accompanied by a copy of a report made by an expert (not being a person who is associated with the offeror, the on-market offeror or the company that issued the shares or granted or issued the renounceable option or the convertible note) setting out the particulars referred to in sub-section (5B), stating whether, in his opinion, the terms proposed in the notice are fair and reasonable and setting out his reasons for forming that opinion.

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“(5A) Where an offeror or on-market offeror obtains 2 or more reports, each of which could be used for the purposes of compliance with sub-section (5), the notice given under sub-section (4) by the offeror or on-market offeror, as the case may be, shall not propose terms for the acquisition by the offeror or on-market offeror of the shares, renounceable option or convertible note to which the notice relates unless the notice is accompanied by a copy of each report.

“(5B) The particulars that are required by sub-section (5) to be set out in a report made by an expert in relation to terms proposed by an offeror or on-market offeror (in this sub-section referred to as the ‘relevant offeror’) for the acquisition of shares in, or renounceable options or convertible notes granted or issued by, a company are—

- (a) particulars of any relationship of the expert with the relevant offeror, the company or any person (in this paragraph referred to as a ‘relevant associate’) who is associated with the relevant offeror or the company, including, without limiting the generality of the foregoing, particulars of any circumstances in which the expert furnishes advice to or acts on behalf of the relevant offeror, the company or a relevant associate in the proper performance of the functions attaching to the expert’s professional capacity or to the expert’s business relationship with the relevant offeror, the company or the relevant associate;
- (b) particulars of any pecuniary or other interest of the expert that could reasonably be regarded as being capable of affecting the expert’s ability to give an unbiased opinion in relation to the proposed terms; and
- (c) particulars of—
 - (i) any fee; and
 - (ii) any pecuniary or other benefit, whether direct or indirect, that the expert has received or will or may receive for or in connection with the making of the report.”.

Liability for mis-statements

10. Section 44 of the Principal Act is amended—

- (a) by omitting from paragraph (7) (b) “section” and substituting “sub-section”; and
- (b) by inserting in sub-paragraph (7) (b) (ii) “with or” after “dispatched,”.

Orders where prohibited acquisitions take place

11. Section 45 of the Principal Act is amended—

- (a) by inserting in sub-section (1) “such order or orders as it thinks fit, including, but without limiting the generality of the foregoing,” after “make” (first occurring);

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- (b) by inserting after paragraph (1) (d) the following paragraph:
 - “(da) an order vesting in the Commission—
 - (i) the shares, or such of the shares as are specified in the order; or
 - (ii) any interest in the shares, or in such of the shares as are specified in the order;” and
- (c) by omitting from sub-section (3) “restraining the exercise of voting rights” and substituting “referred to in paragraph (1) (b) or (f)”.

Orders where offers not dispatched pursuant to Part A statement

12. Section 46 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “do either or both of the following:” and substituting “make such order or orders as it thinks fit, including, but without limiting the generality of the foregoing—”;
- (b) by omitting from paragraph (1) (e) “make”;
- (c) by adding at the end of paragraph (1) (e) “and”; and
- (d) by omitting from paragraph (1) (f) “order” (first occurring) and substituting “an order directing”.

Orders to protect rights under take-over schemes or announcements

13. Section 47 of the Principal Act is amended by inserting after paragraph (1) (e) the following paragraph:

- “(ea) an order vesting in the Commission shares, or any interest in shares, in the target company;”.

Miscellaneous provisions relating to orders

14. Section 49 of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-section:
 - “(1) The Court shall not make an order under section 45, 46, 47, 48, 57 or 60 if it is satisfied that the order would unfairly prejudice any person.”; and
- (b) by omitting sub-sections (6) and (6A) and substituting the following sub-section:
 - “(6) Where a share or an interest in a share vests in the Commission by virtue of an order under section 45, 46, 47 or 60 or of a direction under sub-section (5) of this section—
 - (a) the Commission may, subject to any directions of the Court, get in, sell or otherwise dispose of, or deal with, the share or interest as it sees fit;
 - (b) the provisions of section 462 of the *Companies Act 1981* (other than sub-section 462 (1) of that Act) apply in relation to the share or interest as if—
 - (i) a reference in those provisions to the power of the Commission under sub-section 462 (1) of that Act, or to

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- the power conferred upon the Commission by sub-section 462 (1) of that Act, were a reference to the power conferred on the Commission by paragraph (a) of this sub-section;
- (ii) a reference in those provisions to property, or to an estate or interest in property, were a reference to the share or interest; and
 - (iii) the reference in sub-section 462 (4) of that Act to any power conferred on the Commission by Subdivision F of Division 4 of Part XII of that Act included a reference to the power conferred on the Commission by paragraph (a) of this sub-section; and
- (c) sections 463 and 464 of that Act apply in relation to the share or interest in like manner as they apply in relation to property vested in the Commission by Subdivision F of Division 4 of Part XII of that Act.”.

Power to exempt from compliance with Act

15. Section 57 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:

“(2) The Commission shall cause a copy of an instrument executed under sub-section (1) to be published in the *Gazette*, but failure of the Commission to do so does not affect the validity of the instrument.”.

Power to declare that Act applies as if modified

16. Section 58 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:

“(2) The Commission shall cause a copy of an instrument executed under sub-section (1) to be published in the *Gazette*, but failure of the Commission to do so does not affect the validity of the instrument.”.

17. Section 60 of the Principal Act is repealed and the following section is substituted:

Power of Commission to declare acquisition of shares or other conduct to be unacceptable

“60. (1) Where the Commission is satisfied that an acquisition of shares occurred in circumstances where—

- (a) the shareholders and directors of a company did not know the identity of a person who proposed to acquire a substantial interest in the company;
- (b) the shareholders and directors of a company did not have a reasonable time in which to consider a proposal under which a person would acquire a substantial interest in the company;

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- (c) the shareholders and directors of a company were not supplied with sufficient information to enable them to assess the merits of a proposal under which a person would acquire a substantial interest in the company; or
- (d) the shareholders of a company did not all have reasonable and equal opportunities to participate in any benefits, or to become entitled to participate in any benefits, accruing, whether directly or indirectly and whether immediately or in the future, to any shareholder or to any person associated with a shareholder, in connection with the acquisition, or proposed acquisition, by any person of a substantial interest in the company,

the Commission may, within 90 days after that acquisition of shares occurred, by instrument in writing, declare that acquisition of shares to have been an unacceptable acquisition and, where such a declaration is made, the person who acquired those shares shall be deemed, for the purposes only of section 45, to have acquired those shares in contravention of section 11.

“(2) Where an application is made to the Court under section 45 in relation to an acquisition of shares that has been declared by the Commission pursuant to sub-section (1) to have been an unacceptable acquisition, the Court may, instead of making any of the orders referred to in section 45, declare that the acquisition was not an unacceptable acquisition and, where the Court so declares, the declaration of the Commission has no further effect.

“(3) Where the Commission is satisfied that, as a result of conduct engaged in by a person in relation to shares in, or the affairs of, a company—

- (a) the shareholders and directors of a company did not know the identity of a person who proposed to acquire a substantial interest in the company;
- (b) the shareholders and directors of a company did not have a reasonable time in which to consider a proposal under which a person would acquire a substantial interest in the company;
- (c) the shareholders and directors of a company were not supplied with sufficient information to enable them to assess the merits of a proposal under which a person would acquire a substantial interest in the company; or
- (d) the shareholders of a company did not all have reasonable and equal opportunities to participate in any benefits, or to become entitled to participate in any benefits, accruing, whether directly or indirectly and whether immediately or in the future, to any shareholder or to any person associated with a shareholder, in connection with the acquisition, or proposed acquisition, by any person of a substantial interest in the company,

the Commission may, within 90 days after that conduct was engaged in, by instrument in writing, declare that conduct to have been unacceptable conduct.

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“(4) Where, pursuant to sub-section (3), the Commission declares conduct that has been engaged in by a person in relation to shares in, or the affairs of, a company to have been unacceptable conduct, the Court may, on the application of the Commission, the company or a member of the company, make—

- (a) any order that it thinks necessary or expedient to protect the rights of any person affected by the conduct or to ensure, as far as possible, that a take-over scheme or take-over announcement or a proposed take-over scheme or take-over announcement in relation to shares in the company proceeds in the manner in which it would have proceeded if that conduct had not been engaged in;
- (b) without limiting the generality of paragraph (a), any one or more of the following orders:
 - (i) an order directing a person to supply to the holders of shares in the company such information as is specified in the order;
 - (ii) an order restraining the exercise of any voting or other rights attached to any shares;
 - (iii) an order restraining the disposal of, or of any interest in, shares in the company;
 - (iv) an order directing the disposal of, or of any interest in, shares in the company;
 - (v) an order vesting in the Commission shares, or any interest in shares, in the company;
 - (vi) an order directing the company not to register the transfer or transmission of shares;
 - (vii) an order cancelling a contract, arrangement or offer relating to a take-over scheme or take-over announcement or a proposed take-over scheme or take-over announcement in relation to shares in the company;
 - (viii) an order declaring a contract, arrangement or offer relating to a take-over scheme or take-over announcement or a proposed take-over scheme or take-over announcement in relation to shares in the company to be voidable; and
- (c) for the purpose of securing compliance with any order made pursuant to paragraph (a) or (b), an order directing a person to do or refrain from doing a specified act,

or, instead of making any order, the Court may declare that the conduct was not unacceptable conduct and, where the Court so declares, the declaration of the Commission has no further effect.

“(5) Where the Commission makes a declaration under sub-section (1) or (3) in relation to an acquisition of shares by, or in relation to conduct engaged in by, a person, the Court may, upon an application made by that person, declare that the acquisition of shares or the conduct was not an unacceptable

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acquisition or was not unacceptable conduct, as the case may be, and, where the Court so declares, the declaration of the Commission has no further effect.

“(6) Where the Commission makes a declaration under this section, the Commission shall, as soon as practicable—

- (a) cause a copy of the instrument by which the declaration was made to be given to, or served on, any person to whom the declaration relates; and
- (b) cause a copy of that instrument to be published in the *Gazette*.

“(7) The validity of a declaration under this section is not affected by failure of the Commission to comply with sub-section (6) in relation to the declaration.”.

Power of Commission to make certain orders

18. Section 60A of the Principal Act is amended—

- (a) by omitting from sub-section (1) “, (3) or (4)” and substituting “or (3)”;
- (b) by omitting from paragraph (9) (b) “or (4)”;
- (c) by omitting from paragraph (9) (b) “(5)” and substituting “(4)”.

Schedule

19. The Schedule to the Principal Act is amended—

- (a) by omitting paragraph 2 (e) of Part B and substituting the following paragraph:

“(e) where there will or may be made or given to a person who, in relation to the target company, is or, if the target company were a company as defined in sub-section 5 (1) of the *Companies Act 1981*, would be a prescribed person for the purposes of section 233 of that Act—

- (i) a payment (including a payment by way of damages for breach of contract) or other valuable consideration or any other benefit (not being a payment to which paragraph (e) or (g) of the definition of ‘exempt benefit’ in sub-section (7) of that section applies) by way of compensation for the loss by that person or any other person of, or for or in connection with retirement of that person or any other person from, an office that, in relation to the target company, is or, if the target company were a company as so defined, would be a prescribed office for the purposes of that section; or
- (ii) a payment (including a payment by way of damages for breach of contract) or other valuable consideration or any other benefit in connection with the transfer of the whole or any part of the undertaking or property of the target company,

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including such a payment or other valuable consideration or other benefit that a person is, or will or may become, obliged under a contract to make or give—particulars with respect to the payment or consideration (including the amount of the payment or the money value of the consideration) or the other benefit;” and

(b) by omitting paragraph 2 (e) of Part D and substituting the following paragraph:

“(e) where there will or may be made or given to a person who, in relation to the target company, is or, if the target company were a company as defined in sub-section 5 (1) of the *Companies Act 1981*, would be a prescribed person for the purposes of section 233 of that Act—

(i) a payment (including a payment by way of damages for breach of contract) or other valuable consideration or any other benefit (not being a payment to which paragraph (e) or (g) of the definition of ‘exempt benefit’ in sub-section (7) of that section applies) by way of compensation for the loss by that person or any other person of, or for or in connection with retirement of that person or any other person from, an office that, in relation to the target company, is or, if the target company were a company as so defined, would be a prescribed office for the purposes of that section; or

(ii) a payment (including a payment by way of damages for breach of contract) or other valuable consideration or any other benefit in connection with the transfer of the whole or any part of the undertaking or property of the target company,

including such a payment or other valuable consideration or other benefit that a person is, or will or may become, obliged under a contract to make or give—particulars with respect to the payment or consideration (including the amount of the payment or the money value of the consideration) or the other benefit;”.

PART III—AMENDMENTS OF COMPANIES ACT 1981

Principal Act

20. The *Companies Act 1981*² is in this Part referred to as the Principal Act.

Interpretation

21. Section 5 of the Principal Act is amended—

- (a) by omitting from the definition of “borrowing corporation” in sub-section (1) “but does not include a banking corporation”;
- (b) by inserting after paragraph (a) of the definition of “debenture” in sub-section (1) the following paragraph:
 - “(aa) a document issued or executed by a banking corporation in the ordinary course of its banking business, being a document that evidences or acknowledges indebtedness of the corporation arising in the ordinary course of that business;”;
- (c) by omitting the definition of “mining company” from sub-section (1) and substituting the following definition:
 - “ ‘mining company’ means a company—
 - (a) the memorandum of which contains a provision stating the objects of the company; and
 - (b) the sole objects of which are mining purposes;”;
- (d) by omitting from paragraph (b) of the definition of “officer” in sub-section (1) “the property or any part of the”;
- (e) by omitting from sub-section (2) “other person” and substituting “directors or the body corporate”;
- (f) by omitting sub-section (7) and substituting the following sub-section:
 - “(7) For the purposes of this Act, a receiver of property of a corporation shall be deemed to be also a manager if the receiver manages affairs of the corporation or has power under the terms of his appointment to manage affairs of the corporation.”; and
- (g) by inserting after sub-section (8) the following sub-sections:
 - “(8A) For the purposes of this Act, a person shall be taken to be or become subject to a section 227 prohibition if, and only if, the person is or becomes, as the case may be, by virtue of section 227, prohibited, without the leave of the Court, from being a director or promoter of, or from being in any way (whether directly or indirectly) concerned in or taking part in the management of, a corporation.
 - “(8B) For the purposes of this Act, a person shall be taken to be or become subject to a section 227A order if, and only if, the person is or becomes, as the case may be, prohibited, by virtue of an order made under section 227A or under a provision of a law of a State or of another Territory that corresponds with section 227A, from being a director or promoter of, or from being in any way (whether directly or indirectly) concerned in or taking part in the management of, a corporation, and a reference in this Act to a section 227A order is a reference to an order so made.
 - “(8C) For the purposes of this Act, a person shall be taken to be or become subject to a section 562 order if, and only if, the person is or

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becomes, as the case may be, by virtue of an order made under section 562, under a corresponding provision of a previous law of the Territory or under a provision of a law, or a previous law, of a State or of another Territory that corresponds with section 562—

- (a) prohibited from acting as a director of, or from being concerned in or taking part in the management of, a company or other corporation; or
- (b) prohibited from being a director or promoter of, or from being in any way (whether directly or indirectly) concerned in or taking part in the management of, a company or other corporation,

and a reference in this Act to a section 562 order is a reference to an order so made.”.

Relevant interests in shares

22. Section 8 of the Principal Act is amended—

- (a) by omitting from paragraph (8) (a) “, 232 or 261” and substituting “and 232”; and
- (b) by omitting from paragraph (8) (b) “or of section 261”.

Insertion of Subdivision heading

23. Before section 17 of the Principal Act the following heading is inserted in Division 2 of Part II:

“Subdivision A—Registration”

Registration of auditors

24. Section 18 of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-section:

“(3) The Commission shall not register as an auditor a person who is subject to a section 227 prohibition, a section 227A order or a section 562 order.”.

Registration of liquidators

25. Section 20 of the Principal Act is amended by omitting sub-section (4) and substituting the following sub-section:

“(4) The Commission shall not register as a liquidator, or as a liquidator of a specified corporation, a person who is subject to a section 227 prohibition, a section 227A order or a section 562 order.”.

Register of Auditors

26. Section 23 of the Principal Act is amended by inserting in paragraph (1) (e) “or 30D (7) (a), (b) or (c)” after “(c)”.

Registers of Liquidators and Official Liquidators

27. Section 24 of the Principal Act is amended—

- (a) by inserting in sub-paragraph (1) (a) (v) “or 30D (7) (a), (b) or (c)” after “(c)”; and
- (b) by inserting in sub-paragraph (1) (b) (vi) “or 30D (7) (a), (b) or (c)” after “(c)”.

Notification of certain matters

28. Section 25 of the Principal Act is amended by omitting sub-section (4) and substituting the following sub-section:

“(4) A person who is registered as an auditor, as a liquidator or as a liquidator of a specified corporation shall, not later than 3 days after he becomes subject to a section 227 prohibition, a section 227A order or a section 562 order, lodge with the Commission, in the prescribed form, particulars of the circumstances by reason of which he became subject to the section 227 prohibition or particulars in writing of the section 227A order or section 562 order, as the case may be.”

Repeal of section 27

29. Section 27 of the Principal Act is repealed.

Certain persons not to apply for registration as auditor or liquidator

30. Section 28 of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-section:

“(3) A person whose registration as an auditor or liquidator has been cancelled or suspended—

- (a) under a provision of a law of a participating State or participating Territory that corresponded with a provision of section 27 (other than sub-section 27 (1)); or
- (b) under a provision of a law of a participating State or participating Territory that corresponds with section 30D,

is not entitled, without the leave of the Supreme Court of that State or Territory, to apply to the Commission for registration as an auditor or liquidator, as the case may be, under this Act.”

31. After section 30 of the Principal Act the following Subdivision is inserted in Division 2 of Part II:

“Subdivision B—Cancellation or Suspension of Registration

Interpretation

“30A. In this Subdivision, unless the contrary intention appears—

‘Board’ means the Companies Auditors and Liquidators Disciplinary Board;

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‘Chairman’ means the Chairman of the Board and includes a person acting or purporting to act as Chairman of the Board pursuant to section 7 of the *Companies Auditors and Liquidators Disciplinary Board Ordinance 1982*;

‘decision’, in relation to the Board, means a decision of the Board under this Subdivision and includes a refusal to exercise a power under section 30D;

‘hearing’ means a hearing held by the Board for the purposes of this Subdivision;

‘member’ means member of the Board and, while the deputy of a member is present at a hearing at which the member is not present, includes that deputy;

‘registered’ means registered under this Division.

Cancellation at request of registered person

“30B. (1) Where a person who is registered as an auditor, as a liquidator, as a liquidator of a specified corporation or as an official liquidator requests the Commission to cancel his registration, the Commission may, in its discretion, cancel the registration of that person as an auditor, as a liquidator, as a liquidator of that corporation or as an official liquidator, as the case may be.

“(2) A decision of the Commission under sub-section (1) to cancel the registration of a person as an auditor, as a liquidator, as a liquidator of a specified corporation or as an official liquidator comes into effect forthwith upon the making of the decision.

Official liquidators

“30C. (1) The Commission may, at any time, in its discretion, cancel or suspend the registration as an official liquidator of a person who is so registered and the decision of the Commission cancelling or suspending the registration of a person as an official liquidator is final.

“(2) Where the Commission decides to exercise its power under sub-section (1) to cancel or suspend the registration of a person as an official liquidator, the Commission shall, not later than 14 days after the decision, give to the person a notice in writing setting out the decision and setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision but the validity of the decision is not affected by failure of the Commission to do so.

“(3) A decision of the Commission under sub-section (1) to cancel or suspend the registration of a person as an official liquidator comes into effect at the expiration of the day on which there is given to the person a notice of the decision, being a notice of the kind referred to in sub-section (2).

Powers of Board in relation to auditors and liquidators

“30D. (1) The Board may, if it is satisfied on an application by the Commission for a person who is registered as an auditor to be dealt with under this section—

- (a) that the person—
 - (i) is subject to a section 227 prohibition, a section 227A order or a section 562 order;
 - (ii) is incapable, by reason of mental infirmity, of managing his affairs;
 - (iii) has failed to comply with the provisions of section 26; or
 - (iv) has ceased to be resident in Australia; or
- (b) that the person has failed, whether within or outside the Territory, to carry out or perform adequately and properly—
 - (i) the duties of an auditor; or
 - (ii) any duties or functions required by any law to be carried out or performed by a registered company auditor,or is otherwise not a fit and proper person to remain registered as an auditor,

by order, cancel, or suspend for a specified period, the registration of the person as an auditor.

“(2) The Board may, if it is satisfied on an application by the Commission for a person who is registered as a liquidator to be dealt with under this section—

- (a) that the person—
 - (i) is subject to a section 227 prohibition, a section 227A order or a section 562 order;
 - (ii) is incapable, by reason of mental infirmity, of managing his affairs;
 - (iii) has failed to comply with the provisions of section 26; or
 - (iv) has ceased to be resident in Australia; or
- (b) that the person has failed, whether within or outside the Territory, to carry out or perform adequately and properly—
 - (i) the duties of a liquidator; or
 - (ii) any duties or functions required by any law to be carried out or performed by a registered liquidator,or is otherwise not a fit and proper person to remain registered as a liquidator,

by order, cancel, or suspend for a specified period, the registration of the person as a liquidator.

