



# Companies and Securities Legislation (Miscellaneous Amendments) Act (No. 1) 1984

No. 13 of 1984

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## An Act to amend laws relating to companies and securities

[Assented to 10 April 1984]

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 (No. 1) 1984*.

#### 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 such respective dates as are, fixed by Proclamation.

### PART II—AMENDMENTS OF COMPANIES ACT 1981

#### Principal Act

3. The *Companies Act 1981*<sup>1</sup> is in this Part referred to as the Principal Act.

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**Interpretation .**

**4. Section 5 of the Principal Act is amended—**

- (a) by omitting the definition of “prescribed interest” in sub-section (1) and substituting the following definition:

“ ‘prescribed interest’ means—

- (a) any right to participate in a time-sharing scheme; and
- (b) any other right to participate or any interest, whether enforceable or not and whether actual, prospective or contingent—

- (i) in any profits, assets or realization of any financial or business undertaking or scheme whether in the Territory or elsewhere;

- (ii) in any common enterprise, whether in the Territory or elsewhere, in relation to which the holder of the right or interest is led to expect profits, rent or interest from the efforts of the promoter of the enterprise or a third party; or

- (iii) in any investment contract,

whether or not the right or interest is evidenced by a formal document and whether or not the right or interest relates to a physical asset, but does not include—

- (iv) any share in, or debenture of, a corporation;

- (v) any interest in, or arising out of, a policy of life insurance;

- (vi) an interest in a partnership agreement, unless the agreement or proposed agreement—

- (A) relates to an undertaking, scheme, enterprise or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts, whether or not that person is, or is to become, a party to the agreement or proposed agreement; or

- (B) is or would be an agreement, or is or would be within a class of agreements, prescribed by the regulations for the purposes of this sub-paragraph; or

- (vii) a right or interest, or a right or interest included in a class or kind of rights or interests, declared by the regulations to be an exempt right or interest, or a class or kind of exempt rights or

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interests, for the purposes of Division 6 of Part IV;” and

- (b) by inserting after the definition of “Table B” in sub-section (1) the following definition:

“ ‘time-sharing scheme’ means a scheme, undertaking or enterprise—

- (a) participants in which are, or may become, entitled to use, occupy or possess, for 2 or more periods during the period for which the scheme, undertaking or enterprise is to operate, property to which the scheme, undertaking or enterprise relates; and
- (b) that is to operate for a period of not less than 3 years;”.

**Charges required to be registered**

5. Section 200 of the Principal Act is amended by inserting after sub-section (4) the following sub-sections:

“(4A) The reference in paragraph (1) (h) to a lien or charge on a crop, a lien or charge on wool or a stock mortgage includes a reference to a security (however described) that is registrable under—

- (a) a provision that is a relevant provision for the purposes of this sub-section;
- (b) a provision of a law of a participating State or participating Territory that is a relevant provision for the purposes of a provision of a law of that State or Territory that corresponds with this sub-section; or
- (c) a provision of a law of a State or of another Territory (other than a participating State or participating Territory) that corresponds with a provision that is a relevant provision for the purposes of this sub-section.

“(4B) Each of the provisions of Parts IV and V of the *Instruments Ordinance 1933* is a relevant provision for the purposes of sub-section (4A).”.

6. Section 211 of the Principal Act is repealed and the following section is substituted:

**Registration under other legislation relating to charges**

“211. (1) Where, whether before or after the prescribed time, a notice in relation to a charge was or is required to be lodged with the Commission under this Division or the corresponding provisions of the law of a participating State or participating Territory—

- (a) the charge is not required to be registered under the provisions of the *Instruments Ordinance 1933*;
- (b) no provision of that Ordinance relating to priorities applies to or in relation to the charge; and

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(c) a failure to register the charge under that Ordinance does not affect the validity, or limit the effect, of the charge.

“(2) Where—

(a) a transfer, assignment or giving of security, whether before or after the prescribed time, by a company, a recognized company or a recognized foreign company is registrable under Part III of the *Instruments Ordinance 1933*;

(b) notice in relation to the transfer, assignment or giving of security was or is required to be lodged with the Commission under this Division or the corresponding provisions of the law of a participating State or participating Territory; and

(c) the transfer, assignment or giving of security has been or is registered under this Division or the corresponding provisions of the law of that State or Territory,

the transfer, assignment or giving of security is, subject to paragraph (1) (b), as valid and effectual as if it had been duly registered under Part III of that Ordinance.

“(3) Where—

(a) a crop lien given, whether before or after the prescribed time, by a company, a recognized company or a recognized foreign company is registrable under Part IV of the *Instruments Ordinance 1933*;

(b) notice in relation to the crop lien was or is required to be lodged with the Commission under this Division or the corresponding provisions of the law of a participating State or participating Territory; and

(c) the crop lien has been or is registered under this Division or the corresponding provisions of the law of that State or Territory,

then, subject to paragraph (1) (b), the crop lien is as valid and effectual, and sections 18, 19 and 20, sub-section 21 (1) and section 24 of that Ordinance have effect in relation to the crop lien, as if the crop lien had been duly registered under Part IV of that Ordinance.

