



Companies and Securities Legislation (Miscellaneous Amendments) Act 1985

No. 192 of 1985

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FURTHER AMENDMENTS OF THE SECURITIES INDUSTRY ACT 1980 RELATING
TO SECURITIES EXCHANGES



Companies and Securities Legislation (Miscellaneous Amendments) Act 1985

No. 192 of 1985

An Act to amend laws relating to companies and securities

[Assented to 16 December 1985]

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 1985*.

Commencement

2. (1) Subject to this section, the provisions of this Act shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation.

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

(3) Sections 7, 9, 11 to 17 (inclusive), 21 and 22 shall come into operation on a day to be fixed by Proclamation.

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(4) Section 24 and sub-section 25 (1) shall come into operation on a day to be fixed by Proclamation, not being a day that is earlier than the day on which sub-section 25 (2) comes into operation.

(5) Sub-section 25 (2) and sections 26, 127, 128, 198 and 199 shall come into operation on a day to be fixed by Proclamation.

(6) Sections 27 and 69 shall come into operation on a day to be fixed by Proclamation.

(7) Sub-section 30 (2) and sections 36 to 43 (inclusive), 65 and 123 shall come into operation on a day to be fixed by Proclamation.

(8) Sections 45 and 131 shall be deemed to have come into operation on 1 July 1982.

(9) Section 63 and sub-section 165 (2) shall come into operation on 1 July 1987.

(10) Sections 72, 73 and 74 and sub-section 75 (1) shall come into operation on a day to be fixed by Proclamation.

(11) Sub-section 80 (2) shall come into operation on the day on which sub-section 80 (1) comes into operation or, if section 9 of the *Companies Amendment Act 1985* does not come into operation before that day, immediately after the commencement of that section.

(12) Part V shall be deemed to have come into operation on 1 January 1984.

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.

Definitions

4. Section 6 of the Principal Act is amended—

(a) by omitting the definition of “home exchange” and substituting the following definition:

“‘home stock exchange’, in relation to a stock exchange listed company, means the stock exchange designated to the company as its Home Exchange by the Australian Associated Stock Exchanges;”;

(b) by inserting “, except in the definition of ‘stock market’,” before “means” in the definition of “invitation”;

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- (c) by omitting the definition of “listed public company” and substituting the following definition:

“ ‘listed company’ means a company that has been admitted to the official list of a securities exchange and has not been removed from that official list;”;

- (d) by inserting after the definition of “non-voting share” the following definition:

“ ‘notifiable securities exchange’, in relation to a listed company, means a securities exchange, being—

(a) in the case of a stock exchange listed company—the home stock exchange of the company; or

(b) in any case—a securities exchange (not being a stock exchange) to whose official list the company has been admitted and from whose official list the company has not been removed;”;

- (e) by inserting after the definition of “prescribed occurrence” the following definition:

“ ‘quotation’, in relation to securities, in relation to a stock market of a securities exchange, includes the displaying or providing, on a stock market of the securities exchange, of information concerning—

(a) in a case where offers to sell, purchase or exchange the securities at particular prices, or for particular consideration, are made or accepted on that stock market—those prices or that consideration;

(b) in a case where offers or invitations are made on that stock market, being offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange the securities at particular prices, or for particular consideration—those prices or that consideration; or

(c) in any case—the price at which, or the consideration for which, particular persons, or particular classes of persons, propose, or may reasonably be expected, to sell, purchase or exchange the securities;”;

- (f) by inserting after the definition of “renounceable option” the following definition:

“ ‘securities exchange’ means a body corporate (whether or not incorporated in the Territory) that is declared by the regulations to be a securities exchange for the purposes of this Act;”;

- (g) by omitting the definition of “stock market” and substituting the following definition:

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- “ ‘stock exchange listed company’ means a company that has been admitted to the official list of a stock exchange and that has not been removed from that official list;” and
- (h) by omitting the definition of “trading day” and substituting the following definitions:
- “ ‘trading’, in relation to securities, in relation to a stock market, includes—
- (a) making or accepting on that stock market offers to sell, purchase or exchange the securities; and
 - (b) making on that stock market offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange the securities;
- ‘trading day’, in relation to a securities exchange, means a day on which a stock market of the securities exchange is open for trading in securities.”.

Acquisition and disposal of, and entitlement to, shares, and associated persons

5. Section 7 of the Principal Act is amended—
- (a) by inserting in sub-section (3) “ (in this sub-section and sub-section (4) referred to as the ‘relevant company’)” after “a company”;
 - (b) by inserting in sub-section (3) “, being the relevant company or any other person,” before “is entitled”;
 - (c) by inserting in sub-paragraph (4) (a) (ii) “(including the relevant company)” after “corporation”;
 - (d) by inserting in paragraph (4) (b) “(including the relevant company)” after “a person”;
 - (e) by omitting sub-paragraphs (4) (b) (i), (ii) and (iii) and substituting the following paragraphs:
 - “(i) by reason of which the first-mentioned person, or the person concerned, may exercise, may directly or indirectly control the exercise of, or may substantially influence the exercise of, any voting power attached to shares in the relevant company;
 - (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the relevant company;
 - (iii) under which the first-mentioned person may acquire from the person concerned, or the person concerned may acquire from the first-mentioned person, shares in the relevant company; or
 - (iv) under which the first-mentioned person, or the person concerned, may be required to dispose of shares in the relevant company in accordance with the directions of the person

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concerned, or of the first-mentioned person, as the case may be;”;

- (f) by inserting in paragraphs (4) (c), (d), (e) and (f) “(including the relevant company)” after “a person”;
- (g) by omitting from paragraphs (4) (c), (d), (e) and (f) “company referred to in sub-section (3)” and substituting “relevant company”;
- (h) by inserting in paragraph (4) (g) “(including the relevant company)” after “another person”; and
- (j) by omitting paragraph (5) (b) and substituting the following paragraph:

“(b) where the matter to which the reference relates is a take-over offer or take-over announcement relating to shares in a company (including, in a case where the other person is a company, the other person), or the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a corporation (including, in a case where the other person is a corporation, the other person)—a person (including the company or corporation, as the case may be) with whom the other person has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied—

- (i) by reason of which the first-mentioned person, or the other person, may exercise, may directly or indirectly control the exercise of, or may substantially influence the exercise of, any voting power attached to a share in the company or corporation, as the case may be;
- (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the company or corporation, as the case may be;
- (iii) under which the first-mentioned person may acquire from the other person, or the other person may acquire from the first-mentioned person, shares in the company or corporation, as the case may be; or
- (iv) under which the first-mentioned person, or the other person, may be required to dispose of shares in the company or corporation, as the case may be, in accordance with the directions of the other person, or of the first-mentioned person, as the case may be;”.