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“(3) The Board may, if it is satisfied on an application by the Commission for a person who is registered as a liquidator of a specified corporation to be dealt with under this section—

- (a) that the person—
 - (i) is subject to a section 227 prohibition, a section 227A order or a section 562 order;
 - (ii) is incapable, by reason of mental infirmity, of managing his affairs;
 - (iii) has failed to comply with a requirement made of him under sub-section 26 (5); or
 - (iv) has ceased to be resident in Australia; or
- (b) that the person has failed, whether within or outside the Territory, to carry out adequately and properly the duties of a liquidator in respect of the winding up of that corporation or is otherwise not a fit and proper person to remain registered as a liquidator of that corporation,

by order, cancel, or suspend for a specified period, the registration of the person as a liquidator of that corporation.

“(4) Where—

- (a) the Commission applies to the Board for a person who is registered as an auditor to be dealt with under this section; and
- (b) the person is also registered as a liquidator or as a liquidator of a specified corporation,

the Board may, in addition to making an order under sub-section (1), if it is satisfied as to any of the matters specified in paragraph (2) (a) or (b) or (3) (a) or (b), make an order cancelling, or suspending for a specified period, the registration of the person as a liquidator or as a liquidator of that corporation, as the case may be, and, where the Board makes such an order, the order shall, for the purposes of this Subdivision, be deemed to have been made under sub-section (2) or (3), as the case may be.

“(5) Where—

- (a) the Commission applies to the Board for a person who is registered as a liquidator to be dealt with under this section; and
- (b) the person is also registered as an auditor or as a liquidator of a specified corporation,

the Board may, in addition to making an order under sub-section (2), if it is satisfied as to any of the matters specified in paragraph (1) (a) or (b) or (3) (a) or (b), make an order cancelling, or suspending for a specified period, the registration of the person as an auditor or as a liquidator of that corporation, as the case may be, and, where the Board makes such an order, the order shall, for the purposes of this Subdivision, be deemed to have been made under sub-section (1) or (3), as the case may be.

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“(6) Where—

(a) the Commission applies to the Board for a person who is registered as a liquidator of a specified corporation to be dealt with under this section; and

(b) the person is also registered as an auditor or as a liquidator,

the Board may, in addition to making an order under sub-section (3), if it is satisfied as to any of the matters specified in paragraph (1) (a) or (b) or (2) (a) or (b), make an order cancelling, or suspending for a specified period, the registration of the person as an auditor or as a liquidator, as the case may be, and, where the Board makes such an order, the order shall, for the purposes of this Subdivision, be deemed to have been made under sub-section (1) or (2), as the case may be.

“(7) Where, on an application by the Commission for a person who is registered as an auditor, as a liquidator or as a liquidator of a specified corporation to be dealt with under this section, the Board is satisfied that the person has failed to carry out or perform adequately and properly any of the duties or functions mentioned in paragraph (1) (b), (2) (b) or (3) (b), as the case may be, or is otherwise not a fit and proper person to remain registered as an auditor, liquidator or liquidator of that corporation, as the case may be, the Board may, in addition to or instead of cancelling or suspending the registration of the person as an auditor, liquidator or liquidator of that corporation, as the case may be, deal with the person in one or more of the following ways:

(a) by imposing on the person a penalty not exceeding \$5,000;

(b) by admonishing or reprimanding the person;

(c) by requiring the person to give an undertaking to engage in, or to refrain from engaging in, specified conduct,

and, if a person fails to give an undertaking when required to do so under paragraph (c), or contravenes or fails to comply with an undertaking given pursuant to a requirement under that paragraph, the Board may, by order, cancel, or suspend for a specified period, the registration of the person as an auditor, as a liquidator or as a liquidator of a specified corporation, as the case may be.

“(8) The amount of a penalty imposed on a person under sub-section (7) may be recovered in a court of competent jurisdiction as a debt due to the Commonwealth.

“(9) The Board may exercise any of its powers under this Subdivision in relation to a person as a result of conduct engaged in by the person whether or not that conduct constituted or might have constituted an offence, and whether or not any proceedings have been brought or are to be brought in relation to that conduct.

“(10) This section has effect subject to section 30E.

Hearings

“30E. (1) The Board may, at a meeting of the Board, hold a hearing for the purpose of the performance of its functions, or the exercise of its powers, under section 30D.

“(2) The Board shall not—

- (a) cancel or suspend the registration of a person as an auditor, as a liquidator or as a liquidator of a specified corporation; or
- (b) deal with a person in any of the ways mentioned in paragraphs 30D (7) (a), (b) and (c),

unless the Board has afforded the person an opportunity to appear at a hearing and to make submissions to, and adduce evidence before, the Board in relation to the matter.

“(3) Where the Board is required by sub-section (2) to afford a person an opportunity to appear at a hearing and to make submissions to, and adduce evidence before, the Board in relation to a matter, the Board shall afford the Commission an opportunity to appear at the hearing and to make submissions to, and adduce evidence before, the Board in relation to the matter.

“(4) Subject to sub-section (5), hearings shall take place in private.

“(5) If a person who is entitled under sub-section (2) to be afforded an opportunity to appear at a hearing requests that the hearing take place in public, the hearing shall, subject to any directions of the Board under sub-section (7), take place in public.

“(6) The Board may give directions as to the persons who may be present at a hearing that is to take place in private.

“(7) Where, at a hearing that is taking place in public at the request of a person, the Board is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or in order to protect the interests of any other person, the Board may—

- (a) direct that 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 Board or of matters contained in documents lodged with or produced to the Board.

“(8) Nothing in a direction given by the Board under sub-section (6) or paragraph (7) (a) prevents the presence at a hearing of—

- (a) a person representing the Commission pursuant to sub-section 30G (3);
- (b) a person who is entitled under sub-section (2) to be afforded an opportunity to appear at the hearing;
- (c) a person representing, pursuant to sub-section 30G (3), a person referred to in paragraph (b); or

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- (d) a person representing, pursuant to sub-section 30G (3), a person who, by reason of a direction given by the Board under sub-section (6) or paragraph (7) (a), is entitled to be present at the hearing.

“(9) Where the Board directs that a hearing or part of a hearing take place in private, a person (other than the Chairman, a member, or a member of the staff of the Board approved by the Board) 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 (8).

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

“(10) Where the Board is required by sub-section (2) or (3) to afford a person an opportunity to appear at a hearing, the Board 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.

“(11) A person who is entitled under sub-section (2) or (3) to be afforded an opportunity to appear at a hearing and who does not wish to appear at the hearing may, before the date of the hearing, lodge with the Board in writing any submissions that he wishes the Board to take into account in relation to the matter.

“(12) The Board shall take into account a submission made or lodged to, or evidence adduced before, the Board when making any decision on the matter to which the submission or evidence relates.

Power to summon witnesses and take evidence

“30F. (1) The Chairman or a member may summon a person to appear at a hearing to give evidence and to produce such documents (if any) as are referred to in the summons, being documents relating to the matters that are the subject of the hearing.

“(2) The Board may, at a hearing, take evidence on oath or affirmation and for that purpose the Chairman 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 sub-section (2) is an oath or affirmation that the evidence he will give will be true.

Proceedings at hearings

“30G. (1) At a hearing—

- (a) the proceedings shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Subdivision and a proper consideration of the matters before the Board permit;

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- (b) the Board is not bound by the rules of evidence; and
- (c) the Board may, upon such conditions as it thinks fit, permit a person to intervene in the proceedings.

“(2) The Board shall observe the rules of natural justice at and in connection with a hearing.

“(3) At a hearing—

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

“(4) A person who attends at a hearing pursuant to a summons issued under sub-section 30F (1) is entitled to be paid—

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

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

“(5) The Board may permit a person appearing as a witness at a hearing to give evidence by tendering, and, if the Board thinks fit, verifying by oath or affirmation, a written statement.

Failure of witnesses to attend and answer questions

“30H. (1) A person served, as prescribed, with a summons to appear as a witness at a hearing 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 the Chairman.

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

- (a) when required pursuant to sub-section 30F (2) 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 Chairman; or
- (c) refuse or fail to produce a document that he was required to produce by a summons under sub-section 30F (1) served on him as prescribed.

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“(3) A person shall not, at a hearing, 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; 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 Chairman, and if he knows the name and address of the person to whom or by whom the communication was made, forthwith furnish that name and address in writing to the Board.

“(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.

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

“(7) Where the Board is satisfied that—

- (a) a person served, as prescribed, with a summons to appear as a witness at a hearing 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 has, without reasonable excuse—
 - (i) when required pursuant to sub-section 30F (2) either to take an oath or make an affirmation;
 - (ii) when required by the Chairman to answer a question; or
 - (iii) when required to produce a document by a summons under sub-section 30F (1) served on him as prescribed,

refused or failed to comply with the requirement,

the Chairman 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 Court.

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“(8) Where a recognized Board of a participating State or participating Territory is satisfied that—

- (a) a person served, in the manner prescribed for the purposes of a provision of a law of that State or Territory that corresponds with this section, with a summons to appear as a witness at a prescribed hearing has, without reasonable excuse, failed to attend as required by a provision of a law of that State or Territory that corresponds with paragraph (1) (a) or (b); or
- (b) a person appearing as a witness at a prescribed hearing has, without reasonable excuse—
 - (i) when required pursuant to a provision of a law of that State or Territory that corresponds with sub-section 30F (2) either to take an oath or make an affirmation;
 - (ii) when required by the Chairman of the recognized Board to answer a question; or
 - (iii) when required to produce a document by a summons under a provision of a law of that State or Territory that corresponds with sub-section 30F (1) served on him in the manner prescribed for the purposes of a provision of a law of that State or Territory that corresponds with this section,

refused or failed to comply with the requirement,

the Chairman of the recognized Board 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 Court.

“(9) Where a certificate is given under sub-section (7) or (8), the 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—
 - (i) in the case of a certificate given under sub-section (7)—at a hearing; or
 - (ii) in the case of a certificate given under sub-section (8) by the Chairman of a recognized Board of a participating State or participating Territory—at a prescribed hearing,

to be held at a time and place specified in the order; or

- (b) may punish the person in the same manner as if he had been guilty of contempt of the Court and, if it thinks fit, also make an order under paragraph (a).

“(10) In this section—

‘Chairman’, in relation to a recognized Board of a participating State or participating Territory, has the same meaning as that expression has in the prescribed provisions of that State or Territory;

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‘prescribed hearing’, in relation to a recognized Board of a participating State or participating Territory, means a hearing held by that Board for the purposes of the prescribed provisions of that State or Territory;

‘prescribed provisions’, in relation to a participating State or participating Territory, means the provisions of the law of that State or Territory that correspond with this Subdivision;

‘recognized Board’, in relation to a participating State or participating Territory, means the body that is the Companies Auditors and Liquidators Disciplinary Board within the meaning of the prescribed provisions of that State or Territory.

Contempt of Board

“30J. A person shall not—

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

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

Protection of members, &c.

“30K. (1) The Chairman or a member has, in the performance of his functions or the exercise of his powers as the Chairman or a member in relation to a hearing, the same protection and immunity as a Justice of the High Court.

“(2) A barrister, solicitor or other person appearing on behalf of a person at a hearing 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 as a witness at a hearing has the same protection as a witness in proceedings in the High Court.

“(4) The Chairman, a member of the Board or a member of the staff of the Board 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 by this Subdivision.

Hearings deemed to be judicial proceedings

“30L. A hearing shall, for the purposes of Part III of the *Crimes Act 1914*, be deemed to be a judicial proceeding.

Notice of Board's decision

“30M. (1) Where the Board decides to exercise any of its powers under section 30D in relation to a person who is registered as an auditor, as a liquidator or as a liquidator of a specified corporation, the Board shall, not later than 14 days after the decision—

- (a) give to the person a notice in writing setting out the decision and setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision;
- (b) lodge with the Commission a copy of the notice referred to in paragraph (a); and
- (c) cause to be published in the *Gazette* a notice in writing setting out the decision.

“(2) Where the Board decides to refuse to exercise its powers under section 30D in relation to a person who is registered as an auditor, as a liquidator or as a liquidator of a specified corporation, the Board shall, not later than 14 days after the decision—

- (a) give to the person a notice in writing setting out the decision and setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision; and
- (b) lodge with the Commission a copy of the notice referred to in paragraph (a).

“(3) The validity of a decision of the Board is not affected by failure of the Board to comply with sub-section (1) or (2), as the case requires, in relation to the decision.

Time when Board's decision comes into effect

“30N. (1) Subject to sub-section (2), a decision of the Board to cancel or suspend the registration of a person as an auditor, as a liquidator or as a liquidator of a specified corporation comes into effect at the expiration of the day on which there is given to the person a notice of the decision, being a notice of the kind referred to in paragraph 30M (1) (a).

“(2) The Board may, in its discretion, postpone the coming into effect of a decision of a kind referred to in sub-section (1) to enable the Commission or the person concerned to appeal against the decision and, where the Board so postpones the coming into effect of a decision, the decision comes into effect—

- (a) where neither the Commission nor the person concerned appeals against the decision pursuant to section 30R within the prescribed period—at the expiration of that period;

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- (b) where either the Commission or the person concerned appeals against the decision pursuant to section 30R—
 - (i) if the Commission or the person concerned, as the case may be, withdraws the appeal before it is determined by the Court—upon the withdrawal of the appeal; or
 - (ii) if the Commission or the person concerned, as the case may be, does not so withdraw the appeal and the Court confirms or modifies the decision—at a time fixed by the Court; or
- (c) where both the Commission and the person concerned appeal against the decision pursuant to section 30R—
 - (i) if both the Commission and the person concerned withdraw the appeals before they are determined by the Court—upon the withdrawal of the later of the appeals to be withdrawn; or
 - (ii) if either the Commission or the person concerned does not so withdraw its or his appeal, or neither the Commission nor the person concerned withdraws its or his appeal, and the Court confirms or modifies the decision—at a time fixed by the Court.

Effect of suspension

“30P. A person whose registration as an auditor, as a liquidator, as a liquidator of a specified corporation or as an official liquidator is suspended shall, except for the purposes of sub-sections 23 (2) and 24 (3), section 25 (other than paragraphs 25 (1) (a), (2) (a) and (3) (a)), section 26 and this Subdivision, be deemed not to be registered as an auditor, liquidator, liquidator of that corporation or official liquidator, as the case may be, so long as the registration is suspended.

Costs

“30Q. (1) Where—

- (a) the Board holds a hearing in relation to a person in accordance with sub-section 30E (2); and
- (b) the Board cancels or suspends the registration of the person as an auditor, as a liquidator or as a liquidator of a specified corporation, or deals with the person in any of the ways mentioned in paragraphs 30D (7) (a), (b) and (c),

the Board may require the person to pay an amount specified by the Board, being all or part of—

- (c) the costs of and incidental to the hearing;
- (d) the costs of the Commission in relation to the hearing; or
- (e) the costs mentioned in paragraph (c) and the costs mentioned in paragraph (d).

“(2) Where—

- (a) the Board holds a hearing in relation to a person in accordance with sub-section 30E (2); and

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- (b) the Board refuses to make an order cancelling or suspending the registration of the person as an auditor, as a liquidator or as a liquidator of a specified corporation, as the case requires, and does not deal with the person in any of the ways mentioned in paragraphs 30D (7) (a), (b) and (c),

the Board may require the Commission to pay an amount specified by the Board, being all or part of—

- (c) the costs of and incidental to the hearing;
- (d) the costs of the person in relation to the hearing; or
- (e) the costs mentioned in paragraph (c) and the costs mentioned in paragraph (d).

“(3) Where—

- (a) under sub-section (1), the Board requires a person to pay all or part of the costs of and incidental to a hearing held by the Board in relation to the person (whether or not the Board also requires the person to pay all or part of the costs of the Commission in relation to the hearing); or
- (b) under sub-section (2), the Board requires the Commission to pay all or part of the costs of and incidental to a hearing held by the Board in relation to a person (whether or not the Board also requires the Commission to pay all or part of the costs of the person in relation to the hearing),

the amount of the costs of and incidental to the hearing so required to be paid by the first-mentioned person or by the Commission, as the case may be, may be recovered in a court of competent jurisdiction as a debt due to the Commonwealth.

“(4) Where, under sub-section (1), the Board requires a person to pay all or part of the costs of the Commission in relation to a hearing held by the Board in relation to the person (whether or not the Board also requires the person to pay all or part of the costs of and incidental to the hearing), the amount of the costs of the Commission so required to be paid by the person may be recovered in a court of competent jurisdiction as a debt due to the Commonwealth.

“(5) Where, under sub-section (2), the Board requires the Commission to pay all or part of the costs of a person in relation to a hearing held by the Board in relation to the person (whether or not the Board also requires the Commission to pay all or part of the costs of and incidental to the hearing), the amount of the costs of the person so required to be paid by the Commission may be recovered in a court of competent jurisdiction as a debt due to the person.

Appeal from decision of Board

“30R. (1) A person (other than the Commission) aggrieved by a decision of the Board may, within such period as is prescribed, appeal to the Court, which may confirm, reverse or modify the decision and make such orders and give such directions in the matter as it thinks fit.

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“(2) The Commission may, within such period as is prescribed, appeal to the Court against a decision of the Board and the Court may confirm, reverse or modify the decision and make such orders and give such directions in the matter as it thinks fit.

Operation of section 27

“30S. This Subdivision does not apply in relation to—

- (a) a request made by a person under sub-section 27 (1);
- (b) a decision made by the Commission under sub-section 27 (2); or
- (c) an application made by the Commission under sub-section 27 (4), (5) or (6),

before the commencement of section 31 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1983*, and, notwithstanding the repeal of section 27 of this Act, that last-mentioned section as amended and in force immediately before that commencement continues to have effect in relation to a request, decision or application so made.”.

Registers

32. Section 31 of the Principal Act is amended—

- (a) by omitting from sub-paragraph (2) (a) (ii) “or” (last occurring); and
- (b) by inserting after sub-paragraph (2) (a) (ii) the following sub-paragraph:

“(iia) a document lodged under paragraph 30M (2) (b); or”.

Requirements as to memorandum

33. Section 37 of the Principal Act is amended—

- (a) by omitting paragraph (1) (b); and
- (b) by inserting after sub-section (1) the following sub-section:

“(1A) The memorandum of a company may state the objects of the company.”.

34. Sections 67 and 68 of the Principal Act are repealed and the following sections are substituted:

Powers

“67. (1) Subject to this Act, a company has the rights, the powers and the privileges of a natural person and, without limiting the generality of the foregoing, has power—

- (a) to issue and allot fully or partly paid shares in the company;
- (b) to issue debentures of the company;
- (c) to distribute any of the property of the company among the members, in kind or otherwise;
- (d) to give security by charging uncalled capital;
- (e) to grant a floating charge on property of the company;

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- (f) to procure the company to be registered or recognized as a body corporate in any place outside the Territory; and
- (g) to do any other act that it is authorized to do by any other law.

“(2) The memorandum or articles of a company may restrict or prohibit the exercise by the company of any of the powers referred to in sub-section (1).

“(3) A company has the capacity to exercise its powers in a place outside the Territory.

“(4) Nothing in this section affects the operation of any restriction on, or prohibition of, the exercise by a company of any of its powers, being a restriction or prohibition included in the memorandum or articles of the company before the commencement of section 34 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1983*.

Restrictions on companies

“68. (1) Subject to this Act, a company shall not—

- (a) exercise any power that the company is prohibited, by the memorandum or articles of the company, from exercising;
- (b) exercise any power contrary to a restriction on the exercise of that power contained in the memorandum or articles of the company; or
- (c) where the memorandum of the company contains a provision stating the objects of the company—do any act otherwise than in pursuance of those objects.

“(2) An officer of a company shall not be in any way, by act or omission, directly or indirectly, knowingly concerned in or party to a contravention by the company of sub-section (1).

“(3) Notwithstanding section 570—

- (a) a company that contravenes sub-section (1); or
- (b) an officer of a company who contravenes sub-section (2),

is not guilty of an offence against this section.

“(4) An act of a company, including the making of an agreement by a company and a transfer of property to or by a company, is not invalid by reason only that the doing of the act is prohibited by sub-section (1) or by the memorandum or articles of the company.

“(5) An act of an officer of a company is not invalid by reason only that the doing of the act is prohibited by sub-section (2).

“(6) The fact that—

- (a) the doing of an act by a company was or would be prohibited by sub-section (1) or by the memorandum or articles of the company; or
- (b) the doing of an act by an officer of a company was or would be prohibited by sub-section (2),

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may be asserted or relied on only in—

- (c) a prosecution of a person for an offence against this Act;
- (d) an application for an order under section 227A;
- (e) an application for an order under section 320;
- (f) an application for an injunction under section 574;
- (g) proceedings by the company, or by a member of the company, against the present or former officers of the company; or
- (h) an application by the Commission or by a member of the company for the winding up of the company.

Persons having dealings with companies, &c.

“68A. (1) A person having dealings with a company is, subject to sub-section (4), entitled to make, in relation to those dealings, the assumptions referred to in sub-section (3) and, in any proceedings in relation to those dealings, any assertion by the company that the matters that the person is so entitled to assume were not correct shall be disregarded.

“(2) A person having dealings with a person who has acquired or purports to have acquired title to property from a company (whether directly or indirectly) is, subject to sub-section (5), entitled to make, in relation to the acquisition or purported acquisition of title from the company, the assumptions referred to in sub-section (3) and, in any proceedings in relation to those dealings, any assertion by the company or by the second-mentioned person that the matters that the first-mentioned person is so entitled to assume were not correct shall be disregarded.