“(4) Where—

(a) a wool lien given, whether before or after the prescribed time, by a company, a recognized company or a recognized foreign company is registrable under Part V of the *Instruments Ordinance 1933*;

(b) notice in relation to the wool lien was or is required to be lodged with the Commission under this Division or the corresponding provisions of the law of a participating State or participating Territory; and

(c) the wool lien has been or is registered under this Division or the corresponding provisions of the law of that State or Territory,

then, subject to paragraph (1) (b), the wool lien is as valid and effectual, and section 26, sub-section 29 (1) and sections 33 and 34 of that Ordinance have effect in relation to the wool lien, as if the wool lien had been duly registered under Part V of that Ordinance.

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“(5) Where—

- (a) a stock mortgage given, whether before or after the prescribed time, by a company, a recognized company or a recognized foreign company is registrable under Part V of the *Instruments Ordinance 1933*;
- (b) notice in relation to the stock mortgage was or is required to be lodged with the Commission under this Division or the corresponding provisions of the law of a participating State or participating Territory; and
- (c) the stock mortgage has been or is registered under this Division or the corresponding provisions of the law of that State or Territory,

then, subject to paragraph (1) (b), the stock mortgage is as valid and effectual, and sub-section 29 (1) and sections 33 and 34 of that Ordinance have effect in relation to the stock mortgage, as if the stock mortgage had been duly registered under Part V of that Ordinance.

“(6) Nothing in this section applies in relation to a charge given, whether before or after the prescribed time, by a company, a recognized company or a recognized foreign company jointly with another person who is, or other persons at least one of whom is, neither a company, a recognized company nor a recognized foreign company.

“(7) In this section, ‘prescribed time’ means the commencement of section 6 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act (No. 1) 1984*.”.

**PART III—AMENDMENT OF COMPANIES AND SECURITIES  
(INTERPRETATION AND MISCELLANEOUS PROVISIONS) ACT  
1980**

**Principal Act**

7. The *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980*<sup>2</sup> is in this Part referred to as the Principal Act.

8. Section 16 of the Principal Act is repealed and the following section is substituted:

**Rules as to gender and number**

“16. In any relevant Act, unless the contrary intention appears—

- (a) words importing a gender include every other gender; and
- (b) words in the singular number include the plural and words in the plural number include the singular.”.

## **PART IV—AMENDMENTS OF SECURITIES INDUSTRY ACT 1980**

### **Principal Act**

**9.** The *Securities Industry Act 1980*<sup>3</sup> is in this Part referred to as the Principal Act.

### **Interpretation**

**10. (1)** Section 4 of the Principal Act is amended—

(a) by omitting paragraph (a) of the definition of “member” in sub-section (1) and substituting the following paragraph:

“(a) a sole trader that is a member of the stock exchange; or”;

(b) by omitting the definition of “sole trader” in sub-section (1) and substituting the following definition:

“‘sole trader’ means—

(a) a natural person who; or

(b) a body corporate that,

is a member of a stock exchange and carries on a business of dealing in securities on his or its own account and not in partnership;”.

**(2)** Section 4 of the Principal Act is amended—

(a) by omitting the definition of “prescribed interest” in sub-section (1) and substituting the following definition:

“‘prescribed interest’ means—

(a) any right to participate in a time-sharing scheme; and

(b) any other right to participate or any interest, whether enforceable or not and whether actual, prospective or contingent—

(i) in any profits, assets or realization of any financial or business undertaking or scheme whether in the Territory or elsewhere;

(ii) in any common enterprise, whether in the Territory or elsewhere, in relation to which the holder of the right or interest is led to expect profits, rent or interest from the efforts of the promoter of the enterprise or a third party; or

(iii) in any investment contract,

whether or not the right or interest is evidenced by a formal document and whether or not the right or interest relates to a physical asset, but does not include—

(iv) any share in, or debenture of, a corporation;

(v) any interest in, or arising out of, a policy of life insurance;

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- (vi) an interest in a partnership agreement, unless the agreement or proposed agreement—
    - (A) relates to an undertaking, scheme, enterprise or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts, whether or not that person is, or is to become, a party to the agreement or proposed agreement; or
    - (B) is or would be an agreement, or is or would be within a class of agreements, prescribed by the regulations for the purposes of this sub-paragraph; or
  - (vii) a right or interest, or a right or interest included in a class or kind of rights or interests, declared by the regulations to be an exempt right or interest, or a class or kind of exempt rights or interests;” and
- (b) by inserting after the definition of “stock market” in sub-section (1) the following definition:
- “‘time-sharing scheme’ means a scheme, undertaking or enterprise—
- (a) participants in which are, or may become, entitled to use, occupy or possess, for 2 or more periods during the period for which the scheme, undertaking or enterprise is to operate, property to which the scheme, undertaking or enterprise relates; and
  - (b) that is to operate for a period of not less than 3 years;”.