Other interpretative and evidentiary provisions

6. Section 8 of the Principal Act is amended—

- (a) by omitting from sub-section (3) “A” and substituting “Unless the contrary intention appears, a”; and

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

“(11) In determining, for the purposes of a provision of this Act, whether or not a person’s contravention of such a provision was due—

- (a) to the person’s inadvertence or mistake or to the person not being aware of a relevant fact or occurrence; or
- (b) to the person’s inadvertence or mistake or to circumstances beyond the person’s control,

the person’s ignorance of, or a mistake on the person’s part concerning, a matter of law shall be disregarded.”.

7. After section 8 of the Principal Act the following section is inserted:

Approved manner of dispatch

“8A. (1) For the purposes of this Act, a person (in this sub-section referred to as the ‘relevant person’) shall be taken to dispatch a document to another person (in this sub-section referred to as the ‘other person’) in an approved manner if, and only if, the relevant person dispatches the document to the other person—

- (a) in a case where, at the time when the relevant person dispatches the document to the other person, there is in force in relation to the document, or in relation to a class of documents that includes the document, a direction under sub-section (2) served on the person—in the manner specified in the direction;
- (b) in a case where, at the time when the relevant person dispatches the document to the other person, there is in force in relation to the document, or in relation to a class of documents that includes the document, an approval under sub-section (3) served on the person—in the manner specified in the approval or in the prescribed manner; or
- (c) in any other case—in the prescribed manner.

“(2) The Commission may, by instrument in writing served on a person, direct the person to dispatch in a specified manner—

- (a) a specified document that the person proposes to dispatch under this Act; or
- (b) documents included in a specified class of documents that the person proposes to dispatch under this Act.

“(3) The Commission may, on application by a person, approve, by instrument in writing served on the person, the dispatch by the person in a specified manner of—

- (a) a specified document that the person proposes to dispatch under this Act; or
- (b) documents included in a specified class of documents that the person proposes to dispatch under this Act.

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“(4) Notwithstanding sub-section (1), a person who, before the commencement of section 7 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985*, dispatched a document in a manner approved by the Commission shall be deemed, for the purposes of this Act as in force after that commencement, to have dispatched the document in an approved manner.”.

Relevant interests in shares

8. (1) Section 9 of the Principal Act is amended—

(a) by omitting sub-sections (4) and (5) and substituting the following sub-sections:

“(4) Without limiting the generality of sub-sections (1), (2) and (3), where a body corporate has, or is by virtue of this section to be deemed to have, power—

- (a) to exercise, or to control the exercise of, the right to vote attached to a voting share; or
- (b) to dispose of, or to exercise control over the disposal of, a share, and—
- (c) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to the exercise of the power; or
- (d) a person has a controlling interest in the body corporate,

that person shall, for the purpose of this section, be deemed to have the same power in relation to that share as the body corporate has or is to be deemed to have.

“(5) Where a body corporate has, or is by virtue of this section (other than this sub-section) to be deemed to have, power—

- (a) to exercise, or to control the exercise of, the right to vote attached to a voting share; or
- (b) to dispose of, or to exercise control over the disposal of, a share, a person (in this sub-section referred to as the ‘relevant person’) shall, for the purposes of this section, be deemed to have the same power in relation to that share as the body corporate has, or is to be deemed to have, if—
 - (c) the relevant person has;
 - (d) a person associated with the relevant person has;
 - (e) persons associated with the relevant person together have; or
 - (f) the relevant person and a person or persons associated with the relevant person together have,

the power to exercise, or to control the exercise of, the voting power attached to not less than the prescribed percentage of the voting shares in the body corporate.”;

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- (b) by omitting from sub-section (7) “deemed by sub-section (6)” and substituting “to be deemed, by virtue of sub-section (6),”; and
- (c) by omitting from sub-paragraph (8) (c) (i) “is deemed, by sub-section (6),” and substituting “is to be deemed, by virtue of sub-section (6),”.

(2) Section 9 of the Principal Act is amended by inserting after sub-section (9) the following sub-section:

“(9A) A corporation may, by virtue of this section, be taken or deemed, for the purposes of this Act, to have a relevant interest in a share in the corporation itself.”.

Acquisition of shares permitted in certain circumstances

9. Section 13 of the Principal Act is amended by omitting sub-paragraph (4) (b) (i).

Acquisition of not more than 3% of voting shares permitted in each 6 months

10. Section 15 of the Principal Act is amended by inserting in sub-section (1) “, other than voting shares acquired by the person concerned pursuant to an allotment in relation to which sub-section 14 (1) applies, being an allotment made to the person concerned as a result of his acceptance of an offer made to him in accordance with paragraph 14 (2) (b)” after “entitled” (second occurring).

Take-over offers

11. Section 16 of the Principal Act is amended—

- (a) by omitting from paragraph (2) (c) “an offer is dispatched in a manner approved by the Commission” and substituting “the offeror dispatches an offer in an approved manner”;
- (b) by omitting sub-paragraph (2) (f) (iv) and substituting the following sub-paragraph:
 - “(iv) specifies, in relation to each class of shares in the target company—
 - (A) the total number of shares included in the class; and
 - (B) the number of shares included in the class to which the offeror was entitled immediately before the offer was dispatched (which may be expressed as a number of shares or as a percentage of the total number of shares included in the class);”;
- (c) by omitting sub-paragraph (2) (f) (vii) and substituting the following sub-paragraph:
 - “(vii) contains a provision setting out when the obligations of the offeror are to be satisfied, being a provision under which the

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consideration for the offer is, if the offer is accepted, to be paid or provided—

- (A) in the case of an offer that is not subject to a prescribed condition—on or before the thirtieth day after the offer is accepted; or
- (B) in the case of an offer that is subject to a prescribed condition—on or before the thirtieth day after the offer is accepted, or the offer, or the contract resulting from the acceptance of the offer, becomes unconditional, whichever happens later,

or, if that day is later than the twenty-first day after the end of the period during which the offer would, if it had not been accepted, have remained open, on or before the last-mentioned day; and”.