“(3) The assumptions that a person is, by virtue of sub-section (1) or (2), entitled to make in relation to dealings with a company, or in relation to an acquisition or purported acquisition from a company of title to property, as the case may be, are—

- (a) that, at all relevant times, the memorandum and articles of the company have been complied with;
- (b) that a person who appears, from returns lodged with the Commission under section 238 or with the Registrar of Companies under the corresponding provision of a previous law of the Territory, to be a director, the principal executive officer or a secretary of the company has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by a director, by the principal executive officer or by a secretary, as the case may be, of a company carrying on a business of the kind carried on by the company;
- (c) that a person who is held out by the company to be an officer or agent of the company has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by an officer or agent of the kind concerned;

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- (d) that an officer or agent of the company who has authority to issue a document on behalf of the company has authority to warrant that the document is genuine and that an officer or agent of the company who has authority to issue a certified copy of a document on behalf of the company has authority to warrant that the copy is a true copy;
- (e) that a document has been duly sealed by the company if—
 - (i) it bears what appears to be an impression of the seal of the company; and
 - (ii) the sealing of the document appears to be attested by 2 persons, being persons one of whom, by virtue of paragraph (b) or (c), may be assumed to be a director of the company and the other of whom, by virtue of paragraph (b) or (c), may be assumed to be a director or to be a secretary of the company; and
- (f) that the directors, the principal executive officer, the secretaries, the employees and the agents of the company properly perform their duties to the company.

“(4) Notwithstanding sub-section (1), a person is not entitled to make an assumption referred to in sub-section (3) in relation to dealings with a company if—

- (a) he has actual knowledge that the matter that, but for this sub-section, he would be entitled to assume is not correct; or
- (b) his connection or relationship with the company is such that he ought to know that the matter that, but for this sub-section, he would be entitled to assume is not correct,

and where, by virtue of this sub-section, a person is not entitled to make a particular assumption in relation to dealings with a company, sub-section (1) has no effect in relation to any assertion by the company in relation to the assumption.

“(5) Notwithstanding sub-section (2), a person is not entitled to make an assumption referred to in sub-section (3) in relation to an acquisition or purported acquisition from a company of title to property if—

- (a) he has actual knowledge that the matter that, but for this sub-section, he would be entitled to assume is not correct; or
- (b) his connection or relationship with the company is such that he ought to know that the matter that, but for this sub-section, he would be entitled to assume is not correct,

and where, by virtue of this sub-section, a person is not entitled to make a particular assumption in relation to dealings with a company, sub-section (2) has no effect in relation to any assertion by the company or by any other person in relation to the assumption.

Certain assumptions not to be made

“68B. A person is not entitled to make the assumption, in relation to a particular matter—

- (a) that any one or more of the directors of a company has or have been appointed to act in that matter as a committee of the board of directors of the company, by reason only that the memorandum or articles of the company provides or provide that authority to act in matters of that kind may be delegated to a committee of the board of directors; or
- (b) that an officer or agent of a company has the company’s authority to act in that matter, by reason only that the memorandum or articles of the company provides or provide that authority to act in matters of that kind may be delegated to such an officer or agent.

Lodgment of documents, &c., with Commission not to constitute constructive notice

“68C. (1) Subject to sub-section (2), a person shall not be taken to have knowledge of—

- (a) the memorandum or articles of a company or any of the contents of the memorandum or articles of a company;
- (b) a document or the contents of a document; or
- (c) any particulars,

by reason only—

- (d) that the memorandum, the articles, the document or the particulars has or have been lodged with the Commission or with the Registrar of Companies; or
- (e) that the memorandum, the articles, the document or the particulars is or are referred to in any other document that has been lodged with the Commission or with the Registrar of Companies.

“(2) Sub-section (1) does not apply in relation to a document, or in relation to the contents of a document, that has been lodged with the Commission under Division 9 of Part IV or with the Registrar of Companies under the corresponding provisions of a previous law of the Territory, to the extent that the document relates to a charge that is registrable under that Division or that was registered under those provisions.

Effect of fraud

“68D. Section 68A operates—

- (a) to entitle a person to make the assumptions referred to in sub-section (3) of that section in relation to dealings with a company; or
- (b) to entitle a person to make the assumptions referred to in sub-section (3) of that section in relation to an acquisition or purported acquisition (whether direct or indirect) of title to property from a company,

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notwithstanding that a person referred to in paragraph 68A (3) (b), (c) or (e) or an officer, agent or employee of the company referred to in paragraph 68A (3) (d) or (f)—

- (c) has acted or is acting fraudulently in relation to the dealings, or in relation to the acquisition or purported acquisition of title to property from the company, as the case may be; or
- (d) has forged a document that appears to have been sealed on behalf of the company,

unless the person referred to in paragraph (a) or (b) of this section has actual knowledge that the person referred to in paragraph 68A (3) (b), (c) or (e), or the officer, agent or employee of the company referred to in paragraph 68A (3) (d) or (f), has acted or is acting fraudulently, or has forged a document, as mentioned in paragraph (c) or (d) of this section.”

General provisions as to alteration of memorandum

35. Section 72 of the Principal Act is amended by inserting in sub-section (5) “or a resolution or order under section 123” after “section 121”.

Alterations of provisions of memorandum

36. Section 73 of the Principal Act is amended—

- (a) by omitting sub-sections (1) and (2) and substituting the following sub-sections:

“(1) Subject to this section, a company may, by special resolution, alter the memorandum of the company—

- (a) where the memorandum contains a provision stating the objects of the company—by altering or omitting that provision;
- (b) where the memorandum does not contain a provision stating the objects of the company—by inserting in the memorandum a provision stating the objects of the company; or
- (c) in any case—by altering, omitting or inserting any other provision with respect to the objects of the company or any provision with respect to the powers of the company.

“(2) Subject to this section, sub-section 78 (3) and section 320, if a provision of the memorandum of a company could lawfully have been contained in the articles of the company, the company may, by special resolution, alter the memorandum—

- (a) unless the memorandum prohibits the alteration of that provision—by altering that provision; or
 - (b) unless the memorandum prohibits the omission of that provision—by omitting that provision.”;
- (b) by omitting from sub-section (3) “or adding to” and substituting “, adding to or omitting”;

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- (c) by inserting after sub-section (4) the following sub-section:
“(4A) A memorandum of a company that, immediately before the commencement of section 36 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1983*, prohibited the alteration of a provision of the memorandum, being a provision that could lawfully have been contained in the articles of the company (in this sub-section referred to as a ‘relevant provision’), shall be deemed also to prohibit the omission of that relevant provision of the memorandum, and a memorandum of a company that makes provision as mentioned in sub-section (3) in respect of a special resolution altering or adding to a relevant provision of the memorandum shall be deemed also to contain a provision to the same effect in respect of a special resolution omitting that relevant provision of the memorandum.”;
- (d) by inserting in sub-section (5) “or omission” after “alteration”;
- (e) by omitting from sub-section (6) “of the provisions”;
- (f) by omitting from sub-section (6) “with respect to the objects or powers of the company” and substituting “, being an alteration provided for by sub-section (1),”;
- (g) by inserting in sub-section (8) “ of the memorandum of a company” after “alteration” (first occurring);
- (h) by omitting paragraph (8) (a) and substituting the following paragraph:
“(a) in the case of an alteration provided for by sub-section (1)—the holders of not less than 10% in nominal value of the company’s debentures; or”;
- (j) by omitting from paragraph (8) (b) “of a provision or provisions of the memorandum”;
- (k) by omitting from sub-section (9) “the provision or provisions of”;
- (m) by omitting from sub-section (11) “a provision or provisions of”.

Confirmation of contracts and authentication and execution of documents

37. Section 80 of the Principal Act is amended by omitting from sub-section (10) “the objects of which require or comprise the transaction of business outside the Territory”.

Certificate authorizing application for transfer of incorporation

38. Section 83 of the Principal Act is amended—

- (a) by omitting sub-paragraph (2) (b) (ii) and substituting the following sub-paragraph:
“(ii) a report in the prescribed form as to affairs of the company, made up to the latest practicable date before the making of the application, showing the assets and liabilities of the company.”; and

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- (b) by omitting from paragraph (5) (b) “the property or part of the”.

Application by foreign company for registration under Division

39. Section 85 of the Principal Act is amended by omitting sub-paragraph (3) (a) (iii).

Establishment of registers and minute books

40. Section 91 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “and 256” and substituting “, 256 and 261”; and
- (b) by omitting from paragraph (2) (a) “or 257 (3)” and substituting “, 257 (3) or 261 (11)”.

Interpretation

41. Section 94 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(4) Where a prospectus in respect of a recognized company or recognized foreign company has been registered under the corresponding law of the participating State or participating Territory in which that recognized company or recognized foreign company is incorporated or registered, that prospectus shall, for the purposes of this Act, be deemed to have been registered by the Commission under this Act and anything required to be done before registration under this Act shall be deemed to have been done.”.

Forms of application for shares or debentures to be attached to prospectus

42. Section 96 of the Principal Act is amended by omitting from sub-section (1) all the words after “Act”.

Invitations or offers in relation to borrowings by a corporation

43. Section 97 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) all the words after “Act”;
- (b) by omitting paragraph (7) (a); and
- (c) by inserting in sub-paragraph (7) (c) (iii) “a banking corporation, or” after “is”.

Certain notices, &c., not to be published

44. Section 99 of the Principal Act is amended by omitting from sub-section (1) the definition of “registered prospectus”.

Certain reports referring to prospectuses not to be published

45. Section 100 of the Principal Act is amended by omitting from sub-section (1) the definition of “registered prospectus”.

Registration of prospectuses

46. Section 103 of the Principal Act is amended by omitting from sub-section (1) all the words after “Act”.

Repeal of section 109

47. Section 109 of the Principal Act is repealed.

Restriction on application of capital of company

48. Section 116 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “or 118”; and
- (b) by omitting from sub-section (2) “117 or”.

Power to make certain payments

49. Section 117 of the Principal Act is amended by omitting sub-sections (1) and (2) and substituting the following sub-sections:

“(1) Subject to sub-section (2), a company may make a payment by way of brokerage or commission to a person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares in the company or procuring or agreeing to procure subscriptions, whether absolute or conditional, for shares in the company if, and only if—

- (a) the payment is not prohibited by the memorandum or articles;
- (b) the amount of the proposed payment, or the rate at which the payment is proposed to be made, is disclosed in the prospectus in respect of the shares or, if there is no such prospectus, in a statement lodged with the Commission before the company becomes liable to make the payment; and
- (c) the number of shares for which persons have agreed, for a payment by way of brokerage or commission, to subscribe absolutely is set out in that prospectus or statement.

“(2) Sub-section (1) does not permit a company to make a payment by way of brokerage or commission in respect of shares in the company if the amount of the payment, or, if another payment or other payments by way of brokerage or commission has or have been made by the company in respect of those shares, the sum of the amount of the first-mentioned payment and the other payment or payments, exceeds—

- (a) 10% of the total of the amount payable in respect of the shares upon their allotment; or
- (b) such amount (if any), or an amount calculated at such rate (if any), as is authorized by the articles,

whichever is the lesser.”

Power of company to alter its share capital

50. Section 121 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

“(1A) An alteration made in the memorandum in accordance with sub-section (1) takes effect on the date of the resolution or such later date as is specified in the resolution.”.

Special resolution for reduction of share capital

51. Section 123 of the Principal Act is amended by omitting from sub-section (7) “retrospective”.

Substantial shareholdings and substantial shareholders

52. Section 136 of the Principal Act is amended by inserting in paragraph (2) (b) “or under a provision of a law of a participating State or of a participating Territory that corresponds with that sub-section” after “sub-section (6)”.

53. After section 144 of the Principal Act the following section is inserted:

Civil remedy where failure or default under Division

“144A. (1) A person who fails to comply with section 137, 138 or 139 is liable to pay, to any person who suffers loss or damage as a result of the failure, damages in respect of that loss or damage, unless it is proved that the failure was due to the inadvertence or mistake of the first-mentioned person or to his not being aware of a relevant fact or occurrence.

“(2) If default is made in complying with section 143 and an officer or officers of the company is or are in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the default—

(a) the company; and

(b) that officer or each of those officers, as the case may be,

are jointly and severally liable to pay, to any person who suffers loss or damage as a result of the default, damages in respect of that loss or damage.”.

Knowledge of employee or agent imputed to employer or principal

54. Section 145 of the Principal Act is amended—

(a) by omitting “a servant” and substituting “an employee”; and

(b) by omitting “master” and substituting “employer”.

Powers of Court with respect to defaulting substantial shareholder

55. Section 146 of the Principal Act is amended—

(a) by inserting in sub-section (1) “or of the company” after “Commission”;

(b) by inserting in sub-section (1) “such order or orders as it thinks fit, including, but without limiting the generality of the foregoing,” after “make” (first occurring);

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- (c) by inserting after paragraph (1) (e) the following paragraph:
 - “(ea) an order vesting in the Commission shares in the company to which the substantial shareholder is or has been entitled, or any interest in such shares;”;
- (d) by inserting in sub-section (5) “or an interest in a share” after “a share”;
- (e) by inserting in sub-section (5) “or interest” after “the share”;
- (f) by omitting sub-section (6) and substituting the following sub-section:
 - “(6) The Court shall not make an order under sub-section (1) if it is satisfied that the order would unfairly prejudice any person.”;
- (g) by omitting from sub-section (7) “restraining the exercise of voting rights” and substituting “referred to in paragraph (1) (c) or (g)”;
- (h) by omitting sub-section (12) and substituting the following sub-section:
 - “(12) Where a share or an interest in a share vests in the Commission by virtue of an order under sub-section (1) or of a direction under sub-section (5)—
 - (a) the Commission may, subject to any directions of the Court, get in, sell or otherwise dispose of, or deal with, the share or interest as it sees fit;
 - (b) the provisions of section 462 (other than sub-section 462 (1)) apply in relation to the share or interest as if—
 - (i) a reference in those provisions to the power of the Commission under sub-section 462 (1), or to the power conferred upon the Commission by sub-section 462 (1), were a reference to the power conferred on the Commission by paragraph (a) of this sub-section;
 - (ii) a reference in those provisions to property, or to an estate or interest in property, were a reference to the share or interest; and
 - (iii) the reference in sub-section 462 (4) to any power conferred on the Commission by Subdivision F of Division 4 of Part XII included a reference to the power conferred on the Commission by paragraph (a) of this sub-section; and
 - (c) sections 463 and 464 apply in relation to the share or interest in like manner as they apply in relation to property vested in the Commission by Subdivision F of Division 4 of Part XII.”.

Register of debenture holders and copies of trust deed

- 56.** Section 147 of the Principal Act is amended—
- (a) by adding at the end of paragraph (11) (a) “or”;
 - (b) by omitting from paragraph (11) (b) “or”; and
 - (c) by omitting paragraph (11) (c).

Branch registers

57. Section 148 of the Principal Act is amended—

- (a) by adding “or” at the end of paragraph (a) of the definition of “debenture” in sub-section (11);
- (b) by omitting “or” from paragraph (b) of that definition; and
- (c) by omitting paragraph (c) of that definition.

Compliance with laws of State or other Territory sufficient compliance for certain corporations

58. Section 162 of the Principal Act is amended—

- (a) by inserting “or recognized foreign company” after “company”; and
- (b) by inserting “or registered” after “incorporated”.

Interpretation

59. Section 164 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the definition of “company” and substituting the following definition:

“ ‘company’ means—

- (a) a public company;
- (b) a corporation that is a public company under the corresponding law of a participating State or participating Territory;
- (c) a corporation that is a public company under the law of a declared State or declared Territory and is registered as a foreign company in the Australian Capital Territory;
- (d) in relation to a prescribed interest that relates to an undertaking, scheme, enterprise, contract or arrangement (in this paragraph referred to as the ‘relevant undertaking’)—a body corporate (other than a body corporate of a kind referred to in paragraph (a), (b) or (c))—

- (i) formed or incorporated in the Australian Capital Territory or in a participating State or participating Territory; or

- (ii) formed or incorporated in a declared State or declared Territory and registered as a foreign company in the Australian Capital Territory,

being a body corporate that is declared by the Commission, by instrument in writing, to be a company for the purposes of this Division in relation to the relevant undertaking or in relation to a class of undertakings, schemes, enterprises, contracts or arrangements that includes the relevant undertaking; or

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- (e) in relation to a prescribed interest that relates to an undertaking, scheme, enterprise, contract or arrangement (in this paragraph referred to as the 'relevant undertaking')—a body corporate (other than a body corporate of a kind referred to in paragraph (a), (b) or (c)) formed or incorporated in a participating State or participating Territory, being a body corporate that is, pursuant to a provision of a law of that State or Territory that corresponds with paragraph (d), declared by the Commission, by instrument in writing, to be a company for the purposes of the provisions of the law of that State or Territory that correspond with this Division in relation to the relevant undertaking or in relation to a class of undertakings, schemes, enterprises, contracts or arrangements that includes the relevant undertaking;"; and
- (b) by omitting from sub-section (3) "approved" and substituting "to which an approval has been granted".

Approved deeds

60. Section 165 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:

"(2) In the case of a management company formed or incorporated in a participating State or participating Territory, a deed is an approved deed for the purposes of this Division if—

- (a) an approval has been granted to the deed under the provisions of the law, or of the previous law, of that State or Territory that correspond with this Division; and
- (b) an approval has been granted under the provisions of the law, or of the previous law, of that State or Territory that correspond with this Division to the trustee or representative appointed for the purposes of the deed acting as trustee or representative and that approval has not been revoked and the trustee or representative has not ceased to hold office."

Approval of deeds

61. Section 166 of the Principal Act is amended—

- (a) by omitting from sub-section (1) "company" (first occurring) and substituting "person"; and
- (b) by omitting from sub-section (3) "a deed has been approved" and substituting "approval has been granted to a deed".

Approval of trustees

62. Section 167 of the Principal Act is amended by omitting from sub-section (1) "company" and substituting "person".

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Covenants to be included in deeds

63. Section 168 of the Principal Act is amended—

- (a) by inserting in paragraph (1) (c) “he or” after “that”;
- (b) by inserting in sub-paragraph (1) (c) (i) “his or” after “out”;
- (c) by omitting paragraph (1) (d) and substituting the following paragraph:

“(d) a covenant binding the management company and the trustee or representative, respectively, that no moneys available for investment under the deed will be invested in or lent to the management company, the trustee or representative, or any person (other than a banking corporation or a corporation declared pursuant to paragraph 97 (7) (b) to be an authorized dealer in the short term money market) who is associated with the management company or with the trustee or representative;”;

- (d) by inserting in sub-paragraph (1) (e) (i) “him or” after “by”;
- (e) by omitting from sub-paragraph (1) (e) (ii) “it or he” and substituting “the trustee or representative or the auditor”;
- (f) by omitting from paragraph (1) (g) “management company, trustee or representative” and substituting “management company or by the trustee or representative”;
- (g) by omitting sub-section (2) and substituting the following sub-sections:

“(2) The Commission may, by instrument in writing, declare that, subject to such terms and conditions as are specified in the instrument, a specified deed that makes provision for the appointment of a specified person as trustee for or representative of the holders of the prescribed interests to which the deed relates is not required to contain covenants to the effect of such of the matters referred to in sub-section (1), or to contain such of the matters provided for in regulations made for the purposes of paragraph 166 (2) (b), as are specified in the instrument and the Commission may, by instrument in writing, revoke the first-mentioned instrument or vary it in such manner as it thinks fit.

“(2A) The Commission shall cause a copy of an instrument executed under sub-section (2) to be published in the *Gazette*, but failure of the Commission to do so does not affect the validity of the instrument.”; and

- (h) by omitting paragraph (5) (b) and substituting the following paragraph:

“(b) is not liable for anything done or omitted to be done by him or it pursuant to that direction.”.

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Statement to be issued

64. Section 170 of the Principal Act is amended by omitting sub-section (6) and substituting the following sub-section:

“(6) Where a statement in respect of a management company formed or incorporated in a participating State or participating Territory has been registered under the provisions of the law of that State or Territory that correspond with Division 1, that statement shall, for the purposes of this Division, be deemed to have been registered by the Commission under Division 1 and anything required to be done before registration under that Division shall be deemed to have been done.”.

Register of holders of prescribed interests

65. Section 172 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “Subject to sub-section (6), the” and substituting “The”;
- (b) by inserting in sub-section (2) “formed or” before “incorporated”;
- (c) by omitting from paragraph (2) (a) “the preceding provisions of this section” and substituting “sub-section (1)”;
- (d) by omitting sub-section (6).

Non-application of Division in certain circumstances

66. Section 176 of the Principal Act is amended by omitting sub-section (1).

Duties of company with respect to issue of certificates

67. Section 188 of the Principal Act is amended—

- (a) by omitting from paragraph (2) (b) “relevant person” (wherever occurring) and substituting “transferee”; and
- (b) by inserting after sub-section (2) the following sub-section:

“(2A) A company is not required to comply—

- (a) with sub-section (1) in relation to the allotment of any shares in, the issue of debentures of, or the making available of interests by, the company; or
- (b) with sub-section (2) in relation to a transfer of shares, debentures or interests,

if the allottee, debenture holder or interest holder, or the transferee, as the case may be, is a person who has applied to the Commission for the making of a declaration under this sub-section and has been declared by the Commission, by instrument in writing published in the *Gazette*, to be a person in relation to whom this section does not apply.”.