**Power of Ministerial Council to approve stock exchange**

**11.** Section 38 of the Principal Act is amended by omitting sub-paragraph (2) (a) (i) and substituting the following sub-paragraph:

- “(i) for the exclusion from membership of—
- (A) any person who is not of good character and high business integrity; and
  - (B) any body corporate a director of which is not of good character and high business integrity;”.

**Issue of contract notes**

**12.** Section 64 of the Principal Act is amended—

- (a) by adding at the end of sub-paragraph (2) (h) (i) “and”; and

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- (b) by omitting sub-paragraphs (2) (h) (ii), (iii) and (iv) and substituting the following sub-paragraph:
- “(ii) specifying the amount of commission charged and the rate (if any) at which the commission was charged;”.

**13.** After section 94 of the Principal Act the following section is inserted in Part VIII:

**Interpretation**

“94A. In this Part, unless the contrary intention appears, a reference to a trust account kept or maintained by a sole trader or member firm includes a reference to a trust account so kept or maintained outside the Territory.”.

**Deposits to be lodged by sole traders and member firms**

**14.** Section 95 of the Principal Act is amended—

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

“(1) Subject to sub-section (6), each sole trader and each partnership that is recognized as a member firm by a stock exchange shall lodge and maintain a deposit in accordance with the provisions of this Part with the stock exchange of which the sole trader is a member or by which the partnership is recognized as a member firm, or, in the case of a sole trader that is a member of 2 or more stock exchanges or a partnership that is recognized as a member firm by 2 or more stock exchanges, with the notified stock exchange.

“(1A) Where—

- (a) a sole trader that is a member of a stock exchange or of 2 or more stock exchanges becomes a member of another stock exchange; or
- (b) a sole trader ceases to be a member of a stock exchange but remains a member of 2 or more other stock exchanges,

the sole trader shall forthwith, by notice in writing, inform each of the stock exchanges of which he is a member of the name of the stock exchange with which he proposes to lodge and maintain his deposit for the purposes of this section.

“(1B) Where—

- (a) a partnership that is recognized as a member firm by a stock exchange or by 2 or more stock exchanges becomes recognized as a member firm by another stock exchange; or
- (b) a partnership ceases to be recognized as a member firm by a stock exchange but continues to be recognized as a member firm by 2 or more other stock exchanges,

the partnership shall forthwith, by notice in writing, inform each of the stock exchanges by which it is recognized as a member firm of the name of the stock exchange with which it proposes to lodge and maintain its deposit for the purposes of this section.



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“(1C) In sub-section (1), ‘notified stock exchange’, in relation to a sole trader or a partnership, means the stock exchange named in notices given by the sole trader or partnership pursuant to sub-section (1A) or (1B), as the case may be, or, where notices have been given by the sole trader or partnership pursuant to that sub-section on 2 or more occasions, in the most recent notices so given.”;

(b) by omitting from sub-section (2) “member firm” and substituting “partnership”;

(c) by omitting sub-section (4) and substituting the following sub-sections:

“(4) A sole trader that fails to comply with sub-section (1) or (1A) is guilty of an offence.

Penalty: \$5,000 or imprisonment for 1 year, or both.

“(4A) Where a partnership fails to comply with sub-section (1) or (1B), each partner in the partnership is guilty of an offence.

Penalty: \$5,000 or imprisonment for 1 year, or both.”; and

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

“(6) A sole trader that is a member of, or a partnership recognized as a member firm by, a stock exchange is not required to comply with this section if, and for so long only as—

(a) the sole trader is a member of, or the partnership is recognized as a member firm by, a body corporate that is a stock exchange for the purposes of the corresponding law of a participating State or participating Territory; and

(b) the sole trader or partnership complies with the provisions of the law of that State or Territory that correspond with this section.”.

### **Contributions to fund**

**15. Section 106 of the Principal Act is amended—**

(a) by adding at the end of sub-section (1) “in relation to that person or in relation to a class of persons in which that person is included”; and

(b) by adding at the end of sub-section (2) “in relation to that person or in relation to a class of persons in which that person is included”.

### **Provisions where fund exceeds \$2,000,000**

**16. Section 107 of the Principal Act is amended—**

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

“(1) In this section, ‘relevant person’, in relation to a stock exchange, means a member of the stock exchange—

(a) who has made 20 or more annual contributions to the fidelity fund of the stock exchange; and

(b) in respect of whom a payment from the fund has not been made or, if such a payment has been made, has been repaid to the fund.