Take-over announcements

12. Section 17 of the Principal Act is amended by omitting from paragraph (10) (b) “a manner approved by the Commission” and substituting “an approved manner”.

Registration of Part A statements and offers

13. Section 18 of the Principal Act is amended by inserting after sub-section (2) the following sub-sections:

“(2A) Where a copy of a Part A statement and a copy of a proposed offer are lodged with the Commission for registration under sub-section (1), the Commission may refuse to register the copy of the proposed offer if the proposed offer is subject to a prescribed condition the fulfilment of which depends on—

- (a) an opinion, belief or other state of mind of the offeror or of a person associated with the offeror; or
- (b) whether or not a particular event happens, being an event that is within the sole control of the offeror or of a person associated with the offeror.

“(2B) Where a copy of a Part A statement relating to an offer to acquire shares (whether the offer was made before, or is made after, the relevant commencement) was lodged with the Commission before the relevant commencement for registration under sub-section (1) of this section, then—

- (a) section 13, paragraph 16 (2) (f), sub-section (2A) of this section, and sections 21, 27 and 28, as in force after the relevant commencement, do not apply; and
- (b) notwithstanding the amendments made, and the repeals effected, by sections 9, 11, 13, 14, 15, 16 and 17 of the relevant Act, the provisions of section 13, paragraph 16 (2) (f), this section and sections 21, 27, 28

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and 29 of this Act, being those provisions as in force immediately before the relevant commencement, apply, in relation to—

- (c) an offer to which the Part A statement relates;
- (d) a contract resulting from the acceptance of an offer to which the Part A statement relates; or
- (e) the take-over scheme under which the offers to which the Part A statement relates were or are made.

“(2C) In sub-section (2B) and this sub-section—

‘relevant Act’ means the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985*;

‘relevant commencement’ means the commencement of sections 9, 11, 13, 14, 15, 16 and 17 of the relevant Act.”

14. Section 21 of the Principal Act is repealed and the following section is substituted:

Withdrawal of offers

“21. A take-over offer is not capable of being withdrawn without the consent in writing of the Commission, which may be given subject to such conditions (if any) as are specified in the consent.”

Variation of take-over offers

15. Section 27 of the Principal Act is amended—

- (a) by inserting after sub-section (8) the following sub-section:

“(8A) Sub-section (8) has effect in relation to a take-over scheme subject to any condition specified in a consent under section 21 given in relation to an offer made under the take-over scheme.”;

- (b) by omitting sub-section (10) and substituting the following sub-section:

“(10) Variations of offers under a take-over scheme shall be made by—

- (a) serving on the target company a notice in writing—

- (i) signed in the same manner as a Part A statement is required by paragraph 16 (2) (d) to be signed;
- (ii) setting out the terms of the proposed variation and particulars of such modifications of the relevant Part A statement as are necessary having regard to the variation; and
- (iii) in a case where the effect of the proposed variation will be to postpone for a period exceeding one month the time when the offeror’s obligations under the take-over scheme are to be satisfied—stating the effect of the provisions of sub-section (12) of this section; and

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- (b) dispatching in an approved manner to each person to whom an offer was made under the take-over scheme (including a person who has accepted an offer so made) a copy of that notice.”;
- (c) by omitting paragraph (11) (a) and substituting the following paragraph:
 - “(a) serve on the target company a notice in writing signed in the same manner as a Part A statement is required by paragraph 16 (2) (d) to be signed and setting out any information that the offeror would have been required to include in the relevant Part A statement if the statement had been lodged with the Commission for registration 5 months after the date that the offer bears, being information that differs from the information included in that relevant Part A statement;”;
- (d) by omitting from paragraph (11) (b) “a manner approved by the Commission” and substituting “an approved manner”; and
- (e) by omitting from sub-section (12) “relating to the offer dispatched pursuant to sub-section (11),” and substituting “under sub-section (10) in relation to a variation of offers under the relevant take-over scheme, being a variation the effect of which is to postpone for a period exceeding one month the time when the offeror’s obligations under the take-over scheme are to be satisfied,”.

Declaration where take-over offers are conditional

16. Section 28 of the Principal Act is amended by omitting sub-section (9) and substituting the following sub-section:

“(9) Where—

- (a) offers made under a take-over scheme have at any time been subject to a prescribed condition; and
- (b) as at the time immediately after the end of the period during which the offers remained open—
 - (i) the offeror has not declared the offers to be free from the condition;
 - (ii) the offers have not become free from the condition by virtue of the operation of sub-section 30 (1); and
 - (iii) the condition has not been fulfilled,

all contracts resulting from the acceptance of offers made under the take-over scheme, and all such offers that have been accepted and from whose acceptance binding contracts have not yet resulted, are void.”.

Repeal of section 29

17. Section 29 of the Principal Act is repealed.

18. After section 39 of the Principal Act the following section is inserted:

Notification of offeror's entitlement

“39A. (1) In this section—

‘company’ does not include a listed company;

‘prescribed percentage’ means—

- (a) 25%;
- (b) 50%;
- (c) 75%; or
- (d) 90%;

‘relevant period’, in relation to a company, means—

- (a) a period commencing when a Part A statement is served on the company and ending at the expiration of 28 days after the day on which the statement is served or, if take-over offers are dispatched pursuant to the statement within those 28 days, at the expiration of the period during which the take-over offers remain open; and
- (b) if take-over offers are dispatched, in accordance with an order under section 46, pursuant to a Part A statement served on the company—the period during which the take-over offers remain open;

‘relevant person’, in relation to a relevant period in relation to a company, means the person who is, or each of the persons who constitute, the offeror in relation to the Part A statement concerned.

“(2) Where—

- (a) at a particular time during a period that is a relevant period in relation to a company, the percentage of the voting shares in the company to which a relevant person is entitled is less than a prescribed percentage; and
- (b) immediately after that time, the percentage of the voting shares in the company to which the relevant person is entitled is equal to or greater than that prescribed percentage,

the relevant person shall, as soon as practicable, and in any event within 2 business days, after that time, serve on the company a notice in writing setting out the percentage of the voting shares in the company to which the relevant person is entitled at the time when the notice is so served.

“(3) Where a company receives a notice under sub-section (2), it shall make the notice available at its registered office for inspection without charge by any member of the company at any time during the remainder of the relevant period in relation to the company, being a time at which the registered office is open and accessible to the public.”.