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68. After section 215A of the Principal Act the following Division is inserted in Part IV:

***“Division 10—Exemption from, and modification of the application of,
Divisions of this Part and related provisions***

Banking business

“215B. (1) Subject to sub-section (3)—

- (a) nothing in a prescribed provision applies to or in relation to anything done or to be done by a banking corporation in the ordinary course of its banking business;
- (b) a banking corporation is not required to comply with a prescribed provision in respect of anything done or to be done by the corporation in the ordinary course of its banking business; and
- (c) a banking corporation shall not be taken, by reason of anything done or to be done by the corporation in the ordinary course of its banking business, to be a borrowing corporation for the purposes of a prescribed provision.

“(2) In sub-section (1), ‘prescribed provision’ means a provision of Division 1 or 5 or of section 552.

“(3) Where—

- (a) a borrowing corporation is required by sub-section 152 (1) to make provision in a trust deed for the appointment of a corporation as a trustee for the holders of debentures; and
- (b) a banking corporation is appointed as a trustee for the holders of those debentures,

sub-section (1) does not affect the application of a provision of Division 5 to or in relation to the banking corporation in its capacity as trustee for the holders of those debentures.

Powers of Commission

“215C. (1) This section applies to Divisions 1, 2, 5 and 6.

“(2) The Commission may, by instrument in writing, exempt a person, as specified in the instrument and subject to such conditions (if any) as are specified in the instrument, from compliance with all or any of the provisions of—

- (a) the Divisions to which this section applies;
- (b) regulations made for the purposes of the provisions of those Divisions or any of them; and
- (c) section 552.

“(3) Without limiting the generality of sub-section (2), an exemption under that sub-section may relate to particular securities or to securities included in a class of securities.

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“(4) A person shall not contravene or fail to comply with a condition to which an exemption under sub-section (2) is subject.

“(5) Where a person has contravened or failed to comply with a condition to which an exemption under sub-section (2) is subject, the Court may, on the application of the Commission, order the person to comply with the condition.

“(6) The Commission may, by instrument in writing, declare that a Division to which this section applies and regulations made for the purposes of the provisions of that Division or any of them, shall have effect in their application to or in relation to a particular person or particular persons—

- (a) in a particular case; or
- (b) in relation to particular securities or securities included in a particular class of securities,

as if a provision or provisions of that Division or of those regulations specified in the instrument were omitted, modified or varied in a manner specified in the instrument and, where such a declaration is made, that Division and those regulations have effect accordingly.

“(7) The Commission may, by instrument in writing, declare that section 552 shall have effect in its application to or in relation to a particular person or particular persons—

- (a) in a particular case; or
- (b) in relation to particular securities or securities included in a particular class of securities,

as if a provision or provisions of that section specified in the instrument were omitted, modified or varied in a manner specified in the instrument and, where such a declaration is made, section 552 has effect accordingly.

“(8) The Commission shall cause a copy of an instrument executed under this section to be published in the *Gazette*, but failure of the Commission to do so does not affect the validity of the instrument.

“(9) An instrument executed under section 109 of this Act and in force immediately before the commencement of section 47 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1983* continues to have effect, and may be revoked or varied, after that commencement as if section 109 of this Act had not been repealed.

“(10) An order published in the *Gazette* under sub-section 172 (6) of this Act and in force immediately before the commencement of section 65 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1983* continues to have effect, and may be revoked or varied, after that commencement as if sub-section 172 (6) of this Act had not been omitted.

“(11) An order published, or deemed to have been published, in the *Gazette* under sub-section 176 (1) of this Act and in force immediately before the commencement of section 66 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1983* continues to have effect, and may be

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revoked or varied, after that commencement as if sub-section 176 (1) of this Act had not been omitted.”.

Vacation of office

69. Section 222 of the Principal Act is amended—

- (a) by omitting “or” from paragraph (1) (c);
- (b) by adding at the end of sub-section (1) the following paragraphs:
 - “(e) he becomes subject to a section 227A order; or
 - (f) he becomes subject to a section 562 order.”;
- (c) by inserting after sub-section (1) the following sub-section:
 - “(1A) The office of a director of a corporation is, by force of this sub-section, vacated at the commencement of section 69 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1983* if, immediately before that commencement, he was subject to a section 562 order.”;
- (d) by omitting from sub-section (4) “within” and substituting “until the expiration of”; and
- (e) by inserting after sub-section (4) the following sub-section:
 - “(4A) A person whose office is vacated by reason of paragraph (1) (e) or (f) or sub-section (1A) is incapable of being re-appointed as a director until the expiration of the period specified in the order referred to in that paragraph or sub-section, as the case may be.”.

70. After section 227 of the Principal Act the following section is inserted:

Court may order persons not to manage corporations

“227A. (1) Where, on application by the Commission or a person who is a prescribed person in relation to the corporation concerned, or any of the corporations concerned, the Court is satisfied—

- (a) that—
 - (i) a corporation has, during a period in which a person (in this sub-section referred to as the ‘relevant person’) was a relevant officer of the corporation, repeatedly breached relevant legislation; and
 - (ii) the relevant person failed to take reasonable steps to prevent the corporation so breaching relevant legislation;
- (b) that—
 - (i) each of 2 or more corporations has, at a time when a person (in this sub-section also referred to as the ‘relevant person’) was a relevant officer of the corporation, breached relevant legislation; and
 - (ii) in each case the relevant person failed to take reasonable steps to prevent the corporation breaching relevant legislation;

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(c) that—

- (i) a person (in this sub-section also referred to as the ‘relevant person’) has repeatedly breached relevant legislation; and
 - (ii) on 2 or more of the occasions when the relevant person breached relevant legislation, he was a relevant officer of a corporation (whether or not he was a relevant officer of the same corporation on each of those occasions); or
- (d) that, at any time during a period in which a person (in this sub-section also referred to as the ‘relevant person’) has been or was a relevant officer of a corporation, the relevant person acted dishonestly, or failed to exercise a reasonable degree of care and diligence, in the performance of his duties as an officer of the corporation,

the Court may, in its discretion, by order prohibit the relevant person, for such period as is specified in the order, from being a director or promoter of, or from being in any way (whether directly or indirectly) concerned in or taking part in the management of, a corporation.

“(2) Where an order has been made under sub-section (1) on the application of a person other than the Commission, the person shall, within 7 days after the making of the order, lodge with the Commission an office copy of the order.

“(3) A person shall not contravene an order made under sub-section (1) that is applicable to him.

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

“(4) A person shall not contravene an order made under a provision of a law of a State or of another Territory that corresponds with sub-section (1), being an order that is applicable to him.

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

“(5) In this section—

- (a) a reference to a contravention of, or a failure to comply with, a provision of a relevant Act includes a reference to such a contravention or failure to comply that occurred before the commencement of section 70 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1983*; and
- (b) a reference to a period in which a person has been or was a relevant officer of a corporation includes a reference to such a period that elapsed, or part of which elapsed, before that commencement.

“(6) For the purposes of this section—

- (a) a corporation or other person shall be taken to have breached relevant legislation if the corporation or other person has contravened or failed to comply with a provision of a relevant Act; and

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- (b) a corporation or another person may be taken to have breached relevant legislation repeatedly if the corporation or the other person has—
- (i) on 2 or more occasions, contravened or failed to comply with a particular provision of a relevant Act;
 - (ii) contravened or failed to comply with 2 or more provisions of a relevant Act; or
 - (iii) contravened or failed to comply with provisions of 2 or more relevant Acts.

“(7) For the purposes of this section—

- (a) each of the following persons is a prescribed person in relation to a corporation:
- (i) an official manager, liquidator or provisional liquidator of the corporation;
 - (ii) a member of the corporation;
 - (iii) a creditor of the corporation;
 - (iv) a person who is authorized by the Commission to make applications under this section, or to make an application under this section in relation to the corporation,
- (b) each of the following laws is a relevant Act:
- (i) this Act, the *Companies (Acquisition of Shares) Act 1980* and the *Securities Industry Act 1980*;
 - (ii) a previous law of the Territory with which an Act referred to in sub-paragraph (i) corresponds;
 - (iii) a law of a State or of another Territory that corresponds with an Act referred to in sub-paragraph (i);
 - (iv) a previous law of a State or of another Territory with which a law referred to in sub-paragraph (iii) corresponds; and
- (c) ‘relevant officer’, in relation to a corporation, means a director, secretary or executive officer of the corporation.”.

Duty and liability of officers

71. Section 229 of the Principal Act is amended—

- (a) by omitting from paragraph (5) (b) “the property or part of the”; and
- (b) by inserting in paragraph (5) (b) “, or any other authorized person who enters into possession or assumes control of property of the corporation for the purpose of enforcing any charge” after “corporation”.

Loans to directors

72. Section 230 of the Principal Act is amended by omitting from sub-paragraph (4) (b) (i) “(i) nor (ii)” and substituting “(ii) nor (iii)”.

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73. After section 238 of the Principal Act the following section is inserted in Division 2 of Part V:

Register of Disqualified Company Directors and Other Officers

“238A. (1) The Commission shall cause to be kept for the purposes of this Act a Register of Disqualified Company Directors and Other Officers consisting of a copy of each order made under sub-section 227A (1) or 562 (2) or under a provision of a law of a participating State or participating Territory that corresponds with either of those sub-sections.

“(2) A person may inspect and make copies of, or take extracts from, the Register of Disqualified Company Directors and Other Officers.”.

Convening of general meeting on requisition

74. Section 241 of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-section:

“(1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition in writing of—

- (a) in the case of a company having a share capital—not less than 100 members holding shares in the company on which there has been paid up an average sum, per member, of not less than \$200;
- (b) in the case of a company not having a share capital—not less than 200 members; or
- (c) in either case—a member who is entitled, or members who are together entitled, to not less than 5% of the total voting rights of all the members having at the date of the deposit of the requisition a right to vote at general meetings,

forthwith convene a general meeting of the company to be held as soon as practicable but, in any case, not later than 2 months after the date of the deposit of the requisition.”;

(b) by inserting in sub-section (2) “member or” before “members” (first occurring) and “, where there are 2 or more requisitioning members,” before “may”;

(c) by omitting sub-section (3) and substituting the following sub-sections:

“(3) If the directors do not, within 21 days after the date of the deposit of the requisition, proceed to convene a meeting, the requisitioning member, or, where there are 2 or more requisitioning members, those members or any of them representing more than 50% of the total voting rights of all of them—

- (a) may, in the same manner as nearly as possible as that in which meetings are to be convened by directors, convene a meeting; and
- (b) for the purposes of convening a meeting as provided by paragraph (a), may request the company to supply a written

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statement setting out the names and addresses (so far as they are known to the company) of the persons who, at the date of the deposit of the requisition, were entitled, under sub-section 242 (4) or a provision of the articles of the company, to receive notice of general meetings of the company.

“(3A) Where a request for a statement is made to a company under paragraph (3) (b), the directors of the company shall send the statement to the person or persons who requested the statement within 7 days after the date on which the request is made.

“(3B) A meeting convened by a requisitioning member or requisitioning members in accordance with sub-section (3) shall not be held more than 3 months after the date of the deposit of the requisition.”;

- (d) by inserting in sub-section (4) “member or” after “requisitioning” (first occurring) and “that member or” after “paid to”; and
- (e) by adding at the end thereof the following sub-section:

“(6) A reference in this section to a requisition includes a reference to a requisition deposited, before the commencement of section 74 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1983*, in accordance with this section as in force at the date of the deposit of the requisition.”.

Circulation of members’ resolutions, &c.

75. Section 247 of the Principal Act is amended—

- (a) by omitting sub-sections (1) and (2) and substituting the following sub-section:

“(1) Subject to this section, a company shall, on the requisition in writing of—

- (a) in the case of a company having a share capital—not less than 100 members holding shares in the company on which there has been paid up an average sum, per member, of not less than \$200;
- (b) in the case of a company not having a share capital—not less than 200 members; or
- (c) in either case—a member who is entitled, or members who are together entitled, to not less than 5% of the total voting rights of all the members having at the date of the deposit of the requisition a right to vote at general meetings,

and, unless the company otherwise resolves, at the expense of the requisitioning member or members—

- (d) give to members of the company entitled to have notice of the next annual general meeting sent to them notice of any resolution that may properly be moved and is intended to be moved at that meeting; and

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- (e) circulate to members of the company entitled to have notice of any general meeting sent to them any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.”;
- (b) by inserting in paragraph (4) (a) “member or” before “members” (first occurring) and “, where there are 2 or more requisitioning members,” before “2 or more copies”; and
- (c) by inserting in sub-section (5) “member or” before “members”.

76. Section 261 of the Principal Act is repealed and the following sections are substituted:

Power of company to obtain information as to beneficial ownership of its shares

“261. (1) In this section—

‘company’ has the same meaning as in section 134;

‘relevant instructions’, in relation to shares, means instructions or directions—

- (a) in relation to the acquisition or disposal of the shares;
- (b) in relation to the exercise of any voting or other rights attached to the shares; or
- (c) in connection with any other matter relating to the shares;

‘sub-section (2) notice’, in relation to shares in a company, means a notice in writing addressed to the holder of the shares requiring him to furnish to the company a statement in writing setting out—

- (a) full particulars of his relevant interest in the shares and of the circumstances by reason of which he has that interest; and
- (b) so far as it lies within his knowledge—
 - (i) full particulars of the name and address of every other person (if any) who has a relevant interest in any of the shares;
 - (ii) full particulars of each such interest and of the circumstances by reason of which the other person has that interest; and
 - (iii) full particulars of the name and address of each person (if any) who has given to the holder of the shares relevant instructions in relation to any of the shares and of those relevant instructions, and the date or dates on which those relevant instructions were given;

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'sub-section (3) notice', in relation to shares in a company, means a notice in writing addressed to a person requiring him to furnish to the company a statement in writing setting out—

- (a) full particulars of any relevant interest that the person has in any of the shares and of the circumstances by reason of which he has that interest; and
- (b) so far as it lies within his knowledge—
 - (i) full particulars of the name and address of every other person (if any) who has a relevant interest in any of the shares;
 - (ii) full particulars of each such interest, and of the circumstances by reason of which the other person has that interest; and
 - (iii) full particulars of the name and address of each person (if any) who has given to the person to whom the notice is addressed relevant instructions in relation to any of the shares and of those relevant instructions, and the date or dates on which those relevant instructions were given.

“(2) A sub-section (2) notice in relation to particular voting shares in a company—

- (a) may be given, to the holder of the shares, by the company at any time; and
- (b) shall be given, to the holder of the shares, by the company within 7 days after receiving a notice in the prescribed form from—
 - (i) the Commission; or
 - (ii) a member of the company who is entitled, or members of the company who are together entitled, to not less than 5% of the total voting rights of all the members having at the date of the last-mentioned notice a right to vote at general meetings of the company,

requiring the company to give a sub-section (2) notice to the holder of the shares.

“(3) Where a company receives, pursuant to a sub-section (2) notice or sub-section (3) notice given to a person in relation to particular shares in the company, information that—

- (a) another person has a relevant interest in any of the shares; or
- (b) another person has given relevant instructions in relation to any of the shares,

a sub-section (3) notice in relation to the first-mentioned shares—

- (c) may be given to the other person by the company at any time; and
- (d) subject to sub-section (4), shall be given to the other person by the company within 7 days after receiving the information, if the

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information was received pursuant to a notice that was required by paragraph (2) (b) or by this paragraph to be given.

“(4) Where—

- (a) a company has received a notice from the Commission or a member or members of the company requiring the company to give a sub-section (2) notice to a holder of shares in the company; and
- (b) the company receives a notice in writing from the Commission or from that member or those members, as the case may be, to the effect that the company is no longer required to comply with sub-section (3) in relation to those shares,

then, notwithstanding anything in this section, the company is not required to give any sub-section (3) notices or any further sub-section (3) notices, as the case requires, in relation to those shares pursuant to the first-mentioned notice.

“(5) A person who—

- (a) receives a sub-section (2) notice or sub-section (3) notice in relation to shares in a company; and
- (b) believes that there are special reasons why particular information that the notice requires him to furnish to the company should not be so furnished, or should be so furnished only in a particular form,

may, within 2 business days after he receives the notice, apply to the Commission for a certificate under sub-section (6).

“(6) Where, on application made by a person under sub-section (5), the Commission is satisfied that there are special reasons why particular information should not be furnished to a company, or should be so furnished only in a particular form, the Commission may give the person a certificate either—

- (a) referring to the information and stating that the information need not be furnished to the company; or
- (b) referring to the information and stating that the information need only be furnished to the company in a form specified in the certificate,

as the case may be.

“(7) A person who receives a sub-section (2) notice or sub-section (3) notice in relation to shares in a company shall, unless within 2 business days after the day on which he receives the notice he applies to the Commission under sub-section (5) in relation to particular information that the notice requires him to furnish to the company, comply with the notice within 2 business days after that day.

“(8) A person who—

- (a) receives a sub-section (2) notice or sub-section (3) notice in relation to shares in a company; and

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- (b) applies to the Commission under sub-section (5) for a certificate in relation to particular information that the notice requires him to furnish to the company,

shall, forthwith after applying to the Commission under sub-section (5), notify the company that he has so applied, and shall, within 2 business days after receiving notice of the decision of the Commission in relation to his application—

- (c) except in a case to which paragraph (d) applies—comply with the sub-section (2) notice or sub-section (3) notice, as the case may be; or
- (d) if the Commission has given him a certificate under sub-section (6) in relation to some or all of that information, furnish to the company a copy of the certificate together with a statement in writing—
- (i) setting out so much of the information required by the sub-section (2) notice or sub-section (3) notice, as the case may be, as is not referred to in the certificate; and
 - (ii) if the certificate states that particular information need only be furnished to the company in a specified form—setting out that information in that form.

“(9) A company shall keep a register of the information received by the company pursuant to notices given under this section, being either a register containing—

- (a) the name of each holder of voting shares in the company to whom the company has given a sub-section (2) notice;
- (b) against each such name—
 - (i) the name and address of each other person (if any) who, according to information received by the company under this section, has a relevant interest in any of the shares, together with particulars of the interest and of the circumstances by reason of which the other person has the interest; and
 - (ii) the name and address of each person who, according to information received by the company under this section, has given relevant instructions in relation to any of the shares, together with particulars of the relevant instructions; and
- (c) in relation to each item of information entered in the register, the date on which the item was so entered,

or a register in such other form as the Commission approves.

“(10) The register shall be open for inspection—

- (a) by any member of the company—without charge; and
- (b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

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“(11) A person may request a company to furnish him with a copy of the register or any part of the register and, where such a request is made, the company shall send the copy to that person—

- (a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves; or
- (b) in a case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Commission approves.

“(12) Information that is required by sub-section (9) to be entered in a register shall be so entered by the company within 2 business days after the company receives the information.

“(13) If a company fails to comply with sub-section (2) or (3) and an officer of the company is in default, the company and the officer are each guilty of an offence.

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

“(14) A person who fails to comply with sub-section (7) or (8) is guilty of an offence.

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

“(15) If default is made in complying with sub-section (9), (10), (11) or (12) and an officer of the company is in default, the company and the officer are each guilty of an offence.

“(16) If a company fails to comply with sub-section (2) or (3) and an officer or officers of the company is or are in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the failure—

- (a) the company; and
- (b) that officer or each of those officers, as the case may be,

are jointly and severally liable to pay, to any person who suffers loss or damage as a result of the failure, damages in respect of that loss or damage.

“(17) A person who fails to comply with sub-section (7) or (8) is liable to pay, to any person who suffers loss or damage as a result of the failure, damages in respect of that loss or damage, unless it is proved that the failure was due to the inadvertence or mistake of the first-mentioned person.

“(18) If default is made in complying with sub-section (9), (10), (11) or (12) and an officer or officers of the company is or are in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the default—

- (a) the company; and
- (b) that officer or each of those officers, as the case may be,

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are jointly and severally liable to pay, to any person who suffers loss or damage as a result of the default, damages in respect of that loss or damage.

“(19) A person—

- (a) is not guilty of an offence under sub-section (14); and
- (b) is not liable to pay damages under sub-section (17),

in respect of a failure to furnish to a company information that a sub-section (2) notice or sub-section (3) notice in relation to shares in the company required him to furnish to the company, if it is proved that—

- (c) at the time when the person received the notice, the information appeared on a register kept by the company pursuant to this section or section 143; or
- (d) the giving of the notice was for any reason frivolous or vexatious.

“(20) The reference in sub-section (3) to information received pursuant to a sub-section (2) notice or sub-section (3) notice includes a reference to information received pursuant to a notice given under sub-section (2) or (3) of the repealed section.

“(21) Notwithstanding the repeal of the repealed section, that section continues to have effect in relation to notices given under sub-section (2) or (3) of that section, in relation to information received pursuant to such notices and in relation to the separate part of the register of members kept pursuant to sub-section (4) of that section.

“(22) In sub-sections (20) and (21), ‘repealed section’ means section 261 of this Act as in force at any time before the commencement of section 76 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1983*.