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“(1A) Where the amount in a fidelity fund of a stock exchange exceeds \$2,000,000 or such lesser amount as is prescribed, a relevant person is not, subject to this section, required to make further annual contributions to the fund.

“(1B) Where the amount in a fidelity fund of a stock exchange exceeds \$2,000,000 or such lesser amount as is prescribed, the following paragraphs apply in relation to relevant persons who are natural persons:

- (a) on the retirement from business of such a relevant person, the committee may, in its discretion, pay to him an amount determined in accordance with sub-section (1D);
- (b) on the death of such a relevant person without any payment having been made to him under paragraph (a), the committee may, in its discretion, pay an amount determined in accordance with sub-section (1D) to his personal representative or to any person who was wholly or partly dependent on him at the time of his death.

“(1C) Where the amount in a fidelity fund of a stock exchange exceeds \$2,000,000 or such lesser amount as is prescribed, the committee may, in its discretion, pay to a relevant person, being a body corporate, that ceases to be a member of the stock exchange an amount determined in accordance with sub-section (1D).

“(1D) The amount that may, under sub-section (1B) or (1C), be paid out of a fidelity fund to or in respect of a relevant person is the total amount of the annual contributions made by the relevant person to the fund or such proportion of those contributions as is for the time being determined by the committee either generally or in relation to the particular relevant person, either with or without simple interest at a rate not exceeding 3% per annum.”;

- (b) by omitting from sub-section (2) “paragraph (1) (b)” and substituting “sub-section (1D)”;
- (c) by omitting from paragraph (3) (a) “(1) (b) or (c)” and substituting “(1B) (a) or (b)”;
- (d) by omitting from sub-section (4) “(1)” and substituting “(1A)”.

**Application of fund**

**17.** Section 111 of the Principal Act is amended—

- (a) by inserting after sub-section (3) the following sub-section:

“(3A) Where a right to compensation does not arise under sub-section (1), a fidelity fund may, subject to this Part, be applied for the purpose of paying to a liquidator of a body corporate that is being wound up (being a body corporate that is a member of a stock exchange) an amount not greater than the amount that the liquidator certifies is required to make up or reduce the total deficiency arising by reason of the available assets of the body corporate being insufficient to

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satisfy the debts arising from dealings in securities that have been proved in the winding up by creditors of the body corporate.”;

- (b) by inserting in paragraph (4) (b) “or (3A)” after “(2)”;
- (c) by adding at the end of sub-section (8) “or (3A)”;
- (d) by adding at the end thereof the following sub-sections:

“(10) A reference in this section to an employee of a member or former member of a stock exchange includes, in the case of a member or former member that is a body corporate, a reference to an officer of the body corporate.

“(11) A reference in this section to a defalcation, or to a fraudulent misuse of securities or documents of title to securities or of other property, is a reference to a defalcation, or to such a fraudulent misuse, wherever occurring.”.

**Power of committee to settle claims**

18. Section 115 of the Principal Act is amended by omitting paragraph (2) (b) and substituting the following paragraph:

- “(b) the claimant has exhausted all relevant rights of action and other legal remedies for the recovery of the money, securities, documents of title to securities or other property in respect of which the pecuniary loss occurred, being rights and remedies that are available against the member of the stock exchange in relation to whom the claim arose and all other persons who are liable in respect of the loss suffered by the claimant, other than any right or remedy that the claimant may have—
  - (i) under section 112, against another stock exchange; or
  - (ii) under the provision of a law of a participating State or participating Territory that corresponds with section 112, against a body corporate that is a stock exchange for the purposes of the corresponding law of that State or Territory.”.

**Dealings by employees of holders of licences**

19. Section 132 of the Principal Act is amended by omitting “Penalty: \$2,500 or imprisonment for 6 months, or both.” and substituting the following sub-sections:

“(8) The references in sub-sections (1) and (4) to an employee of a person who is a dealer or an investment adviser include, in the case of a body corporate that is a dealer or an investment adviser, references to an officer of the body corporate.

“(9) The reference in sub-section (7) to an employee of a sole trader or member firm includes, in the case of a sole trader that is a body corporate or a member firm a partner in which is a body corporate, a reference to an officer of the body corporate.

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“(10) The penalty for an offence against this section is a fine not exceeding \$2,500 or imprisonment for a period not exceeding 6 months, or both.”

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**NOTES**

1. No. 89, 1981, as amended. For previous amendments, see No. 153, 1981; Nos. 26 and 80, 1982; and No. 108, 1983.
2. No. 68, 1980, as amended. For previous amendments, see Nos. 4, 98 and 153, 1981; and No. 108, 1983.
3. No. 66, 1980, as amended. For previous amendments, see Nos. 3, 96 and 153, 1981; No. 26, 1982; and No. 108, 1983.