Provisions relating to dissenting shareholders

19. Section 42 of the Principal Act is amended by inserting in paragraph (1) (a) “(other than shares to which the offeror was entitled at the time when the first of the offers was made)” after “were made”.

Orders where prohibited acquisitions take place

20. Section 45 of the Principal Act is amended by inserting after paragraph (1) (f) the following paragraphs:

- “(fa) an order cancelling a contract, arrangement or offer for or in connection with the acquisition of the shares, or of such of the shares as are specified in the order;
- (fb) an order declaring a contract, arrangement or offer for or in connection with the acquisition of the shares, or of such of the shares as are specified in the order, to be voidable;”.

Orders where offers not dispatched pursuant to Part A statement

21. Section 46 of the Principal Act is amended—

- (a) by omitting “is served on a target company” from paragraph (1) (a) and substituting “, being offers relating to shares included in a class of shares in a target company, is served on the company”;
- (b) by omitting “in the company” from paragraph (1) (b) and substituting “included in that class”; and
- (c) by omitting paragraph (1) (f) and substituting the following paragraph:
 - “(f) an order directing the offeror, within such time as is specified in the order, to dispatch in an approved manner to each holder (other than the offeror) of shares included in that class an offer to which the Part A statement relates.”.

Orders to protect interests of certain persons

22. Section 47 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “rights” (first occurring) and substituting “interests”; and
- (b) by inserting after sub-section (1) the following sub-section:

“(1A) Where an offeror contravenes a condition specified in a consent under section 21 given in relation to an offer made under a take-over scheme, the Court may, on the application of the Commission, the target company in relation to the take-over scheme, or any person affected by the contravention, make such orders as the Court thinks necessary or expedient to protect the interests of a person

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affected by the contravention, including, but without limiting the generality of the foregoing, one or more of the following orders:

- (a) an order directing the offeror to supply to the holders of shares in the target company such information as is specified in the order;
- (b) in a case where the contravention is constituted by a failure to do a particular act or thing—an order directing the offeror to do that act or thing within such period as is specified in the order, notwithstanding that the period specified in the condition for the doing of the act or thing has expired;
- (c) an order of a kind referred to in any of paragraphs (1) (c) to (j), inclusive.”.

Miscellaneous provisions relating to orders

23. Section 49 of the Principal Act is amended by omitting sub-section (4) and substituting the following sub-section:

“(4) Without limiting the nature of the orders that may be made by the Court under section 45, 46, 47 or 60 directing the disposal of, or of an interest in, a share in a company, such an order may include one or more of the following provisions:

- (a) a provision 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 person or persons or to persons included in a particular class or classes of persons;
- (b) a provision that a person specified in the order is liable to pay to the company an amount equal to the amount of any profit made by the person as a result of, or in connection with, the disposal of the shares;
- (c) a provision that a person specified in the order shall, for all purposes connected with the disposal of the shares, be deemed to hold the shares as a trustee for the beneficial owner of the shares.”.

24. Section 52 of the Principal Act is repealed and the following section is substituted:

Announcements of proposed take-over bids

“52. (1) A person shall not, whether alone or together with another person or other persons, make a public announcement to the effect that he proposes, or that he and another person, or he and other persons, together propose, to make take-over offers or to cause take-over offers to be made, or to cause a take-over announcement to be made, if—

- (a) he knows that the announcement is false or is recklessly indifferent to whether it is true or false;
- (b) in the case of an announcement that he proposes to make take-over offers, or to cause take-over offers to be made, or to cause a take-over

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announcement to be made—he has no reasonable grounds for believing that he will be able to perform his obligations arising under the take-over scheme or take-over announcement, or arising under this Act in connection with the take-over scheme or take-over announcement, if a substantial proportion of the take-over offers, or of the offers constituted by the take-over announcement, as the case may be, are accepted; or

- (c) in the case of an announcement that he and another person, or he and other persons, together propose to make take-over offers, or to cause take-over offers to be made, or to cause a take-over announcement to be made—he has no reasonable grounds for believing that he and the other person, or he and the other persons, as the case may be, will together be able to perform their obligations arising under the take-over scheme or take-over announcement, or arising under this Act in connection with the take-over scheme or take-over announcement, if a substantial proportion of the take-over offers, or of the offers constituted by the take-over announcement, as the case may be, are accepted.

“(2) A person who contravenes sub-section (1) is guilty of an offence the penalty for which is a fine not exceeding \$20,000 or imprisonment for a period not exceeding 5 years, or both.

“(3) Where a person, whether alone or together with another person or other persons, makes a public announcement to the effect that he proposes, or that he and another person or other persons together propose, to make a take-over bid in relation to shares in a company, the person shall, within 2 months after making the announcement or such further period as the Commission permits in writing, either alone or together with another person or other persons, make a take-over bid in relation to shares in that company in accordance with the public announcement.

“(4) A person who contravenes sub-section (3) is guilty of an offence the penalty for which is a fine not exceeding \$10,000 or imprisonment for a period not exceeding 2 years, or both.

“(5) A person who—

- (a) makes a public announcement in contravention of sub-section (1) and fails, in contravention of sub-section (3), to make a take-over bid in accordance with the announcement; and
- (b) is convicted of an offence under sub-section (2) or (4) in respect of one of those contraventions,

is not liable to be convicted of an offence under sub-section (4) or (2), as the case may be, in respect of the other of those contraventions.

“(6) In any proceedings, if there is produced a certificate in writing by the Commission stating that the Commission has not, pursuant to sub-section (3), permitted a further period for a person or persons specified in the certificate to

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make a take-over bid in relation to shares in a company so specified, it shall be presumed, unless the contrary is established, that no such further period was permitted.

“(7) A person who makes a public announcement in contravention of sub-section (1) or fails, in contravention of sub-section (3), to make a take-over bid in accordance with a public announcement (whether or not he has been convicted of an offence in respect of the contravention) is liable to pay compensation to any other person who suffered loss as a result of entering into a transaction with respect to shares in reliance on the public announcement, and the amount of the compensation that the first-mentioned person is liable to pay is an amount equal to the difference between the price of the shares at which the transaction was entered into and the price of the shares at which the transaction would have been likely to be entered into if the first-mentioned person had not made the public announcement.