Powers of Court

“261A. (1) Where—

- (a) a person has failed to comply with sub-section 261 (7) or (8) in relation to a notice given to the person under sub-section 261 (2) or (3) in relation to shares in a company (whether or not the failure still continues); or
- (b) a person has, in a statement furnished to a company pursuant to a notice given to the person under sub-section 261 (2) or (3) in relation to shares in the company, stated that particular information in relation to any of the shares or in relation to a person—
 - (i) who has a relevant interest in any of the shares; or
 - (ii) who has given in relation to any of the shares relevant instructions within the meaning of section 261,

does not lie within his knowledge,

the Court may, on the application of—

- (c) the company; or

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- (d) if the notice was required by paragraph 261 (2) (b) or (3) (d) to be given by the company by reason of a notice received by the company from the Commission or from a member or members of the company—the Commission, or that member or those members, as the case may be,

make in relation to any of the shares such order or orders as it thinks fit, including, but without limiting the generality of the foregoing, one or more of the orders referred to in sub-section (2).

“(2) The orders the Court may make under sub-section (1) in relation to shares are as follows:

- (a) an order restraining the holder of the shares from disposing of, or of any interest in, the shares;
- (b) an order restraining the exercise of any voting or other rights attached to the shares;
- (c) an order directing the company not to make payment, or to defer making payment, of any sum or sums due from the company in respect of the shares;
- (d) an order directing the disposal of, or of any interest in, the shares;
- (e) an order vesting in the Commission the shares, or any interest in the shares;
- (f) an order directing the company not to register the transfer or transmission of the shares;
- (g) an order that any exercise of the voting or other rights attached to the shares be disregarded;
- (h) for the purposes of securing compliance with any other order made under this section, an order directing the company or any other person to do or refrain from doing a specified act.

“(3) Where an application is made to the Court for an order under sub-section (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

“(4) Where the Commission makes an application to the Court for the making of an order under sub-section (1), the Court shall not require the Commission or any other person, as a condition of granting an interim order under sub-section (3), to give any undertakings as to damages.

“(5) An order under this section may include such ancillary or consequential provisions as the Court thinks just.

“(6) An order under sub-section (1) directing the disposal of, or of an interest in, a share may provide that the disposal shall be made within such time and subject to such conditions (if any) as the Court thinks fit, including, if the Court thinks fit, a condition that the disposal shall not be made to a particular

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person or persons or to persons included in a particular class or classes of persons.

“(7) The Court may direct that, where a share, or an interest in a share, is not disposed of in accordance with an order of the Court under sub-section (1), the share or interest shall vest in the Commission.

“(8) The Court shall not make an order under sub-section (1) if it is satisfied that the order would unfairly prejudice any person.

“(9) Where a person has failed to comply with sub-section 261 (7) or (8) in relation to a notice given to the person under sub-section 261 (2) or (3) in relation to shares in a company, the Court shall not make an order under this section in relation to any of the shares if it is satisfied—

- (a) that, at the time when the person received the notice, the information that the notice required him to furnish to the company appeared on a register kept by the company pursuant to section 143 or 261; or
- (b) that the giving of the notice was for any reason frivolous or vexatious.

“(10) Where a person has failed to comply with sub-section 261 (7) or (8) in relation to shares in a company, the Court shall not make an order under this section in relation to any of the shares, other than an order referred to in paragraph (2) (b) or (g), if it is satisfied—

- (a) that the failure was due to the person’s inadvertence or mistake; and
- (b) that, in all the circumstances, the failure ought to be excused.

“(11) The Court may, before making an order under sub-section (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

“(12) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

“(13) A person who contravenes or fails to comply with an order under this section that is applicable to him is guilty of an offence.

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

“(14) Where an offence under sub-section (13) is committed by a corporation, each officer of the corporation who is in default is guilty of an offence.

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

“(15) Where a share or an interest in a share vests in the Commission by virtue of an order under sub-section (1) or of a direction under sub-section (7)—

- (a) the Commission may, subject to any directions of the Court, get in, sell or otherwise dispose of, or deal with, the share or interest as it sees fit;

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- (b) the provisions of section 462 (other than sub-section 462 (1)) apply in relation to the share or interest as if—
 - (i) a reference in those provisions to the power of the Commission under sub-section 462 (1), or to the power conferred upon the Commission by sub-section 462 (1), were a reference to the power conferred on the Commission by paragraph (a) of this sub-section;
 - (ii) a reference in those provisions to property, or to an estate or interest in property, were a reference to the share or interest; and
 - (iii) the reference in sub-section 462 (4) to any power conferred on the Commission by Subdivision F of Division 4 of Part XII included a reference to the power conferred on the Commission by paragraph (a) of this sub-section; and
- (c) sections 463 and 464 apply in relation to the share or interest in like manner as they apply in relation to property vested in the Commission by Subdivision F of Division 4 of Part XII.”.

Exemption of certain companies

77. Section 265 of the Principal Act is amended—

- (a) by inserting after sub-section (1) the following sub-section:

“(1A) A company limited by guarantee, being a company the memorandum or articles of which prohibits or prohibit the payment of any dividend by the company to its members, need not comply with such of the provisions of this Division and of the regulations made for the purposes of this Division as relate to the inclusion in the annual return of a list of members.”; and

- (b) by inserting in sub-section (2) “or (1A)” after “(1)”.

Interpretation

78. Section 266 of the Principal Act is amended—

- (a) by omitting the definition of “current liability” and substituting the following definitions:

“‘approved accounting standard’ means an accounting standard that has been approved by the Board under sub-section 266B (1), other than an accounting standard in relation to which a copy of a notice has been published under paragraph 266B (3) (b);

‘Board’ means the body, known as the Accounting Standards Review Board, established by the Ministerial Council;”;

- (b) by omitting the definition of “non-current liability”; and
- (c) by adding at the end thereof the following sub-section:

“(2) An approved accounting standard shall be taken to be applicable to accounts of a company or group accounts of a holding

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company if, at the time when the accounts or group accounts are made out, the approved accounting standard—

- (a) applies in relation to the financial year of the company or holding company to which the accounts or group accounts relate; and
- (b) is relevant to those accounts or group accounts.”.

79. After section 266 of the Principal Act the following sections are inserted in Division 1 of Part VI:

Dormant corporations

“266A. (1) For the purposes of this Part, a corporation shall be taken to have been dormant throughout a particular period if, and only if, throughout that period, the corporation—

- (a) did not receive or become entitled to any income or incur or become liable for any expenditure;
- (b) did not purchase, sell or supply any goods or other property, or any services, or enter into any agreement or pass any resolution in relation to the purchase, sale or supply of goods or other property, or services;
- (c) did not issue, sell, purchase or make available any securities, or enter into any agreement or pass any resolution in relation to the issue, sale, purchase or making available of securities;
- (d) did not issue a prospectus or statement, or enter into any agreement or pass any resolution in relation to the issue of a prospectus or statement, in connection with the issue, sale, purchase or making available, or the proposed issue, sale, purchase or making available, of any securities;
- (e) did not take part in any research, development or exploration activities, or enter into any agreement or pass any resolution in relation to taking part in research, development or exploration activities;
- (f) was not, and did not become, a party to any lease, franchise, joint venture or partnership arrangement, and did not take part in any lease, franchise, joint venture or partnership arrangement, or enter into any agreement or pass any resolution in relation to becoming a party to, or taking part in, any lease, franchise, joint venture or partnership arrangement;
- (g) did not make, receive or guarantee any loan, or enter into any agreement or pass any resolution in relation to making, receiving or guaranteeing a loan;
- (h) was not, and did not become, a party to any underwriting agreement and did not enter into any agreement or pass any resolution in relation to becoming a party to any underwriting agreement;
- (j) did not obtain or receive a grant of any licence or other authority, or make any application or pass any resolution in relation to obtaining a licence or other authority; and

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- (k) was not, and did not become, a party to any litigation or negotiations with any other person or body.

“(2) A corporation shall not be taken not to have been dormant throughout a particular period by reason only that, during that period, the corporation—

- (a) issued shares to a person who was a subscriber to the memorandum of the corporation;
- (b) held shares in another corporation that was dormant throughout that period;
- (c) received or became entitled to income by way of a payment of a charge imposed by the corporation in connection with the performance by the corporation of an obligation imposed by this Act or by any corresponding law, being a charge imposed in accordance with this Act or with that corresponding law, as the case may be; or
- (d) incurred or became liable to any necessary expense in connection with the doing of any act or thing mentioned in paragraph (a) or (b) or in connection with the performance of an obligation imposed on the corporation or an officer of the corporation by this Act or by any corresponding law.

Approved accounting standards

“266B. (1) The Board may, by notice in writing published in the *Gazette*, approve an accounting standard for the purposes of this Part.

“(2) The Board shall specify in a notice published under sub-section (1) a place at which copies of the accounting standard to which the notice relates may be purchased, but failure of the Board to do so does not affect the validity of the notice.

“(3) The Ministerial Council may, within 60 days after an accounting standard has been approved under sub-section (1), disallow the accounting standard and, if the Ministerial Council does so, it shall—

- (a) within 2 business days after disallowing the accounting standard, give to the Board a notice in writing stating that the accounting standard has been disallowed; and
- (b) as soon as practicable after disallowing the accounting standard, cause a copy of the notice given to the Board under paragraph (a) to be published in the *Gazette*.

“(4) The Board may, by notice in writing published in the *Gazette*, revoke an approved accounting standard.

“(5) The Ministerial Council may, within 60 days after an approved accounting standard has been revoked under sub-section (4), disallow the revocation and, if the Ministerial Council does so, it shall—

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- (a) within 2 business days after disallowing the revocation, give to the Board a notice in writing stating that the revocation has been disallowed; and
- (b) as soon as practicable after disallowing the revocation, cause a copy of the notice given to the Board under paragraph (a) to be published in the *Gazette*.

Application of approved accounting standards

“266C. (1) Subject to this section, an approved accounting standard applies—

- (a) in a case to which paragraph (b) does not apply—in relation to the first financial year of a company that commences after the day on which the accounting standard is approved under sub-section 266B (1) and in relation to subsequent financial years of the company; or
- (b) if the accounting standard is expressed to apply in relation to financial years of companies that end after—
 - (i) the day on which the accounting standard is approved under sub-section 266B (1); or
 - (ii) the expiration of a specified period after the day on which the accounting standard is approved under sub-section 266B (1),
in relation to the first financial year of a company that ends after that day or the expiration of that period, as the case may be, and in relation to subsequent financial years of the company.

“(2) Subject to sub-section (3), where an approved accounting standard is expressed to replace another approved accounting standard, the other approved accounting standard does not apply in relation to the first financial year of a company in relation to which the first-mentioned approved accounting standard applies, or in relation to any subsequent financial year of the company.

“(3) Where an approved accounting standard that is expressed to replace another approved accounting standard ceases to be an approved accounting standard by reason that a copy of a notice stating that the accounting standard has been disallowed is published under paragraph 266B (3) (b), the other approved accounting standard applies in relation to the financial years of companies in relation to which it would have applied if the first-mentioned accounting standard had not been approved, but nothing in this sub-section alters the operation of the first-mentioned accounting standard during the period during which it was an approved accounting standard.

“(4) Subject to sub-section (5), where an approved accounting standard is revoked under sub-section 266B (4), the approved accounting standard does not apply—

- (a) in a case to which paragraph (b) does not apply—in relation to the first financial year of a company that commences after the day on

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which the approved accounting standard is so revoked, or in relation to any subsequent financial year of the company; or

- (b) if the revocation of the approved accounting standard is expressed to have effect in relation to financial years of companies that end after—
 - (i) the day on which the approved accounting standard is so revoked; or
 - (ii) the expiration of a specified period after the day on which the approved accounting standard is so revoked,

in relation to the first financial year of a company that ends after that day or the expiration of that period, as the case may be, or in relation to any subsequent financial year of the company.

“(5) Where a copy of a notice stating that the revocation of an approved accounting standard has been disallowed is published under paragraph 266B (5) (b), the approved accounting standard applies in relation to the financial years of companies in relation to which it would have applied if it had not been revoked, but nothing in this sub-section alters the effect of the revocation of the approved accounting standard during the period before the revocation was disallowed.

Board to have regard to possibility of disallowance

“266D. (1) The Board shall, in considering whether to approve an accounting standard that is expressed to apply in relation to financial years of companies as mentioned in paragraph 266C (1) (b), have regard to—

- (a) the provisions of sub-section 266B (3); and
- (b) if the accounting standard is expressed to replace another accounting standard—the provisions of sub-section 266C (3).

“(2) The Board shall, in considering whether the revocation of an approved accounting standard should be expressed to have effect in relation to financial years of companies as mentioned in paragraph 266C (4) (b), have regard to the provisions of sub-sections 266B (5) and 266C (5).

Interpretation, &c., of accounting standards

“266E. (1) Unless the contrary intention appears in the accounting standard, an expression used in an approved accounting standard has the same meaning as the expression has in this Part.

“(2) A document that purports to be issued or published by or on behalf of the Board and to set out an accounting standard that has been approved by the Board under sub-section 266B (1), or a copy of such a document, is, in proceedings under this Act, *prima facie* evidence that the accounting standard has been approved by the Board.

Power of Board to require copy of accounts or group accounts

“266F. (1) Where an auditor of a company or holding company has, pursuant to sub-section 285 (11), sent to the Board a copy of a report on the

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accounts or group accounts of the company or holding company, the Board may, by notice in writing served on the company or holding company, require the company or holding company to furnish to the Board within 7 days after service of the notice a copy of those accounts or group accounts.

“(2) If default is made in complying with a notice under sub-section (1), the company or holding company and any officer of the company or holding company who is in default are each guilty of an offence.”.

Profit and loss account, balance-sheet and group accounts

80. Section 269 of the Principal Act is amended—

- (a) by inserting in paragraph (7) (b) “, whether directly or indirectly,” after “realize” (first occurring); and
- (b) by omitting sub-sections (9) and (10) and substituting the following sub-sections:

“(8A) Without affecting the generality of the preceding provisions of this section, the directors of a company shall ensure that the accounts of the company and, if the company is a holding company for which group accounts are required, the group accounts of the company are made out in accordance with applicable approved accounting standards.

“(8B) Notwithstanding sub-section (8A), where the accounts of a company or the group accounts of a holding company would not, if made out in accordance with a particular applicable approved accounting standard, give a true and fair view of the matters required by this section to be dealt with in those accounts or group accounts, as the case may be, the directors of the company or holding company are not required to ensure that those accounts or group accounts, as the case may be, are made out in accordance with that accounting standard.

“(9) The directors of a company shall cause to be attached to any accounts required by section 275 to be laid before an annual general meeting of the company, before the auditor reports on the accounts under this Part, a statement made, not more than 56 days before the date of the annual general meeting or, if no annual general meeting of the company is held within the period within which it is required by section 240 to be held, not more than 56 days before the end of that period, in accordance with a resolution of the directors and signed by at least 2 directors—

- (a) stating whether, in the opinion of the directors—
 - (i) the profit and loss account is drawn up so as to give a true and fair view of the profit or loss of the company for its last financial year (in this sub-section referred to as ‘the financial year’);

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- (ii) the balance-sheet is drawn up so as to give a true and fair view of the state of affairs of the company as at the end of the financial year; and
 - (iii) at the date of the statement, there are reasonable grounds to believe that the company will be able to pay its debts as and when they fall due;
- (b) stating whether the accounts have been made out in accordance with applicable approved accounting standards;
- (c) if the accounts have not been made out in accordance with a particular applicable approved accounting standard—
 - (i) stating why the accounts, if made out in accordance with that accounting standard, would not have given a true and fair view of the matters required by this section to be dealt with in the accounts; and
 - (ii) giving particulars of the quantified financial effect on the accounts of the failure to make out the accounts in accordance with that accounting standard; and
- (d) where the company has been dormant throughout the period commencing at the commencement of the financial year and ending on the day on which the statement is made—stating that the company has been dormant.

“(10) The directors of a company that is a holding company shall cause to be attached to group accounts of the company required by section 275 to be laid before an annual general meeting of the company, before the auditor reports on the group accounts under this Part, a statement made, not more than 56 days before the date of the annual general meeting, or, if no annual general meeting of the company is held within the period within which it is required by section 240 to be held, not more than 56 days before the end of that period, in accordance with a resolution of the directors and signed by at least 2 directors—

- (a) stating whether, in the opinion of the directors, the group accounts are drawn up so as to give a true and fair view of—
 - (i) the profit or loss of the company and its subsidiaries for their respective last financial years; and
 - (ii) the state of affairs of the company and its subsidiaries as at the end of their respective last financial years,
so far as they concern members of the company;
- (b) stating whether the group accounts have been made out in accordance with applicable approved accounting standards;
- (c) if the group accounts have not been made out in accordance with a particular applicable approved accounting standard—
 - (i) stating why the group accounts, if made out in accordance with that accounting standard, would not

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have given a true and fair view of the matters required by this section to be dealt with in the group accounts; and

- (ii) giving particulars of the quantified financial effect on the group accounts of the failure to make out the group accounts in accordance with that accounting standard; and

(d) where—

- (i) the company has been dormant throughout the period commencing at the commencement of its last financial year and ending on the day on which the statement is made; and
- (ii) each corporation that was a subsidiary of the company at any time during that financial year has been dormant throughout each period since the commencement of that financial year during which it was a subsidiary of the company,

stating that the company and each such corporation have been dormant.

“(11) The directors of a company shall—

- (a) in forming an opinion, for the purposes of a statement under sub-section (9) in relation to accounts of the company, as to the matters specified in sub-paragraphs (9) (a) (i) and (ii), have regard to—

- (i) circumstances that have arisen; and
- (ii) information that has become available,

since the end of the financial year to which the accounts relate, being circumstances or information that would, if those accounts had been made out when the statement is made, have affected the determination of an amount or particular in those accounts; and

- (b) if adjustments have not been made in those accounts to reflect circumstances or information of a kind referred to in paragraph (a), being circumstances that are, or information that is, relevant to an understanding of those accounts or of an amount or particular in those accounts—include in the statement such information and explanations as will prevent those accounts or that amount or particular from being misleading by reason that such adjustments have not been made.

“(12) The directors of a company that is a holding company shall—

- (a) in forming an opinion, for the purposes of a statement under sub-section (10) in relation to group accounts of the company, as to the matters specified in paragraph (10) (a), have regard to

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circumstances that have arisen, and information that has become available, since—

- (i) in the case of circumstances or information concerning the company—the end of the financial year of the company to which those accounts relate; or
 - (ii) in the case of circumstances or information concerning a subsidiary of the company—the end of the financial year of that subsidiary to which those accounts relate,
- being circumstances or information that would, if those accounts had been made out when the statement is made, have affected the determination of an amount or particular in those accounts; and
- (b) if adjustments have not been made in those accounts to reflect circumstances or information of a kind referred to in paragraph (a), being circumstances that are, or information that is, relevant to an understanding of those accounts or of an amount or particular in those accounts—include in the statement such information and explanations as will prevent those accounts or that amount or particular from being misleading by reason that such adjustments have not been made.

“(13) This section, as amended and in force at any time after the commencement of section 80 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1983*, applies—

- (a) in the case of a company that is not a holding company—in relation to the first financial year of the company that commences after that commencement and in relation to subsequent financial years of the company; and
- (b) in the case of a company that is a holding company—
 - (i) in relation to the first financial year of the company that commences after that commencement and the financial year of each corporation that is a subsidiary of the company that ended during, or at the end of, that financial year of the company; and
 - (ii) in relation to subsequent financial years of the company and of each corporation that is a subsidiary of the company.”.

Directors' reports

81. Section 270 of the Principal Act is amended—

- (a) by omitting sub-sections (1), (2) and (3) and substituting the following sub-sections:

“(1) The directors of a company, other than a company to which sub-section (2) applies, shall, not less than 14 days and not more than 56 days before the annual general meeting of the company or, if no

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annual general meeting of the company is held within the period within which it is required by section 240 to be held, not less than 14 days and not more than 56 days before the end of that period, cause to be made out a report, made in accordance with a resolution of the directors and signed by at least 2 directors—

- (a) stating—
 - (i) the names of the directors in office at the date of the report;
 - (ii) the principal activities of the company in the course of its last financial year and any significant change in the nature of those activities that occurred during that financial year;
 - (iii) the net amount of the profit or loss of the company for that financial year after provision for income tax; and
 - (iv) the amount (if any) that the directors recommend should be paid by way of dividend, and any amounts that have been paid or declared by way of dividend since the commencement of that financial year, indicating which of those amounts (if any) have been shown in a previous report under this sub-section or sub-section (2) or under a corresponding previous law of the Territory;
- (b) containing a review of the operations of the company during that financial year and of the results of those operations;
- (c) giving particulars of any significant change in the state of affairs of the company that occurred during that financial year;
- (d) giving particulars of any matter or circumstance that has arisen since the end of that financial year and that has significantly affected or may significantly affect—
 - (i) the operations of the company;
 - (ii) the results of those operations; or
 - (iii) the state of affairs of the company,in financial years subsequent to that financial year; and
- (e) referring to—
 - (i) likely developments in the operations of the company; and
 - (ii) the expected results of those operations,in financial years subsequent to that financial year.

“(2) The directors of a company that, at the end of its last financial year, was a holding company (other than a holding company that was a wholly-owned subsidiary of a company or of a recognized company) shall, not less than 14 days and not more than 56 days before the annual general meeting of the company or, if no annual general meeting of the company is held within the period within which it is required by section 240 to be held, not less than 14 days and not more

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than 56 days before the end of that period, cause to be made out a report, made in accordance with a resolution of the directors and signed by at least 2 directors—

- (a) stating—
 - (i) the names of the directors of the company in office at the date of the report;
 - (ii) the principal activities of the corporations in the group of companies of the holding company in the course of that financial year and any significant change in the nature of those activities that occurred during that financial year;
 - (iii) the net amount of the consolidated profit or loss of the group for that financial year after provision for income tax and after deducting from that consolidated profit or loss any amounts that should properly be attributed to any person other than a corporation in the group; and
 - (iv) the amount (if any) that the directors of the company recommend should be paid by way of dividend, and any amounts that have been paid or declared by way of dividend since the commencement of that financial year, indicating which of those amounts (if any) have been shown in a previous report under this sub-section or sub-section (1) or under a corresponding previous law of the Territory;
- (b) containing a review of the operations of the group during that financial year and of the results of those operations;
- (c) giving particulars of any significant change in the state of affairs of the group that occurred during that financial year;
- (d) giving particulars of any matter or circumstance that has arisen since the end of that financial year and that has significantly affected or may significantly affect—
 - (i) the operations of the group;
 - (ii) the results of those operations; or
 - (iii) the state of affairs of the group,in financial years subsequent to that financial year; and
- (e) referring to—
 - (i) likely developments in the operations of the group; and
 - (ii) the expected results of those operations,in financial years subsequent to that financial year.

“(3) Where, in the opinion of the directors of a company, it would prejudice the interests of the company if particular information, being

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some or all of the information required by paragraph (1) (e) or (2) (e) to be included in a report, were so included—

- (a) the first-mentioned information need not be included in the report; and
- (b) if the first-mentioned information is not included in the report—the report shall state that some or all, as the case may be, of the information required by that paragraph to be so included has not been so included.

“(3A) The directors of a public company shall include in, or attach to, a report made for the purposes of sub-section (1) or (2) a statement setting out, as at the date of the statement, in respect of each director of the company—

- (a) particulars of the qualifications, experience and special responsibilities (if any) of the director;
 - (b) particulars of shares in the company or in a corporation that is related to the company, being particulars that are required, by paragraph 231 (1) (a), to be shown with respect to that director in a register kept in accordance with sub-section 231 (1); and
 - (c) particulars of any interest of the director in a contract or proposed contract with the company, being an interest the nature of which has been declared by the director in accordance with sub-section 228 (1)—
 - (i) in the case of the first statement made by the directors of the company under this sub-section—since the commencement of section 81 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1983*; or
 - (ii) in any other case—since the date of the last statement made under this sub-section.”; and
- (b) by adding at the end thereof the following sub-sections:

“(9) The directors of a company are not required to comply with any of the requirements of this section in relation to a financial year of the company if—

- (a) in the case of a company that is not a holding company—the company has been dormant throughout the period commencing at the commencement of that financial year and ending on the prescribed day; or
- (b) in the case of a company that is a holding company—
 - (i) the company has been dormant throughout the period (in this paragraph referred to as the ‘relevant period’) commencing at the commencement of that financial year and ending on the prescribed day; and

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- (ii) each corporation that was a subsidiary of the company at any time during that financial year has been dormant throughout so much of each period during which it was a subsidiary of the company as falls within the relevant period.

“(10) In sub-section (9), ‘prescribed day’, in relation to a financial year of a company, means the fourteenth day before—

- (a) in a case to which paragraph (b) does not apply—the annual general meeting of the company held in relation to that financial year; or
- (b) if no annual general meeting of the company is held in relation to that financial year within the period within which it is required by section 240 to be held—the end of that period.

“(11) Where, at the end of a financial year of a company, the company was a wholly-owned subsidiary of another company or of a recognized company, sub-section (1) applies in relation to that first-mentioned company in relation to that financial year as if paragraphs (1) (b), (c), (d) and (e) were omitted.

“(12) Where, at the end of a financial year of a company, the company was an exempt proprietary company, sub-section (1) or (2), as the case requires, applies in relation to that company in relation to that financial year as if paragraphs (b), (c), (d) and (e) of that sub-section were omitted.

“(13) The directors of a public company are not required to comply with the requirements of sub-section (3A) in relation to a financial year of the company if, at the end of that financial year, the company was a wholly-owned subsidiary of a company or recognized company.

“(14) This section, as amended and in force at any time after the commencement of section 81 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1983*, applies—

- (a) in relation to a company that is not a holding company—in relation to the first financial year of the company that commences after that commencement and in relation to subsequent financial years of that company; and
- (b) in relation to a company that is a holding company—
 - (i) in relation to the first financial year of the company that commences after that commencement and the financial year of each corporation that is a subsidiary of the company that ended during, or at the end of, that financial year of the company; and
 - (ii) in relation to subsequent financial years of the company and of each corporation that is a subsidiary of the company.”.

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82. Section 272 of the Principal Act is repealed and the following section is substituted:

Directors of holding company to obtain all necessary information

“272. (1) Subject to sub-section (3), the directors of a holding company shall not cause to be made out the group accounts referred to in sub-section 269 (3), the statement referred to in sub-section 269 (10) or the report referred to in sub-section 270 (2) unless they have available to them sufficient information, in relation to each subsidiary, to enable them to ensure—

- (a) that the group accounts will give a true and fair view of—
 - (i) the profit or loss of the holding company and its subsidiaries for their respective last financial years; and
 - (ii) the state of affairs of the holding company and its subsidiaries as at the end of their respective last financial years, so far as they concern members of the holding company; and
- (b) that neither the statement nor the report will be false or misleading in a material particular.

“(2) The directors of a subsidiary shall, at the request of the directors of the holding company, supply to the holding company all the information that is required by the directors of the holding company for the preparation of the group accounts, the statement and the report referred to in sub-section (1).

“(3) Where the directors of a holding company, having taken all such steps as are reasonably available to them, are unable to obtain from the directors of a subsidiary the information required by the directors of the holding company for the preparation of the group accounts, the statement and the report referred to in sub-section (1) within the period within which those accounts, that statement and that report are respectively required, by the provisions referred to in that sub-section, to be prepared—

- (a) the directors of the holding company shall cause to be made out those group accounts, that statement and that report without incorporating in, or including with, those group accounts, or incorporating in that statement or report, as the case requires, the information relating to the subsidiary, but—
 - (i) they shall include in those group accounts, that statement or that report, as the case requires, a description of the nature of the information that has not been obtained, and shall include in those group accounts, that statement and that report such qualifications and explanations as are necessary to prevent those group accounts, that statement and that report from being misleading; and
 - (ii) they may qualify accordingly that part of that statement that is made in pursuance of paragraph 269 (10) (a); and
- (b) where the directors of the holding company have caused to be made out those group accounts, that statement and that report in accordance

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with paragraph (a), they shall, within one month after receiving any of that information from the directors of the subsidiary—

- (i) lodge with the Commission a statement setting out or summarizing the information and containing such qualifications and explanations, by the directors of the holding company, of those group accounts, that statement or that report as are necessary having regard to the information received from the directors of the subsidiary; and
- (ii) send, to each shareholder, a copy of the statement required by sub-paragraph (i) to be lodged with the Commission.”.

Failure to comply with this Division

83. Section 276 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “the succeeding provisions of”; and
- (b) by inserting after sub-section (2) the following sub-section:

“(2A) In any proceedings against a person for failure to take all reasonable steps to comply with, or to secure compliance with, or for having knowingly been the cause of any default under, any of the preceding provisions of this Division (including any of those provisions as applying by virtue of section 158) relating to the accounts of a company or the group accounts of a holding company by reason that the accounts or group accounts, as the case may be, have not been made out in accordance with an applicable approved accounting standard, the onus of proving that the accounts or group accounts, as the case may be, would not, if made out in accordance with that accounting standard, have given a true and fair view of the matters required by section 269 to be dealt with in the accounts or group accounts lies on that person.”.

Removal and resignation of auditors

84. Section 282 of the Principal Act is amended—

- (a) by omitting sub-section (5); and
- (b) by omitting sub-section (13) and substituting the following sub-section:

“(13) Within 14 days after—

- (a) the removal from office of an auditor of a company; or
- (b) the receipt of a notice of resignation from an auditor of a company,

the company shall—

- (c) lodge with the Commission a notice of the removal or resignation in the prescribed form; and
- (d) where there is a trustee for the holders of debentures of the company—give to the trustee a copy of the notice lodged with the Commission.”.

Powers and duties of auditors as to reports on accounts

85. Section 285 of the Principal Act is amended—

- (a) by omitting from sub-paragraph (3) (a) (i) “and” (last occurring);
- (b) by adding at the end of paragraph (3) (a) the following word and paragraph:

“and (iii) in accordance with applicable approved accounting standards;”;

- (c) by inserting after paragraph (3) (a) the following paragraph:

“(aa) if, in his opinion, the accounts, or, if the company is a holding company for which group accounts are required, the accounts or group accounts, have not been drawn up in accordance with a particular applicable approved accounting standard—

- (i) whether, in his opinion, the accounts or group accounts, as the case may be, would, if drawn up in accordance with that accounting standard, have given a true and fair view of the matters required by section 269 (or, in the case of a prescribed corporation within the meaning of section 288, by this Part) to be dealt with in the accounts or group accounts;

- (ii) if, in his opinion, the accounts or group accounts, as the case may be, would not, if so drawn up, have given a true and fair view of those matters—his reasons for being of that opinion;

- (iii) if the directors have caused to be attached to the accounts or group accounts a statement under sub-section 269 (9) or (10), as the case may be, giving particulars of the quantified financial effect on the accounts or group accounts of the failure to so draw up the accounts or group accounts—his opinion concerning the particulars; and

- (iv) in a case to which neither sub-paragraph (ii) nor (iii) applies—particulars of the quantified financial effect on the accounts or group accounts of the failure to so draw up the accounts or group accounts, as the case may be;”;

- (d) by inserting in paragraph (3) (e) “, (aa)” after “(a)”; and

- (e) by adding at the end thereof the following sub-section:

“(11) An auditor of a company or holding company who—

- (a) is not satisfied that accounts of the company, or group accounts of the holding company, have been drawn up in accordance with a particular applicable approved accounting standard; or

- (b) is of the opinion that accounts of the company, or group accounts of the holding company, have not been drawn up in

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accordance with a particular applicable approved accounting standard,

shall send by post to the Board, within 7 days after he furnishes to the directors of the company or holding company his report under this section on the accounts or group accounts, a copy of the report.”.

Examination of officers

86. Section 296 of the Principal Act is amended by omitting from sub-section (2) “An officer of the corporation” and substituting “A person”.

Power of Commission to make certain orders

87. Section 311 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

“(1A) The Commission may, by instrument in writing published in the *Gazette*, vary or revoke an order made under sub-section (1).”.

Application for winding up

88. Section 312 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) Where—

- (a) a report of an investigation under this Part has been made by an inspector; or
- (b) a report of an investigation under the provisions of a law of a participating State or participating Territory that correspond with this Part has been made by a person who is an inspector for the purposes of those provisions,

application may be made to the Court by the Commission—

- (c) if the corporation the subject of the report was incorporated or deemed to be incorporated under this Act or any corresponding previous law of the Territory—for the winding up of the corporation; or
- (d) if the corporation the subject of the report is a body to which Division 6 of Part XII applies—for the winding up of the corporation in accordance with that Division.”.

Remedy in cases of oppression or injustice

89. Section 320 of the Principal Act is amended by omitting sub-sections (1), (2), (3) and (4) and substituting the following sub-sections:

“(1) An application to the Court for an order under this section in relation to a company may be made—

- (a) by a member who believes—
 - (i) that affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly

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discriminatory against, a member or members, or in a manner that is contrary to the interests of the members as a whole; or

- (ii) that an act or omission, or a proposed act or omission, by or on behalf of the company, or a resolution, or a proposed resolution, of a class of members, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or was or would be contrary to the interests of the members as a whole; or
- (b) by the Commission, in a case where—
- (i) the Commission has received a report by an inspector under Part VII or under the provisions of a law of a participating State or participating Territory that correspond with that Part; or
 - (ii) the Commission has made a report, under Part VII or under the provisions of a law of a participating State or participating Territory that correspond with that Part, to the relevant authority within the meaning of that Part or of those provisions, as the case may be.

“(2) If the Court is of the opinion—

- (a) that affairs of a company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members (in this section referred to as the ‘oppressed member or members’) or in a manner that is contrary to the interests of the members as a whole; or
- (b) that an act or omission, or a proposed act or omission, by or on behalf of a company, or a resolution, or a proposed resolution, of a class of members of a company, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members (in this section also referred to as the ‘oppressed member or members’) or was or would be contrary to the interests of the members as a whole,

the Court may, subject to sub-section (4), make such order or orders as it thinks fit, including, but without limiting the generality of the foregoing, one or more of the following orders:

- (c) an order that the company be wound up;
- (d) an order for regulating the conduct of affairs of the company in the future;
- (e) an order for the purchase of the shares of any member by other members;
- (f) an order for the purchase of the shares of any member by the company and for the reduction accordingly of the company’s capital;
- (g) an order directing the company to institute, prosecute, defend or discontinue specified proceedings, or authorizing a member or members of the company to institute, prosecute, defend or discontinue specified proceedings in the name and on behalf of the company;

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- (h) an order appointing a receiver or a receiver and manager of property of the company;
- (j) an order restraining a person from engaging in specified conduct or from doing a specified act or thing;
- (k) an order requiring a person to do a specified act or thing.

“(3) A person who contravenes or fails to comply with an order made under sub-section (2) that is applicable to him is guilty of an offence.

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

“(4) The Court shall not make an order under sub-section (2) for the winding up of a company if it is of the opinion that the winding up of the company would unfairly prejudice the oppressed member or members.

“(4A) In this section and in paragraphs 364 (1) (f), (fa) and (fb) —

- (a) a reference to a member, in relation to a company, includes, in the case of a company limited by shares, or a company limited both by shares and by guarantee, a reference to a person to whom a share in the company has been transmitted by will or by operation of law;
- (b) a reference to affairs of a company being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member is a reference to affairs of a company being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a person who is a member, whether in his capacity as a member or in any other capacity; and
- (c) a reference to an act or omission by or on behalf of a company or a resolution of a class of members of a company being oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member is a reference to an act or omission by or on behalf of a company or a resolution of a class of members of a company being oppressive or unfairly prejudicial to, or unfairly discriminatory against, a person who is a member, whether in his capacity as a member or in any other capacity.

“(4B) Where an order that a company be wound up is made under this section, the provisions of this Act relating to the winding up of companies apply, with such adaptations as are necessary, as if the order had been made upon an application duly filed in the Court by the company.”.

90. Section 321 of the Principal Act is repealed and the following section is substituted:

Interpretation

“321. (1) In this Part, unless the contrary intention appears—

- (a) a reference to a receiver, in relation to property of a corporation, includes a reference to a receiver and manager of property of a corporation;

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- (b) a reference to property of a company shall be read as a reference to property of a company within or outside Australia;
- (c) a reference to property of a registered foreign company shall—
 - (i) in the case of a registered foreign company that was formed or incorporated in Australia—be read as a reference to property within the Territory of the registered foreign company; and
 - (ii) in the case of a registered foreign company that was formed or incorporated outside Australia—be read as a reference to property within Australia of the registered foreign company; and
- (d) a reference to property of a corporation shall—
 - (i) in the case of a corporation that is a company—be read as a reference to property of the company within or outside Australia;
 - (ii) in the case of a corporation that is a registered foreign company that was formed or incorporated outside Australia—be read as a reference to property within Australia of the registered foreign company; and
 - (iii) in the case of any other corporation—be read as a reference to property within the Territory of the corporation.

“(2) In this Part, unless the contrary intention appears—

‘Australia’ includes the external Territories;

‘officer’, in relation to a registered foreign company, includes a person who is the agent of the registered foreign company as defined in Division 5 of Part XIII.”

Disqualification for appointment as receiver, &c.

91. Section 323 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “, or shall act, as receiver of the property or part of the property” and substituting “as receiver of property”;
- (b) by omitting from paragraph (1) (c) “the” (first occurring) and substituting “any”;
- (c) by inserting after sub-section (1) the following sub-sections:

“(1A) Subject to sub-section (1B), none of the following persons shall act as receiver of property of a corporation:

- (a) a mortgagee of any property of the corporation;
- (b) an auditor or an officer of the corporation;
- (c) an officer of any corporation that is a mortgagee of any property of the corporation;
- (d) a person who is not a registered liquidator.

“(1B) Sub-section (1A) does not prohibit a person from acting as receiver of property of a corporation if he was appointed as a receiver

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of property of the corporation before the commencement of section 91 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1983*.”;

(d) by omitting sub-section (2) and substituting the following sub-section:

“(2) For the purposes of sub-section (1) or (1A), a person shall be deemed to be an officer of a company, or an officer of a corporation, as the case requires, if—

(a) he is an officer of a related corporation; or

(b) except where the Commission, if it thinks fit in the circumstances of the case, directs that this paragraph shall not apply in relation to him—he has, at any time within the immediately preceding period of 12 months, been an officer or promoter of the company or corporation, or of a related corporation.”;

(e) by omitting from sub-section (3) “the property, or part of the property,” and substituting “property”;

(f) by omitting from sub-section (4) “the” (last occurring);

(g) by inserting after sub-section (4) the following sub-section:

“(4A) Nothing in paragraph (1A) (d) applies to any corporation authorized by any Act, any law of the Territory or any law of a State or of another Territory to act as receiver of property of a corporation.”; and

(h) by omitting from sub-section (5) “the property or part of the property of a company” and substituting “property of a corporation”.

Liability of receiver

92. Section 324 of the Principal Act is amended—

(a) by omitting from sub-section (1) “company” (wherever occurring) and substituting “corporation”;

(b) by omitting from sub-section (3) “company” and substituting “corporation”; and

(c) by omitting sub-section (4).

93. After section 324 of the Principal Act the following sections are inserted:

Powers of receiver

“324A. (1) Subject to this section, a receiver of property of a corporation has power to do, in Australia and elsewhere, all things necessary or convenient to be done for or in connection with, or as incidental to, the attainment of the objectives for which he was appointed.

“(2) Without limiting the generality of sub-section (1), but subject to any provision of the court order by which, or the instrument under which, he was appointed, being a provision that limits his powers in any way, a receiver of

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property of a corporation has, in addition to any powers conferred on him by that order or instrument, as the case may be, or by any other law, power, for the purpose of attaining the objectives for which he was appointed—

- (a) to enter into possession and take control of property of the corporation in accordance with the terms of that order or instrument;
- (b) to lease, let on hire or dispose of property of the corporation;
- (c) to grant options over property of the corporation on such conditions as he thinks fit;
- (d) to borrow money on the security of property of the corporation;
- (e) to insure property of the corporation;
- (f) to repair, renew or enlarge property of the corporation;
- (g) to convert property of the corporation into money;
- (h) to carry on any business of the corporation;
- (j) to take on lease or on hire, or to acquire, any property necessary or convenient in connection with the carrying on of a business of the corporation;
- (k) to execute any document, bring or defend any proceedings or do any other act or thing in the name of and on behalf of the corporation;
- (m) to draw, accept, make and indorse a bill of exchange or promissory note;
- (n) to use a seal of the corporation;
- (o) to engage or discharge employees on behalf of the corporation;
- (p) to appoint a solicitor, accountant or other professionally qualified person to assist the receiver;
- (q) to appoint an agent to do any business that the receiver is unable to do himself or that can more conveniently be done by an agent;
- (r) where a debt or liability is owed to the corporation—to prove the debt or liability in a bankruptcy, insolvency or winding up and, in connection therewith, to receive dividends and to assent to a proposal for a composition or a scheme of arrangement;
- (s) where the receiver was appointed under an instrument that created a charge on uncalled capital or uncalled premiums of the corporation—
 - (i) in the name of the corporation, to make a call in respect of money unpaid on shares in the corporation (whether on account of the nominal value of the shares or by way of premium); or
 - (ii) upon the giving of a proper indemnity to a liquidator of the corporation—in the name of the liquidator, to make a call in respect of money unpaid on account of the nominal value of shares in the corporation;
- (t) to enforce payment of any call that is due and unpaid, whether the calls were made by the receiver or otherwise;

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- (u) to make or defend an application for the winding up of the corporation; and
- (v) to refer to arbitration any question affecting the corporation.

“(3) The conferring by this section on a receiver of powers in relation to property of a corporation does not affect any rights in relation to that property of any other person other than the corporation.

“(4) In this section, a reference, in relation to a receiver, to property of a corporation is, unless the contrary intention appears, a reference to the property of the corporation in relation to which the receiver was appointed.

“(5) This section does not apply in relation to a receiver appointed before the commencement of section 93 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1983*, but nothing in this section shall be taken to limit by implication the powers of such a receiver.

Duties of receiver with respect to bank accounts and accounting records

“324B. (1) A receiver of property of a corporation shall—

- (a) open and maintain a bank account bearing his own name, the title ‘receiver’ and the name of the corporation;
- (b) within 3 business days after money of the corporation comes under his control, pay that money into the account referred to in paragraph (a);
- (c) ensure that the account referred to in paragraph (a) does not contain any moneys other than the moneys of the corporation that come under his control; and
- (d) keep such accounting records as correctly record and explain all transactions entered into by him as receiver.

“(2) A receiver who contravenes or fails to comply with sub-section (1) is guilty of an offence.

“(3) Any director, creditor or member of a corporation may, unless the Court otherwise orders, personally or by his agent, inspect records kept by a receiver of property of the corporation for the purposes of paragraph (1) (d).