“(8) A person—

- (a) is not guilty of an offence under sub-section (4); and
- (b) is not liable to pay compensation under sub-section (7),

in respect of a failure to make a take-over bid in accordance with a public announcement made by the person if it is established that—

- (c) by virtue of circumstances that existed at the time of the making of the public announcement but of which the person had no knowledge and could not reasonably have been expected to have knowledge; or
- (d) by virtue of a change in circumstances after the making of the announcement, not being a change in circumstances caused, whether directly or indirectly, by the person,

the person could not reasonably have been expected to make the take-over bid.

“(9) Notwithstanding anything in section 5 of this Act, neither section 571, nor sub-section 574 (2), of the *Companies Act 1981* applies in relation to a failure, in contravention of sub-section (3) of this section, to make a take-over bid in accordance with a public announcement.

“(10) In this section—

(a) a reference to making a take-over bid is a reference to—

- (i) making take-over offers;
- (ii) causing take-over offers to be made; or
- (iii) causing a take-over announcement to be made; and

(b) a reference to making a take-over bid in accordance with a public announcement to the effect that a take-over bid is proposed to be made is a reference to making a take-over bid the terms and conditions of which are the same as, or not substantially less favourable to the shareholders in the target company than, the terms and conditions of the take-over bid referred to in the public announcement.”.

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Offences

25. (1) Section 53 of the Principal Act is amended by omitting from sub-section (4) “and 49” and substituting “, 49 and 52”.

(2) Section 53 of the Principal Act is amended by omitting sub-section (5) and substituting the following sub-sections:

“(5) Notwithstanding anything in section 5 of this Act—

- (a) section 570, and sub-section 571 (7), of the *Companies Act 1981* do not apply in relation to this Act; and
- (b) sub-section 571 (5) of that Act has effect for the purposes of this Act as if ‘the penalty applicable to the offence’ were omitted from that sub-section and ‘the penalty for the offence’ were substituted.

“(6) Notwithstanding anything in section 5 of this Act or in paragraph (5) (b) of this section, sub-sections 571 (1) to (6), inclusive, of the *Companies Act 1981* do not apply in relation to an obligation to do an act or thing, being an obligation that arose under this Act before the commencement of section 26 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985*, and, notwithstanding the repeals effected by the last-mentioned section, section 54 of this Act as in force at any time before that commencement continues to have effect in relation to such an obligation.”.

Repeal of sections 54, 63 and 64

26. Sections 54, 63 and 64 of the Principal Act are repealed.

Schedule

27. The Schedule to the Principal Act is amended—

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

“(e) where—

- (i) a prescribed benefit (not being an excluded benefit) will or may be given to a person in connection with the retirement of a person from a prescribed office in relation to the target company; or
- (ii) a prescribed benefit will or may be given to a prescribed person in relation to the target company in connection with the transfer of the whole or any part of the undertaking or property of the target company, particulars with respect to the prescribed benefit, including—
- (iii) in the case of a prescribed benefit that is a payment—the amount of the payment; or
- (iv) in any other case—the money value of the prescribed benefit;”;

- (b) by adding at the end of Part B the following clause:

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- “3. For the purposes of paragraph 2 (e) and of this clause—
- (a) sub-sections 233 (6), (6A) and (7) of the *Companies Act 1981* apply as if that paragraph and this clause were provisions of section 233 of that Act and a reference in those sub-sections to a company were a reference to the target company; and
 - (b) a reference to an excluded benefit is a reference to a prescribed benefit—
 - (i) in relation to the giving of which sub-section 233 (2A) of that Act would apply; or
 - (ii) that is a payment in relation to which paragraph (f) of the definition of ‘exempt benefit’ in sub-section 233 (7) of that Act would apply,if a reference in sub-section 233 (2A) of that Act, or in that definition, as the case may be, to a company were a reference to the target company.”;
 - (c) by omitting paragraph 2 (e) of Part D and substituting the following paragraph:
 - “(e) where—
 - (i) a prescribed benefit (not being an excluded benefit) will or may be given to a person in connection with the retirement of a person from a prescribed office in relation to the target company; or
 - (ii) a prescribed benefit will or may be given to a prescribed person in relation to the target company in connection with the transfer of the whole or any part of the undertaking or property of the target company,particulars with respect to the prescribed benefit, including—
 - (iii) in the case of a prescribed benefit that is a payment—the amount of the payment; or
 - (iv) in any other case—the money value of the prescribed benefit;”;
 - (d) by adding at the end of Part D the following clause:
 - “3. For the purposes of paragraph 2 (e) and of this clause—
 - (a) sub-sections 233 (6), (6A) and (7) of the *Companies Act 1981* apply as if that paragraph and this clause were provisions of section 233 of that Act and a reference in those sub-sections to a company were a reference to the target company; and
 - (b) a reference to an excluded benefit is a reference to a prescribed benefit—
 - (i) in relation to the giving of which sub-section 233 (2A) of that Act would apply; or

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- (ii) that is a payment in relation to which paragraph (f) of the definition of 'exempt benefit' in sub-section 233 (7) of that Act would apply,

if a reference in sub-section 233 (2A) of that Act, or in that definition, as the case may be, to a company were a reference to the target company.”.

Further amendments relating to securities exchanges

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

PART III—AMENDMENTS OF COMPANIES ACT 1981

Principal Act

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

Interpretation

30. (1) Section 5 of the Principal Act is amended—

- (a) by omitting from paragraph (a) of the definition of “director” in sub-section (1) “and” (last occurring);
- (b) by adding at the end of the definition of “director” in sub-section (1) the following word and paragraph:

“and (c) in the case of a foreign company—

- (i) a member of the committee of management, council or other governing body of the foreign company;
 - (ii) any person occupying or acting in the position of member of the committee of management, council or other governing body of the foreign company, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and
 - (iii) any person in accordance with whose instructions the members of the committee of management, council or other governing body of the foreign company are accustomed to act;”;
- (c) by omitting the definition of “home exchange” in sub-section (1);
 - (d) by inserting after the definition of “official manager” in sub-section (1) the following definitions:

“ ‘on’, in relation to a stock market, includes at or by means of;

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‘participation interest’ means any right to participate, or any interest—

- (a) in any profits, assets or realisation of any financial or business undertaking or scheme whether in the Territory or elsewhere;
- (b) 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
- (c) in any investment contract,

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

- (d) such a right that is a right to participate in a time-sharing scheme;
- (e) any share in, or debenture of, a corporation;
- (f) any interest in, or arising out of, a policy of life insurance; or
- (g) an interest in a partnership agreement, unless the agreement or proposed agreement—