Reports by receiver

“324C. (1) If it appears to the receiver of property of a company or registered foreign company that—

- (a) a past or present officer, or a member, of the company or registered foreign company may have been guilty of an offence under any law of the Commonwealth or of a State or Territory in relation to the company or registered foreign company; or
- (b) a person who has taken part in the formation, promotion, administration, management or winding up of the company or registered foreign company—
 - (i) may have misapplied or retained, or may have become liable or accountable for, any money or property (whether the property

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is within or outside the Territory or within or outside Australia)
of the company or registered foreign company; or

- (ii) may have been guilty of any negligence, default, breach of duty or breach of trust in relation to the company or registered foreign company,

the receiver shall—

- (c) forthwith report the matter to the Commission; and
- (d) furnish the Commission with such information, and give to it such access to and facilities for inspecting and taking copies of any documents, as the Commission requires.

“(2) The receiver may also, if he thinks fit, lodge with the Commission further reports specifying any other matter that, in his opinion, it is desirable to bring to the notice of the Commission.

“(3) If it appears to the Court—

- (a) that a past or present officer, or a member, of a company or registered foreign company in respect of property of which a receiver has been appointed has been guilty of an offence under a law referred to in paragraph (1) (a) in relation to the company or registered foreign company; or
- (b) that a person who has taken part in the formation, promotion, administration, management or winding up of a company or registered foreign company in respect of property of which a receiver has been appointed has engaged in conduct referred to in paragraph (1) (b) in relation to the company or registered foreign company,

and that the receiver has not made a report to the Commission with respect to the matter, the Court may, on the application of a person interested in the appointment of the receiver or of its own motion, direct the receiver to make such a report.

Prosecution of delinquent officers and members

“324D. (1) Where a report is made under section 324C, the Commission may, if it thinks fit, investigate the matter.

“(2) Where the Commission decides to institute a prosecution against a person following a report to the Commission under section 324C, the Commission may, by notice in writing given before or after the institution of the prosecution, require an officer of the company or registered foreign company to which the matter reported to the Commission relates (not being an officer who is, or, in the opinion of the Commission, is likely to be, a defendant in the proceedings or who is or has been a duly qualified legal practitioner acting for such a person) to give all assistance in connection with the prosecution or proposed prosecution that he is reasonably able to give.

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“(3) Where a person is required pursuant to sub-section (2) to give assistance in connection with a prosecution or proposed prosecution, the person shall not—

- (a) without reasonable excuse, refuse or fail to comply with the requirement; or
- (b) in purported compliance with the requirement, furnish information or make a statement that is false or misleading in a material particular.

Penalty: \$10,000 or imprisonment for 2 years, or both.

“(4) A person is not excused from furnishing information pursuant to a requirement made of him under sub-section (2) on the ground that the information might tend to incriminate him but, where the person claims before furnishing information that the information might tend to incriminate him, the information is not admissible in evidence against him in criminal proceedings other than proceedings under this section.

“(5) For the purposes of sub-section (2), ‘officer’, in relation to a company or registered foreign company, means a person who is an officer of the company or registered foreign company as defined in sub-section 5 (1) and includes—

- (a) a person who has at any time been an officer of the company or registered foreign company as defined in that sub-section or in the corresponding provision of a previous law of the Territory;
- (b) in relation to a registered foreign company—a person who is, or has at any time been, an agent of the registered foreign company as defined in Division 5 of Part XIII or in the corresponding provisions of a previous law of the Territory; and
- (c) a person who acts, or has at any time acted, as banker, solicitor, auditor or in any other capacity for the company or registered foreign company.

Supervision of receivers

“324E. (1) If—

- (a) it appears to the Court or to the Commission that a receiver of property of a corporation has not faithfully performed or is not faithfully performing his duties or has not observed or is not observing—
 - (i) a requirement of the order by which, or the instrument under which, he was appointed;
 - (ii) a requirement of the Court; or
 - (iii) a requirement of this Act, of the regulations or of the rules; or

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- (b) a complaint is made to the Court or to the Commission by any person with respect to the conduct of a receiver of property of a corporation in connection with the performance of his duties,

the Court or the Commission, as the case may be, may inquire into the matter and, where the Court or Commission so inquires, the Court may take such action as it thinks fit.

“(2) The Commission may report to the Court any matter that in its opinion is a misfeasance, neglect or omission on the part of the receiver and the Court may order the receiver to make good any loss that the estate of the corporation has sustained thereby and may make such other order or orders as it thinks fit.

“(3) The Court may at any time require a receiver of property of a corporation to answer any inquiry in relation to the performance of his duties as receiver and may examine him or any other person on oath or affirmation concerning the performance of the receiver’s duties and may direct an investigation to be made of the books of the receiver.

Receiver may apply to Court

“324F. A receiver of property of a company or registered foreign company appointed under the powers contained in any instrument may apply to the Court for directions in relation to any matter arising in connection with the performance of his functions.”.

Power of Court to fix remuneration of receivers

94. Section 325 of the Principal Act is amended—

- (a) by inserting in sub-section (1) “or registered foreign company” after “company” (first occurring); and
- (b) by omitting from sub-section (1) “the property or part of the property of the company” and substituting “property of the company or registered foreign company”.

95. After section 325 of the Principal Act the following section is inserted:

Receiver to enjoy qualified privilege in certain circumstances

“325A. (1) A receiver of property of a corporation is not, in the absence of malice on his part, liable to any action for defamation at the suit of any person in respect of any matter contained in a report made by him pursuant to section 324C or any comments made by him pursuant to paragraph 328 (1) (c).

“(2) This section does not limit or affect any other right, privilege or immunity that a receiver of property of a corporation or any other person has as defendant in an action for defamation.”.

Notification of appointment of receiver

96. Section 326 of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-section:

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“(1) A person who obtains an order for the appointment of a receiver of property of a company or registered foreign company, or appoints such a receiver under any powers contained in an instrument, shall—

- (a) within 7 days after he has obtained the order or made the appointment, lodge with the Commission notice that the order has been obtained, or that the appointment has been made, as the case may be; and
 - (b) within 21 days after he has obtained the order or made the appointment, cause notice that the order has been obtained, or that the appointment has been made, as the case may be, to be published in the *Gazette*.”
- (b) by omitting from sub-section (1A) “the property or part of the”; and
- (c) by omitting sub-section (2) and substituting the following sub-section:

“(2) Where a person appointed as receiver of property of a company or registered foreign company ceases to act as such, he shall—

- (a) within 7 days after so ceasing to act, lodge with the Commission notice that he has so ceased to act; and
- (b) within 21 days after so ceasing to act, cause notice that he has so ceased to act to be published in the *Gazette*.”

Statement that receiver appointed

97. Section 327 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “of the property or part of the property of a corporation” and substituting “of property of a corporation (whether the property is within or outside the Territory or within or outside Australia)”; and
- (b) by inserting in sub-section (2) “of property of the corporation” after “receiver”.

Provisions as to information where receiver appointed

98. Section 328 of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-section:

“(1) Where a receiver of property of a company or registered foreign company is appointed—

 - (a) the receiver shall forthwith serve on the company or registered foreign company notice of his appointment;
 - (b) the persons who were the directors and the secretary of the company, or the person who was the agent of the registered foreign company, as the case may be, at the date of the receiver’s appointment, shall, within 14 days after the company or registered foreign company receives the notice referred to in paragraph (a), make out and submit to the receiver a report in

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the prescribed form as to the affairs of the company or registered foreign company as at the date of that appointment; and

- (c) the receiver shall, within one month after receipt of the report—
- (i) lodge with the Commission a copy of the report and a notice setting out any comments he sees fit to make relating to the report or, if he does not see fit to make any comment, a notice stating that he does not see fit to make any comment;
 - (ii) send to the company or registered foreign company a copy of the notice lodged with the Commission in accordance with sub-paragraph (i); and
 - (iii) where the receiver is appointed by or on behalf of the holders of debentures of the company or registered foreign company, send to the trustees (if any) for those holders, a copy of the report and a copy of the notice lodged with the Commission in accordance with sub-paragraph (i).”;
- (b) by inserting in sub-section (2) “or registered foreign company” after “company” (first occurring);
- (c) by omitting from sub-section (2) “, at the date of the receiver’s appointment, the directors and the secretary of the company” and substituting “the directors and the secretary of the company, or the person who was the agent of the registered foreign company, as the case may be, at the date of the receiver’s appointment”;
- (d) by inserting in paragraph (2) (a) “or that person, as the case may be” after “those persons”;
- (e) by inserting in sub-section (3) “, or the person who was, at the date of the receiver’s appointment, the agent of a registered foreign company is,” after “are”;
- (f) by inserting in sub-section (3) “or registered foreign company, as the case may be,” after “company” (last occurring);
- (g) by inserting in paragraph (3) (a) “or that person, as the case may be” after “those persons”;
- (h) by inserting in paragraph (3) (b) “or person” after “the persons”;
- (j) by omitting sub-section (4) and substituting the following sub-section:
- “(4) Sub-sections (1), (2) and (3) do not apply in relation to the appointment of a receiver to act with an existing receiver or in place of a receiver who has died or ceased to act, except that, where sub-section (1) applies to a receiver who dies or ceases to act before that sub-section has been fully complied with, the references in paragraphs (1) (b) and (c) and sub-sections (2) and (3) to the receiver (other than the first such reference in paragraph (1) (b) and sub-section (2)

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and the first and second such references in sub-section (3)) shall, subject to sub-section (5), be read as including references to his successor and to any continuing receiver.”; and

- (k) by inserting in sub-section (5) “or registered foreign company” after “company”.

Receiver may require reports

99. Section 329 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “the property or part of the”; and
(b) by inserting in sub-sections (1) and (2) “or registered foreign company” after “company” (wherever occurring).

100. After section 329 of the Principal Act the following section is inserted:

Receiver may inspect books

“329A. A receiver of property of a corporation is entitled to inspect at any reasonable time any books of the corporation that relate to that property and a person who refuses or fails to allow the receiver to inspect such books at such a time is guilty of an offence.”.

Lodging of accounts of receiver

101. Section 330 of the Principal Act is amended by omitting from sub-section (1) “the property or part of the property of a company, or of the property or part of the property within the Territory of a registered foreign company, shall” and substituting “property of a company or registered foreign company shall,”.

Payment of certain debts out of property subject to floating charge in priority to claims under charge

102. Section 331 of the Principal Act is amended—

- (a) by inserting in sub-section (1) “or registered foreign company” after “company” (wherever occurring);
(b) by omitting from sub-section (2) “The following debts or amounts shall be paid out of the property coming to the hands of the receiver or other person taking possession or assuming control” and substituting “The receiver or other person taking possession or assuming control of property of a company shall pay, out of the property coming into his hands, the following debts or amounts”; and
(c) omitting sub-section (3) and substituting the following sub-sections:

“(2A) The receiver or other person taking possession or assuming control of property of a registered foreign company shall pay, out of the property of the registered foreign company coming into his hands, the following debts or amounts in priority to any claim for principal or interest in respect of the debentures:

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- (a) first, any amount that in a winding up is payable in priority to unsecured debts pursuant to section 447;
- (b) second, any debt or amount that in a winding up is payable in priority to other unsecured debts pursuant to paragraph 441 (e) or (g) or section 445.

“(3) The receiver or other person taking possession or assuming control of property shall pay debts and amounts payable pursuant to paragraph (2) (c) or (2A) (b) in the same order of priority as is prescribed by Subdivision C of Division 4 of Part XII in respect of those debts and amounts.”.

Enforcement of duty of receiver to make returns

103. Section 332 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “the property or part of the property of a company” and substituting “property of a company or registered foreign company”;
- (b) by inserting in paragraphs (1) (a) and (b) “or registered foreign company” after “company” (wherever occurring); and
- (c) by inserting in sub-section (2) “or registered foreign company” after “company” (wherever occurring).

Notice of appointment and address of official manager

104. Section 340 of the Principal Act is amended by omitting sub-sections (1) and (2) and substituting the following sub-sections:

“(1) A person who has been appointed official manager of a company shall—

- (a) within 7 days after the date of his appointment, lodge with the Commission notice in the prescribed form of his appointment as official manager and of the address of his office; and
- (b) within 14 days after any change in the situation of his office, lodge with the Commission notice in the prescribed form of the change.

“(2) A person shall—

- (a) within 7 days after his resignation or removal from office as official manager of a company, lodge with the Commission notice in the prescribed form of his resignation or removal; and
- (b) within 21 days after his resignation or removal from office as official manager of a company, cause notice of his resignation or removal to be published in the *Gazette*.”.

Effect of resolution

105. Section 341 of the Principal Act is amended by omitting from sub-section (2) “of the company and its creditors” and substituting “of the creditors and members of the company”.

Six-monthly meetings of creditors and members

106. Section 342 of the Principal Act is amended by inserting after sub-section (6) the following sub-section:

“(6A) Where a quorum is not present at a meeting convened in accordance with sub-section (1), the official manager shall, within 7 days after the day for which the meeting was convened or, if the meeting was adjourned and no quorum is present at the adjourned meeting, within 7 days after the day to which the meeting was adjourned, lodge with the Commission—

- (a) a notice stating—
 - (i) that the meeting was duly convened and that no quorum was present; or
 - (ii) that the meeting was duly convened and adjourned and that no quorum was present at the adjourned meeting,as the case requires; and
- (b) a copy of the statement and a copy of the report prepared in accordance with paragraph (1) (a).”.

Circumstances in which company may be wound up by Court

107. Section 364 of the Principal Act is amended by inserting after paragraph (1) (f) the following paragraphs:

- “(fa) affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or in a manner that is contrary to the interests of the members as a whole;
- (fb) an act or omission, or a proposed act or omission, by or on behalf of the company, or a resolution, or a proposed resolution, of a class of members of the company, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or was or would be contrary to the interests of the members as a whole;”.

Repeal of section 380

108. Section 380 of the Principal Act is repealed.

Final meeting and dissolution

109. Section 411 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “the company and the creditors” and substituting “the creditors and members of the company”; and
- (b) by omitting from sub-section (4) “company and of the creditors, 2 members and 2 creditors” and substituting “creditors and members of the company, 2 creditors and 2 members”.

Reports by liquidator

110. Section 418 of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-section:

- “(3) If it appears to the Court, in the course of winding up a company—
- (a) that a past or present officer, or a contributory or member, of the company has been guilty of an offence under a law referred to in paragraph (1) (a) in relation to the company; or
 - (b) that a person who has taken part in the formation, promotion, administration, management or winding up of the company has engaged in conduct referred to in paragraph (1) (b) in relation to the company,

and that the liquidator has not made a report to the Commission with respect to the matter, the Court may, on the application of a person interested in the winding up or of its own motion, direct the liquidator to make such a report.”.

Supervision of liquidators

111. Section 420 of the Principal Act is amended by omitting paragraph (1) and substituting the following paragraph:

- “(a) it appears to the Court or to the Commission that a liquidator has not faithfully performed or is not faithfully performing his duties or has not observed or is not observing—
- (i) a requirement of the Court; or
 - (ii) a requirement of this Act, of the regulations or of the rules; or”.

112. After section 421 of the Principal Act the following section is inserted:

Regulations relating to money, &c., received by liquidator

- “421A. (1) The regulations may—
- (a) require a liquidator to pay, into such bank and account, in such manner and at such times as are prescribed, money received by him;
 - (b) prescribe the circumstances and manner in which money paid into such an account is to be paid out;
 - (c) require a liquidator of a company to deposit, in such bank, in such manner and at such times as are prescribed, bills, notes or other securities payable to the company or its liquidator;
 - (d) prescribe the circumstances and manner in which bills, notes or other securities so deposited are to be delivered out;
 - (e) make provision for and in relation to the giving by the Court of directions with respect to the payment, deposit or custody of money payable to or into the possession of a liquidator, or of bills, notes or other securities so payable; and

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(f) provide for—

- (i) the payment by a liquidator of interest at such rate, on such amount and in respect of such period as is prescribed;
- (ii) disallowance of all or of such part as is prescribed of the remuneration of a liquidator;
- (iii) the removal from office of a liquidator by the Court; and
- (iv) the payment by a liquidator of any expenses occasioned by reason of his default,

where a liquidator contravenes or fails to comply with regulations made under this section.

“(2) Regulations made under this section may apply generally or in relation to windings up included in a particular class of windings up.”.

Prosecution of delinquent officers and members

113. Section 457 of the Principal Act is amended—

- (a) by omitting from sub-section (4) “or producing a document” and “or document”;
- (b) by omitting from sub-section (5) “an officer” (first occurring) and substituting “a person who is an officer of the company”; and
- (c) by omitting paragraph (5) (a) and substituting the following paragraph:
 - “(a) a person who has at any time been an officer of the company as defined in that sub-section or in the corresponding provision of a previous law of the Territory; and”.

Power of Commission to deregister defunct company

114. Section 459 of the Principal Act is amended by adding at the end of sub-section (7) “, but failure of the Commission to do so does not affect the validity of the reinstatement”.

Special requirements as to articles and prospectus

115. Section 494 of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-section:
 - “(1) An investment company shall not issue a prospectus or permit a prospectus to be issued on its behalf unless the prospectus—
 - (a) where the memorandum of the company contains a provision stating the objects of the company—
 - (i) specifies the type of security in which, in accordance with the objects of the company, the company may invest; and
 - (ii) states whether it is among the objects of the company to invest in Australia or outside Australia or both; or

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- (b) where the memorandum of the company does not contain a provision stating the objects of the company—states that the memorandum does not contain such a provision.”; and
- (b) by omitting from sub-section (2) “paragraphs (1) (a) and (b)” and substituting “paragraph (1) (a) or (b), as the case requires”.

Notice to be lodged where documents, &c., altered

116. Section 515 of the Principal Act is amended—

- (a) by omitting paragraph (2) (b) and substituting the following paragraph:
 - “(b) the directors, or the members of the committee of management, council or other governing body, of a registered foreign company;”;
- (b) by omitting paragraph (2) (d) and substituting the following paragraph:
 - “(d) the situation of the registered office or, if there is no registered office, of the principal place of business, of a registered foreign company in its place of incorporation or formation;”.

Cessation of business, &c.

117. Section 518 of the Principal Act is amended by adding at the end of sub-section (9) “, but failure of the Commission to do so does not affect the validity of the restoration of the name to the register”.

Location of registers

118. Section 547 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “or 256” and substituting “, 256 or 261”;
- (b) by inserting in sub-section (1) “at an office at” before “the principal place”;
- (c) by omitting from paragraph (1) (c) “another place in Australia” and substituting “another office in Australia, being an office of the company or of another person”;
- (d) by inserting in sub-section (2) “at an office at” before “the principal place”;
- (e) by omitting from paragraph (2) (c) “another place in Australia” and substituting “another office in Australia, being an office of the company or of another person”;
- (f) by omitting from sub-section (4) “a place” and substituting “an office”; and
- (g) by omitting from sub-section (4) “the place” (first occurring) and substituting “the address of the office”.

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Interpretation

119. Section 553 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (e) “the property or part of the”;
- (b) by omitting “the property or any part of the” from paragraph (d) of the definition of “appropriate officer” in sub-section (3); and
- (c) by omitting “the property or any part of the” from paragraph (d) of the definition of “relevant day” in sub-section (3).

Court may disqualify person from being a director, &c., in certain circumstances

120. Section 562 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (f) “the property or part of the”; and
- (b) by omitting from sub-section (2) “acting as a director of, or from being concerned” and substituting “being a director or promoter of, or from being in any way (whether directly or indirectly) concerned in”.

121. After section 570 of the Principal Act the following section is inserted:

Penalty notices

“570A. (1) Where the Commission has reason to believe that a person has, whether before or after the commencement of section 121 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1983*, committed a prescribed offence, the Commission may, subject to sub-section (2), serve on the person a notice in the prescribed form—

- (a) alleging that the person has committed the prescribed offence and giving the prescribed particulars in relation to the prescribed offence;
- (b) setting out the prescribed penalty in respect of the prescribed offence; and
- (c) stating—
 - (i) in the case of a prescribed offence constituted by a failure to do a particular act or thing—
 - (A) that the obligation to do the act or thing continues notwithstanding the service of the notice or the payment of the prescribed penalty;
 - (B) that if, within the period specified in the notice (being a period that is not less than 21 days), the person pays the prescribed penalty to the authority specified in the notice and does the act or thing, no further action will be taken against the person in relation to the prescribed offence; and
 - (C) that if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice or has not done the act or thing, proceedings may be instituted against the person; or

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(ii) in the case of a prescribed offence, not being an offence constituted by a failure to do a particular act or thing—

(A) that if, within the period specified in the notice (being a period that is not less than 21 days), the person pays the prescribed penalty to the authority specified in the notice, no further action will be taken against the person in relation to the prescribed offence; and

(B) that if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice, proceedings may be instituted against the person.

“(2) Sub-section (1) does not empower the Commission—

(a) to serve on a person more than one notice under that sub-section in relation to an alleged commission by that person of a particular prescribed offence; or

(b) to serve on a person a notice under that sub-section in relation to a prescribed offence unless proceedings could be instituted against that person for that offence in accordance with section 34 of the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980*.

“(3) A notice under sub-section (1) may be served on a natural person either personally or by post.

“(4) Where a notice under sub-section (1) is served on a person in relation to a prescribed offence constituted by a failure to do a particular act or thing—

(a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice, and does the act or thing—no proceedings may be instituted against the person in respect of the prescribed offence;

(b) if, at the expiration of the period specified in the notice, the person has paid the prescribed penalty to the authority specified in the notice but has not done the act or thing—no proceedings may be instituted against the person in respect of the prescribed offence, but the obligation to do that act or thing continues, and section 571 applies in relation to the continued failure to do that act or thing as if, on the day on which the person so paid the prescribed penalty, he had been convicted of an offence constituted by a failure to do that act or thing;

(c) if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice but has done the act or thing—proceedings may be instituted against the person in respect of the prescribed offence; or

(d) if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice and has not done the act or thing—the obligation to do that act or thing

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continues, and proceedings may be instituted against the person in respect of the prescribed offence.