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

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

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

“ ‘prescribed interest’ means—

- (a) a participation interest; or
- (b) a right, whether enforceable or not, whether actual, prospective or contingent and whether or not evidenced by a formal document, to participate in a time-sharing scheme,

but does not include a right or interest, or a right or interest included in a class or kind of rights or interests, declared by the

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regulations to be an exempt right or interest, or a class or kind of exempt rights or interests, for the purposes of Division 6 of Part IV;”;

- (f) by inserting after the definition of “public company” in sub-section (1) the following definition:

“‘quotation’, in relation to securities, in relation to a stock market of a securities exchange, includes the displaying or providing, on a stock market of the securities exchange, of information concerning—

- (a) in a case where offers to sell, purchase or exchange the securities at particular prices, or for particular consideration, are made or accepted on that stock market—those prices or that consideration;
- (b) in a case where offers or invitations are made on that stock market, being offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange the securities at particular prices, or for particular consideration—those prices or that consideration; or
- (c) in any case—the price at which, or the consideration for which, particular persons, or particular classes of persons, propose, or may reasonably be expected, to sell, purchase or exchange the securities;”;

- (g) by inserting after the definition of “securities” in sub-section (1) the following definition:

“‘securities exchange’ means, where the expression appears in a provision for the purposes of which a regulation is in force defining that expression, a securities exchange as defined by that regulation;”;

- (h) by omitting from sub-section (1) the definition of “stock market” and substituting the following definition:

“‘stock market’ means a market, exchange or other place (whether or not in the Territory) at which, or a facility (whether or not in the Territory) by means of which—

- (a) offers to sell, purchase or exchange securities of corporations are regularly made or accepted;
- (b) offers or invitations are regularly made, being offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange securities of corporations; or
- (c) information is regularly provided concerning the prices at which, or the consideration for which, particular persons, or particular classes of persons, propose, or

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may reasonably be expected, to sell, purchase or exchange securities of corporations;”;

- (j) by inserting “, whether in the Territory or elsewhere” after “enterprise” (first occurring) in the definition of “time-sharing scheme” in sub-section (1);
- (k) by inserting after sub-section (1) the following sub-section:

“(1A) Unless the contrary intention appears, a reference in this Act to a person carrying on business, or carrying on a business, includes a reference to the person carrying on business, or carrying on a business, as the case may be—

 - (a) in any case—otherwise than for profit; or
 - (b) in the case of a body corporate—otherwise than for the profit of the members or corporators of the body corporate.”;
- (m) by omitting from sub-section (8) “(f) (ii) of the definition of ‘prescribed interest’ ” and substituting “(g) (ii) of the definition of ‘participation interest’ ”; and
- (n) by omitting from paragraph (8) (a) “Territory” and substituting “Commonwealth, of a State or of a Territory”.

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

“(8D) For the purposes of this Act, a person shall be taken to be or become subject to a section 562A notice if, and only if, the person is or becomes, as the case may be, by virtue of a notice served on the person under sub-section 562A (3) or under a provision of a law of a participating State or participating Territory that corresponds with that sub-section, 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, and a reference in this Act to a section 562A notice is a reference to a notice so served.”.

Affairs of a corporation

31. Section 6 of the Principal Act is amended by omitting “or 15” and substituting “, 15 or 16A”.

Relevant interests in shares

32. (1) Section 8 of the Principal Act is amended—

- (a) by omitting sub-sections (4) and (5) and substituting the following sub-sections:

“(4) Without limiting the generality of sub-sections (1), (2) and (3), where a body corporate has, or is by virtue of this section to be deemed to have, power—

 - (a) to exercise, or to control the exercise of, the right to vote attached to a voting share; or

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(b) to dispose of, or to exercise control over the disposal of, a share, and—

(c) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to the exercise of the power; or

(d) a person has a controlling interest in the body corporate, that person shall, for the purposes of this section, be deemed to have the same power in relation to that share as the body corporate has or is to be deemed to have.

“(5) Where a body corporate has, or is by virtue of this section (other than this sub-section) to be deemed to have, power—

(a) to exercise, or to control the exercise of, the right to vote attached to a voting share; or

(b) to dispose of, or to exercise control over the disposal of, a share, a person (in this sub-section referred to as the ‘relevant person’) shall, for the purposes of this section, be deemed to have the same power in relation to that share as the body corporate has, or is to be deemed to have, if—

(c) the relevant person has;

(d) a person associated with the relevant person has;

(e) persons associated with the relevant person together have; or

(f) the relevant person and a person or persons associated with the relevant person together have,

the power to exercise, or to control the exercise of, the voting power attached to not less than the prescribed percentage of the voting shares in the body corporate.”;

(b) by omitting from sub-section (7) “deemed by sub-section (6)” and substituting “to be deemed, by virtue of sub-section (6),”; and

(c) by omitting from sub-sub-paragraph (8) (a) (iii) (A) “is deemed, by sub-section (6),” and substituting “is to be deemed, by virtue of sub-section (6),”.

(2) Section 8 of the Principal Act is amended by inserting after sub-section (9) the following sub-section:

“(9A) A body corporate may, by virtue of this section, be taken or deemed, for the purposes of the provisions referred to in paragraph (1) (a) or (b), as the case requires, to have a relevant interest in a share in the body corporate itself.”.

Associated persons

33. Section 9 of the Principal Act is amended—

(a) by omitting from paragraph (1) (b) “corporation—a person” and substituting “corporation (including, in a case where the other person

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is a corporation, the other person)—a person (including the corporation)”; and

- (b) by omitting sub-paragraphs (1) (b) (i), (ii) and (iii) and substituting the following sub-paragraphs:
- “(i) by reason of which the first-mentioned person, or the other person, may exercise, may directly or indirectly control the exercise of, or may substantially influence the exercise of, any voting power attached to a share in the corporation;
 - (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the corporation;
 - (iii) under which the first-mentioned person may acquire from the other person, or the other person may acquire from the first-mentioned person, shares in the corporation; or
 - (iv) under which the first-mentioned person, or the other person, may be required to dispose of shares in the corporation in accordance with the directions of the other person, or of the first-mentioned person, as the case may be;”.

Power of Commission to require production of books

34. Section 12 of the Principal Act is amended—

- (a) by omitting paragraph (1) (a) and substituting the following paragraph:
- “(a) for the purpose of—
 - (i) the performance of a function, or the exercise of a power, by the Commission under a relevant Act (other than the exercise of a power of the Commission under sub-section 6 (3) of the *National Companies and Securities Commission Act 1979*); or
 - (ii) ensuring compliance with the provisions of a relevant Act; or”;
- (b) by omitting from sub-paragraph (1) (b) (i) “such a relevant Act or corresponding law” and substituting “a relevant Act”; and
- (c) by inserting after sub-section (1) the following sub-section:
- “(1A) A reference in sub-section (1) to a relevant Act includes a reference to the provisions of a law of a participating State or participating Territory that correspond with a relevant Act.”.

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

Investigation of certain matters

“16A. Where the Commission has reason to suspect that—

- (a) an offence under a provision of a relevant Act; or

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(b) an offence relating to a company, being an offence that involves fraud or dishonesty or concerns the management of affairs of the company, may have been committed, the Commission may make such investigation as the Commission thinks expedient for the due administration of a relevant Act.”.

Registration of auditors

36. Section 18 of the Principal Act is amended by omitting from sub-section (3) “or a section 562 order” and substituting “, a section 562 order or a section 562A notice”.

Registration of liquidators

37. Section 20 of the Principal Act is amended by omitting from sub-section (4) “or a section 562 order” and substituting “, a section 562 order or a section 562A notice”.

Notification of certain matters

38. Section 25 of the Principal Act is amended—

- (a) by omitting from sub-section (4) “or a section 562 order” and substituting “, a section 562 order or a section 562A notice”;
- (b) by inserting in sub-section (4) “in writing” after “particulars” (first occurring);
- (c) by omitting from sub-section (4) “or particulars in writing” and substituting “, or”; and
- (d) by omitting from sub-section (4) “or section 562 order” and substituting “, section 562 order or section 562A notice”.

Powers of Board in relation to auditors and liquidators

39. Section 30D of the Principal Act is amended—

- (a) by omitting sub-paragraphs (1) (a) (i) and (ii), (2) (a) (i) and (ii) and (3) (a) (i) and (ii);
- (b) by inserting after sub-section (6) the following sub-sections:

“(6A) The Board shall, if it is satisfied on an application by the Commission for a prescribed person to be dealt with under this section—

- (a) that the person is subject to a section 227 prohibition, a section 227A order, a section 562 order or a section 562A notice; or
- (b) that the person is incapable, by reason of mental infirmity, of managing his affairs,

by order, cancel each prescribed registration of the person.

“(6B) In sub-section (6A) and in this sub-section—

‘prescribed person’ means a person who is registered as an auditor, as a liquidator or as a liquidator of a specified corporation;

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‘prescribed registration’, in relation to a prescribed person, means a registration of the person as an auditor, as a liquidator or as the liquidator of a specified corporation.”;

- (c) by omitting from sub-section (7) “, 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,”;
- (d) by inserting after sub-section (7) the following sub-section:

“(7A) 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 empowered to deal with the person as mentioned in sub-section (7), the Board may so deal with the person—

- (a) in a case where the Board is required to make an order under sub-section (6A) on the application—in addition to making such an order; or
 - (b) in any other case—in addition to or instead of cancelling or suspending the registration of the person as an auditor, as a liquidator or as a liquidator of that corporation, as the case may be.”; and
- (e) by adding at the end the following sub-sections:

“(11) This section (other than this sub-section) as in force after the commencement of section 39 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985* applies in relation to a prescribed application made after that commencement and, notwithstanding the amendments made by that section, this section as in force immediately before that commencement continues to apply in relation to a prescribed application made before that commencement.

“(12) In sub-section (11), ‘prescribed application’ means 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.”.

Proceedings at hearings

40. Section 30G of the Principal Act is amended by omitting paragraph (3) (a) and substituting the following paragraph:

- “(a) the Commission may be represented by—
- (i) an employee, or a member or acting member, of the Commission; or
 - (ii) a person authorised by the Commission for the purpose;”.

Notice of Board’s decision

41. Section 30M of the Principal Act is amended by omitting from sub-sections (1) and (2) “who is registered as an auditor, as a liquidator or as a

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liquidator of a specified corporation” and substituting “, or decides that it is required to make an order under sub-section 30D (6A) in relation to a person”.

Time when Board’s decision comes into effect

42. Section 30N of the Principal Act is amended—

- (a) by omitting from sub-section (1) “a decision of the Board to cancel or suspend” and substituting “an order made by the Board cancelling or suspending”;
- (b) by inserting in sub-section (1) “pursuant to which the order is made” before “, being”;
- (c) by omitting from sub-section (2) “a decision” (first occurring) and substituting “an order”;
- (d) by inserting in sub-section (2) “pursuant to which the order is made” after “decision” (second occurring);
- (e) by omitting from sub-section (2) “a decision, the decision” and substituting “an order, the order”; and
- (f) by omitting from sub-paragraphs (2) (b) (ii) and (c) (ii) “decision” and substituting “order”.

Appeal from decision of Board

43. Section 30R of the Principal Act is amended—

- (a) by inserting in sub-section (1) “any order made by the Board pursuant to the decision and may” after “and” (first occurring); and
- (b) by inserting in sub-section (2) “any order made by the Board pursuant to the decision and may” after “and” (second occurring).

Registers

44. Section 31 of the Principal Act is amended—

- (a) by omitting from sub-paragraph (2) (a) (iia) “or”; and
- (b) by inserting after sub-paragraph (2) (a) (iia) the following sub-paragraph:
 - “(iib) a report made or lodged, whether before or after the commencement of section 44 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985*, under section 324C, 351 or 418; or”.

Formation of companies

45. Section 33 of the Principal Act is amended by inserting in paragraph (3) (a) “, an Ordinance” after “another Act”.

Amendment of Division heading

46. The heading to Division 3 of Part III of the Principal Act is amended by inserting “*Legal Capacity*,” before “*Powers*”.

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47. Before section 67 of the Principal Act the following sections are inserted in Division 3 of Part III:

Commencement of certain provisions

“66A. The following provisions shall be deemed to have come into operation on 1 January 1984:

- (a) the heading to this Division, as amended by section 46 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985*;
- (b) sections 66B and 66C of this Act;
- (c) sections 67 and 68 of this Act, as amended by sections 48 and 49, respectively, of that Act.