“(5) Where a notice under sub-section (1) is served on a person in relation to a prescribed offence, not being an offence constituted by a failure to do a particular act or thing—

- (a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice—no proceedings may be instituted against the person in respect of the prescribed offence; or
- (b) if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice—proceedings may be instituted against the person in respect of the prescribed offence.

“(6) The payment of an amount by a person pursuant to a notice served on the person under this section in relation to a prescribed offence shall not be taken for any purpose to be an admission by that person of any liability in connection with the alleged commission of the prescribed offence.

“(7) Except as provided by paragraphs (4) (a) and (b) and (5) (a), this section does not affect the operation of any provision of this Act, of the regulations, of the rules or of any other Act in relation to the institution of proceedings in respect of offences that are prescribed offences for the purposes of this section.

“(8) In this section, ‘authority’ includes a person.”.

Continuing offences

122. Section 571 of the Principal Act is amended by omitting paragraph (1) (e) and substituting the following paragraph:

- “(e) where a person is convicted of an offence that is constituted by failure to do that act or thing within that period or before that time, as the case may be, that person is guilty of a separate and further offence in respect of each day after the day of the conviction during which the failure to do that act or thing continues; and”.

Injunctions

123. Section 574 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “an offence against” and substituting “a contravention of”;
- (b) by omitting sub-section (2) and substituting the following sub-section:
 - “(2) Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that he is required by this Act to do, the Court may, on the application of—
 - (a) the Commission; or

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- (b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,
grant an injunction requiring the first-mentioned person to do that act or thing.”; and
- (c) by omitting from paragraph (6) (b) “engages in conduct of that kind” and substituting “refuses or fails to do that act or thing”.

Regulations

124. Section 577 of the Principal Act is amended by adding at the end thereof the following sub-sections:

“(6) Regulations providing for allowances and expenses for the purposes of sub-section 30G (4) 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.

“(7) The regulations—

- (a) may prescribe offences against this Act (not being offences the penalties applicable to which include a term of imprisonment or a pecuniary penalty that exceeds \$1,000), or offences against the regulations, for the purposes of section 570A; and
- (b) shall, in relation to each offence that is prescribed pursuant to this sub-section—
 - (i) prescribe the particulars of that offence that are to be given in a notice served on a person under section 570A in relation to the offence; and
 - (ii) prescribe the amount of the penalty (being an amount that does not exceed half the amount of the penalty applicable to the offence) that is payable in respect of the offence pursuant to a notice served on a person under section 570A in relation to the offence.

“(8) In sub-section (7), a reference to a penalty applicable to an offence is a reference to the penalty that is applicable to that offence by virtue of any of the provisions of section 570.

“(9) The particulars of an offence required to be prescribed by sub-paragraph (7) (b) (i) may be prescribed by being set out in the form prescribed for the purposes of section 570A in relation to the offence.”.

Repeal of Schedule 2

125. Schedule 2 to the Principal Act is repealed.

Amendment of Schedule 3

126. Schedule 3 to the Principal Act is amended—

(a) by omitting regulation 5 of Table A and substituting the following regulation:

“5. (1) The company may exercise the power to make payments by way of brokerage or commission conferred by the Act in the manner provided by the Act.

“(2) Payments by way of brokerage or commission may be satisfied by the payment of cash, by the allotment of fully or partly paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.”;

(b) by omitting paragraphs 65 (a) and (b) of Table A;

(c) by omitting regulation 5 of Table B and substituting the following regulation:

“5. (1) The company may exercise the power to make payments by way of brokerage or commission conferred by the Act in the manner provided by the Act.

“(2) Payments by way of brokerage or commission may be satisfied by the payment of cash, by the allotment of fully or partly paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.”; and

(d) by omitting paragraphs 49 (a) and (b) of Table B.

Amendment of Schedule 5

127. Schedule 5 to the Principal Act is amended by inserting after clause 3 the following clause:

“3A. Where, by virtue of the definition of ‘priority time’ in clause 6, a registered charge has 2 or more priority times each of which relates to a particular liability secured by the charge, each of those liabilities shall, for the purposes of this Schedule, be deemed to be secured by a separate registered charge the priority time of which is the priority time of the first-mentioned registered charge that relates to the liability concerned.”.

Further amendments

128. The Principal Act is amended as set out in Schedule 1.

**PART IV—AMENDMENT OF COMPANIES (TRANSITIONAL
PROVISIONS) ACT 1981**

Principal Act

129. The *Companies (Transitional Provisions) Act 1981*³ is in this Part referred to as the Principal Act.

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Registered auditors and liquidators

130. Section 26 of the Principal Act is amended by inserting in sub-section (2) “and Subdivision B of Division 2 of Part II” after “section 27”.

**PART V—AMENDMENTS OF COMPANIES AND SECURITIES
(INTERPRETATION AND MISCELLANEOUS PROVISIONS) ACT
1980**

Principal Act

131. The *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980*⁴ is in this Part referred to as the Principal Act.

132. After section 5 of the Principal Act the following section is inserted in Division 1 of Part II:

Regard to be had to purpose or object of relevant Act

“5A. (1) In the interpretation of a provision of a relevant Act, a construction that would promote the purpose or object underlying the relevant Act (whether that purpose or object is expressly stated in the relevant Act or not) shall be preferred to a construction that would not promote that purpose or object.

“(2) Nothing in sub-section (1) shall be construed as authorizing, in the interpretation of a provision of a relevant Act, the consideration of any matter or document not forming part of the relevant Act for any purpose for which that matter or document could not be considered apart from that sub-section.”.

Definitions

133. Section 9 of the Principal Act is amended by omitting “*Seat of Government Act 1909*” from the definition of “the Territory” or “the Australian Capital Territory” and substituting “*Seat of Government Acceptance Act 1909*”.

134. After section 38 of the Principal Act the following section is inserted in Part III:

Evidence

“38A. For the purposes of a relevant Act, a certificate that—

- (a) purports to be signed by the registrar or other proper officer of a federal court or of a court of a State or Territory; and
- (b) states—
 - (i) that a person was convicted by that court on a specified date of a specified offence; or
 - (ii) that a person charged before that court with a specified offence was, on a specified date, found in that court to have committed

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the offence but that the court did not proceed to convict the person of the offence,

is, unless it is proved that the conviction was quashed or set aside, or that the finding was set aside or reversed, as the case may be, conclusive evidence—

- (c) in a case to which sub-paragraph (b)(i) applies—that the person was convicted of the offence on that date; and
- (d) in any case, where the offence was constituted by a contravention of, or a failure to comply with, a provision of a law—that the person contravened, or failed to comply with, that provision.”.

**PART VI—AMENDMENTS OF NATIONAL COMPANIES AND
SECURITIES COMMISSION ACT 1979**

Principal Act

135. The *National Companies and Securities Commission Act 1979*^s is in this Part referred to as the Principal Act.

Interpretation

136. Section 3 of the Principal Act is amended by inserting before the definition of “acting member” in sub-section (1) the following definition:

“ ‘Accounting Standards Review Board’ means the body, known as the Accounting Standards Review Board, established by the Ministerial Council;”.

Application of moneys

137. Section 29 of the Principal Act is amended—

- (a) by inserting in paragraph (1) (a) “, by the Accounting Standards Review Board” after “Commission” (first occurring);
- (b) by inserting in paragraph (1) (a) “or that Board,” after “Commission” (second occurring); and
- (c) by inserting in paragraph (1) (b) “the Accounting Standards Review Board or of” after “members of”.

Power to summon witnesses and take evidence

138. Section 37 of the Principal Act is amended by omitting from sub-section (3) “answers he will give to the questions asked him” and substituting “evidence he will give”.

139. After section 43 of the Principal Act the following section is inserted:

Accounting Standards Review Board

“43A. For the purpose of the performance of the functions and the exercise of the powers of the Accounting Standards Review Board, the Commission shall provide to the Board such staff and facilities as are approved by the Ministerial Council.”.

**PART VII—AMENDMENTS OF SECURITIES INDUSTRY ACT
1980**

Principal Act

140. The *Securities Industry Act 1980*⁶ is in this Part referred to as the Principal Act.

Interpretation

141. Section 4 of the Principal Act is amended—

- (a) by omitting “the property or any part of the” from paragraph (b) of the definition of “officer” in sub-section (1); and
- (b) by inserting after sub-section (1A) the following sub-section:

“(1B) For the purposes of this Act, a person shall not be regarded as a person in accordance with whose directions or instructions the directors of a body corporate are accustomed to act by reason only that the directors act on advice given by that person in the proper performance of the functions attaching to his professional capacity or to his business relationship with the directors or the body corporate.”.

Power of Court to make certain orders

142. Section 14 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “, without prejudice to any orders it would be entitled to make otherwise than pursuant to this section, make” and substituting “make such order or orders as it thinks fit, including, but without limiting the generality of the foregoing,”; and
- (b) by omitting sub-section (2) and substituting the following sub-section:

“(2) The Court shall not make an order under sub-section (1) if it is satisfied that the order would unfairly prejudice any person.”.

Conditions to which licence is subject

143. Section 51 of the Principal Act is amended by omitting from paragraph (2) (d) “\$20,000” and substituting “the prescribed amount”.

Further provisions relating to revocation and suspension of licences

144. Section 60 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “or” (last occurring); and
- (b) by inserting after paragraph (1) (b) the following word and paragraph:

“; or (c) the application for a licence contained matter that was false in a material particular or materially misleading in the form

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or context in which it appeared, or there was an omission of material matter from the application for a licence.”.

Deposits to be invested by stock exchange

145. Section 97 of the Principal Act is amended by omitting from sub-section (7) “Penalty: \$5,000 or imprisonment for 1 year.” and substituting “Penalty: \$5,000 or imprisonment for 1 year, or both.”.

Prohibition of dealings in securities by insiders

146. Section 128 of the Principal Act is amended—

- (a) by omitting from sub-section (6) “sub-section (7)” and substituting “sub-sections (7) and (7A)”;
- (b) by inserting after sub-section (7) the following sub-section:

“(7A) A body corporate is not precluded by sub-section (6) from dealing in securities of another body corporate at any time by reason only of information in the possession of an officer of that first-mentioned body corporate, being information that was obtained by the officer in the course of the performance of his duties as an officer of that first-mentioned body corporate and that relates only to proposed dealings by that first-mentioned body corporate in securities of that other body corporate.”; and

- (c) by omitting from paragraph (11) (b) “the property or any part of the”.

147. After section 141 of the Principal Act the following section is inserted:

Penalty notices

“141A. (1) Where the Commission has reason to believe that a person has, whether before or after the commencement of section 147 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1983*, committed a prescribed offence, the Commission may, subject to sub-section (2), serve on the person a notice in the prescribed form—

- (a) alleging that the person has committed the prescribed offence and giving the prescribed particulars in relation to the prescribed offence;
- (b) setting out the prescribed penalty in respect of the prescribed offence; and
- (c) stating—
 - (i) in the case of a prescribed offence constituted by a failure to do a particular act or thing—
 - (A) that the obligation to do the act or thing continues notwithstanding the service of the notice or the payment of the prescribed penalty;
 - (B) that if, within the period specified in the notice (being a period that is not less than 21 days), the person pays the prescribed penalty to the authority specified in the

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notice and does the act or thing, no further action will be taken against the person in relation to the prescribed offence; and

- (C) that if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice or has not done the act or thing, proceedings may be instituted against the person; or
- (ii) in the case of a prescribed offence, not being an offence constituted by a failure to do a particular act or thing—
 - (A) that if, within the period specified in the notice (being a period that is not less than 21 days), the person pays the prescribed penalty to the authority specified in the notice, no further action will be taken against the person in relation to the prescribed offence; and
 - (B) that if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice, proceedings may be instituted against the person.

“(2) Sub-section (1) does not empower the Commission—

- (a) to serve on a person more than one notice under that sub-section in relation to an alleged commission by that person of a particular prescribed offence; or
- (b) to serve on a person a notice under that sub-section in relation to a prescribed offence unless proceedings could be instituted against that person for that offence in accordance with section 34 of the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980*.

“(3) A notice under sub-section (1) may be served on a natural person either personally or by post.

“(4) Where a notice under sub-section (1) is served on a person in relation to a prescribed offence constituted by a failure to do a particular act or thing—

- (a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice, and does the act or thing—no proceedings may be instituted against the person in respect of the prescribed offence;
- (b) if, at the expiration of the period specified in the notice, the person has paid the prescribed penalty to the authority specified in the notice but has not done the act or thing—no proceedings may be instituted against the person in respect of the prescribed offence, but the obligation to do that act or thing continues, and section 142 applies in relation to the continued failure to do that act or thing as if, on the day on which the person so paid the prescribed penalty, he had been convicted of an offence constituted by a failure to do that act or thing;

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- (c) if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice but has done the act or thing—proceedings may be instituted against the person in respect of the prescribed offence; or
- (d) if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice and has not done the act or thing—the obligation to do that act or thing continues, and proceedings may be instituted against the person in respect of the prescribed offence.

“(5) Where a notice under sub-section (1) is served on a person in relation to a prescribed offence, not being an offence constituted by a failure to do a particular act or thing—

- (a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice—no proceedings may be instituted against the person in respect of the prescribed offence; or
- (b) if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice—proceedings may be instituted against the person in respect of the prescribed offence.

“(6) The payment of an amount by a person pursuant to a notice served on the person under this section in relation to a prescribed offence shall not be taken for any purpose to be an admission by that person of any liability in connection with the alleged commission of the prescribed offence.

“(7) Except as provided by paragraphs (4) (a) and (b) and (5) (a), this section does not affect the operation of any provision of this Act, of the regulations, of the rules or of any other Act in relation to the institution of proceedings in respect of offences that are prescribed offences for the purposes of this section.

“(8) In this section, ‘authority’ includes a person.”.

Continuing offences

148. Section 142 of the Principal Act is amended by omitting paragraph (1) (e) and substituting the following paragraph:

- “(e) where a person is convicted of an offence that is constituted by failure to do that act or thing within that period or before that time, as the case may be, that person is guilty of a separate and further offence in respect of each day after the day of the conviction during which the failure to do that act or thing continues; and”.

Injunctions

149. Section 149 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “an offence against” and substituting “a contravention of”;

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- (b) by omitting from sub-section (1) “court” and substituting “Court”;
- (c) by omitting sub-section (1A) and substituting the following sub-section:

“(1A) Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that he is required by this Act to do, the Court may, on the application of—

- (a) the Commission; or
- (b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

grant an injunction requiring the first-mentioned person to do that act or thing.”; and

- (d) by omitting from paragraph (4A) (b) “engages in conduct of that kind” and substituting “refuses or fails to do that act or thing”.

Regulations

150. Section 150 of the Principal Act is amended by inserting after sub-section (1) the following sub-sections:

“(1A) The regulations—

- (a) may prescribe offences against this Act (not being offences the penalties applicable to which include a term of imprisonment or a pecuniary penalty that exceeds \$1,000), or offences against the regulations, for the purposes of section 141A; and
- (b) shall, in relation to each offence that is prescribed pursuant to this sub-section—
 - (i) prescribe the particulars of that offence that are to be given in a notice served on a person under section 141A in relation to the offence; and
 - (ii) prescribe the amount of the penalty (being an amount that does not exceed half the amount of the penalty applicable to the offence) that is payable in respect of the offence pursuant to a notice served on a person under section 141A in relation to the offence.

“(1B) In sub-section (1A), a reference to a penalty applicable to an offence is a reference to the penalty that is applicable to that offence by virtue of any of the provisions of section 141.

“(1C) The particulars of an offence required to be prescribed by sub-paragraph (1A) (b) (i) may be prescribed by being set out in the form prescribed for the purposes of section 141A in relation to the offence.”.

Further amendments

151. The Principal Act is amended as set out in Schedule 2.

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SCHEDULE 1

Section 128

FURTHER AMENDMENTS OF COMPANIES ACT 1981

Provision	Amendment
Sub-paragraph 6 (d) (i)	Omit "the whole or any part of the".
Paragraph 12 (10) (b)	Omit "the property or any part of the".
Paragraph 84 (3) (b)	Omit "the property or part of the".
Paragraph 85 (2) (b)	Omit "the property or part of the".
Sub-section 130 (8)	Omit "a servant", substitute "an employee".
Sub-section 203 (13)	Omit "12", substitute "(12)".
Sub-section 232 (5)	Omit "a servant" (wherever occurring), substitute "an employee". Omit "master's", substitute "employer's".
Sub-paragraph 233 (6) (a) (ii)	Omit "an office", substitute "the office".
Paragraph 237 (4) (b)	Omit "the property or part of the".
Sub-section 238 (1)	Omit "principal executive officers and secretaries", substitute "its principal executive officer and its secretaries".
Sub-section 238 (4)	Omit "each principal executive officer and secretary", substitute "the principal executive officer and each secretary".
Paragraph 238 (7) (c)	Omit "A principal executive officer or", substitute "the principal executive officer, or a".
Paragraph 238 (7) (d)	Omit "a principal executive officer or", substitute "the principal executive officer, or a".
Sub-section 238 (9)	Omit "principal executive officer or" (first occurring), substitute "the principal executive officer or a".
Sub-section 238 (10)	Omit "principal executive officer or" (first and second occurring), substitute "the principal executive officer or a".
Paragraph 239 (3) (d)	Omit ", principal executive officers and secretaries of the company", substitute "and secretaries of the company, and the name, address and description of the principal executive officer of the company".
Section 258	Omit "servants", substitute "employees".
Sub-paragraph 315 (11) (a) (i)	Omit "the property", substitute "property".
Sub-paragraph 315 (11) (a) (ii)	Omit "the".
Sub-section 500 (2)	Omit "servants", substitute "employees".
Sub-section 501 (1)	Omit "situation", substitute "address".
Sub-section 501 (3)	Omit "situation", substitute "address".
Sub-section 505 (1)	Omit "servants", substitute "employees".
Sub-section 510 (2)	Omit "servants", substitute "employees".
Paragraph 528 (2) (b)	Omit "of address" (first occurring), substitute "in the situation of the registered office".
Sub-paragraph 528 (2) (b) (ii)	Omit "of address".
Paragraph 528 (2) (c)	Omit "of address" (first occurring), substitute "in the situation of the registered office".
Sub-paragraph 528 (2) (c) (ii)	Omit "of address".
Paragraph 529 (2) (b)	Omit "of address" (first occurring), substitute "in the situation of the principal office".

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SCHEDULE 1—continued

Provision	Amendment
Sub-paragraph 529 (2) (b) (ii)	Omit "of address".
Paragraph 529 (2) (c) . . .	Omit "of address" (first occurring), substitute "in the situation of the principal office".
Sub-paragraph 529 (2) (c) (ii)	Omit "of address".
Paragraph 530 (2) (b) . . .	Omit "of address" (first occurring), substitute "in the situation of the registered office".
Sub-paragraph 530 (2) (b) (ii)	Omit "of address".
Paragraph 530 (2) (c) . . .	Omit "of address" (first occurring), substitute "in the situation of the registered office".
Sub-paragraph 530 (2) (c) (ii)	Omit "of address".
Sub-section 534 (3)	Omit "principal executive officer or", substitute "the principal executive officer or a".
Paragraph 535 (5) (b) . . .	Omit "the property or part of the".
Paragraph 538 (b)	Omit "the property or part of the".
Section 559	Omit "the property or any part of the".
Sub-section 560 (4)	Omit "the property or any part of the".

SCHEDULE 2

Section 151

FURTHER AMENDMENTS OF SECURITIES INDUSTRY ACT 1980

Provision	Amendment
Paragraph 8 (8) (b) . . .	Omit "the property or any part of the".
Sub-paragraph 48 (b) (ii)	Omit "the property, or part of the property,", substitute "property".
Sub-paragraph 59 (1) (b) (ii)	Omit "the" (first occurring).
Sub-section 91 (2)	Omit "a servant" (wherever occurring), substitute "an employee". Omit "master's", substitute "employer's".
Sub-section 111 (1)	Omit "or servant" (wherever occurring).
Sub-section 111 (9)	Omit "or servant" (wherever occurring).
Sub-section 121 (3)	Omit "servant", substitute "employee".
Paragraph 143 (2) (b) . . .	Omit "the property, or any part of the property", substitute "property".
Paragraph 144 (1) (a) . . .	Omit "servant", substitute "employee".
Paragraph 144 (1) (b) . . .	Omit "or a servant, or an agent, ", substitute " , employee or agent".
Sub-section 144 (4)	Omit "a servant", substitute "an employee".

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NOTES

1. No. 64, 1980, as amended. For previous amendments, see Nos. 2, 94 and 153, 1981; and No. 26, 1982.
2. No. 89, 1981, as amended. For previous amendments, see No. 153, 1981; and Nos. 26 and 80, 1982.
3. No. 91, 1981, as amended. For previous amendments, see No. 153, 1981.
4. No. 68, 1980, as amended. For previous amendments, see Nos. 4, 98 and 153, 1981.
5. No. 173, 1979, as amended. For previous amendments, see Nos. 1 and 153, 1981.
6. No. 66, 1980, as amended. For previous amendments, see Nos. 3, 96 and 153, 1981; and No. 26, 1982.