Interpretation

“66B. In this section and in sections 66C, 67 and 68—

- (a) a reference to a company is a reference to a company whether incorporated before, on or after 1 January 1984;
- (b) a reference to the doing of an act by a company includes a reference to the making of an agreement by the company and a reference to a transfer of property to or by the company;
- (c) a reference to a restriction on, or a prohibition of, the exercise by a company of any of its powers, being a restriction or prohibition contained in the rules of the company, is, in the case of a company incorporated before 1 January 1984, a reference to such a restriction or prohibition whether or not the restriction or prohibition was so contained immediately before that day;
- (d) a reference to legal capacity includes a reference to powers; and
- (e) a reference to the rules of a company is a reference to the memorandum and articles of the company.

Object of sections 67 and 68

“66C. The object of sections 67 and 68 is—

- (a) to abolish the doctrine of *ultra vires* in its application to companies; and
- (b) without affecting the validity of the dealings of a company with outsiders, to ensure that provisions of the rules of a company relating to objects or powers of the company are given effect to by the company’s officers and members,

and those sections shall be construed, and have effect, accordingly.”

Legal capacity

48. Section 67 of the Principal Act is amended—

- (a) by omitting from sub-section (1) all the words from and including “Subject to” to and including “has power—” and substituting “A company has, both within and outside the Territory, the legal capacity

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- of a natural person and, without limiting the generality of the foregoing, has, both within and outside the Territory, power—”; and
- (b) by omitting sub-sections (2), (3) and (4) and substituting the following sub-sections:

“(2) Sub-section (1) has effect in relation to a company—

- (a) subject to this Act (other than sub-section 68 (1));
- (b) in a case where the rules of the company contain an express or implied restriction on, or an express or implied prohibition of, the exercise by the company of any of its powers— notwithstanding any such restriction or prohibition;
- (c) in a case where the memorandum of the company contains a provision stating the objects of the company— notwithstanding that fact; and
- (d) notwithstanding sub-section 68 (1).

“(3) The fact that the doing of an act by a company would not be, or is not, in the best interests of the company does not affect the legal capacity of the company to do the act.”.

Restrictions on companies

49. Section 68 of the Principal Act is amended—

- (a) by omitting sub-sections (1) to (5) (inclusive) and substituting the following sub-sections:

“(1A) The rules of a company may contain an express restriction on, or an express prohibition of, the exercise by the company of a power of the company.

“(1) Where—

- (a) a company exercises a power contrary to an express restriction on, or an express prohibition of, the exercise of that power, being a restriction or prohibition contained in the rules of the company; or
- (b) the memorandum of a company contains a provision stating the objects of the company and the company does an act otherwise than in pursuance of those objects,

the company contravenes this sub-section.

“(2) Where an officer of a company is 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), the officer contravenes this sub-section.

“(3) A company that contravenes sub-section (1), or an officer of a company who contravenes sub-section (2), is not guilty of an offence by virtue of this section or section 570.

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“(4) Where, by exercising a power as mentioned in paragraph (1) (a), or by doing an act as mentioned in paragraph (1) (b), a company contravenes sub-section (1), the exercise of the power, or the act, as the case may be, is not invalid by reason only of the contravention.

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

(b) by omitting paragraphs (6) (a) and (b) and substituting the following paragraphs:

“(a) by exercising a power as mentioned in paragraph (1) (a), or by doing an act as mentioned in paragraph (1) (b), a company contravened, or would contravene, sub-section (1); or

(b) by doing a particular act, an officer of a company contravened, or would contravene, sub-section (2).”;

(c) by adding at the end of paragraph (6) (f) “to restrain the company from entering into an agreement”;

(d) by inserting in paragraph (6) (g) “(other than an application for an injunction)” after “proceedings”; and

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

“(7) Where, if sub-section (6) had not been enacted, the Court would have power under section 574 to grant, on the application of a person, an injunction restraining a company, or an officer of a company, from engaging in particular conduct constituting a contravention of sub-section (1) or (2), as the case may be, the Court may, on the application of that person, order the first-mentioned company, or the officer, as the case may be, to pay damages to that person or any other person.”.

Repeal of section 68B

50. Section 68B of the Principal Act is repealed.

Alterations of memorandum

51. Section 73 of the Principal Act is amended by adding at the end the following sub-section:

“(14) In this section—

(a) a reference to a memorandum includes a reference to a memorandum registered under a corresponding previous law of the Territory; and

(b) a reference to a provision of the memorandum of a company that could lawfully have been contained in the articles of the company is, in the case of a memorandum of a company registered under a corresponding previous law of the Territory, a reference to a provision of the memorandum of the company that could lawfully have been contained in the articles of the company if the memorandum and articles of the company had been registered under this Act.”.

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52. Section 78 of the Principal Act is repealed and the following section is substituted:

Operation of memorandum and articles

“78. (1) Subject to this Act, the memorandum and articles of a company have the effect of a contract under seal—

- (a) between the company and each member;
- (b) between the company and each officer; and
- (c) between a member and each other member,

under which each of the above-mentioned persons agrees to observe and perform the provisions of the memorandum and articles as in force for the time being so far as those provisions are applicable to that person.

“(2) Subject to section 476, any money payable by a member of a company to the company under the memorandum or articles is a debt from him to the company and is of the nature of a specialty debt.

“(3) A member of a company, unless either before or after the alteration is made he agrees in writing to be bound by it, is not bound by an alteration of the memorandum or articles made after the date on which he became a member so far as the alteration—

- (a) requires him to take or subscribe for more shares than the number held by him at the date of the alteration;
- (b) in any way increases his liability as at the date of the alteration to contribute to the share capital of, or otherwise to pay money to, the company; or
- (c) increases, or imposes, restrictions on the right to transfer the shares held by him at the date of the alteration.

“(4) Sub-section (3) does not apply in relation to an alteration of the memorandum or articles of a public company having a share capital (other than a no liability company) if the alteration—

- (a) is made by virtue of a special resolution of the kind referred to in sub-section 70 (1); and
- (b) is necessary to impose the restrictions, limitations and prohibitions referred to in sub-section 34 (1).

“(5) In this section, ‘officer’, in relation to a company, means a director, the principal executive officer or a secretary of the company.”

Contents of prospectuses

53. Section 98 of the Principal Act is amended—

- (a) by inserting in sub-sub-paragraph (1) (d) (i) (B) “brokerage or” before “commission”; and

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(b) by omitting paragraph (1) (1) and substituting the following paragraph:

“(ka) shall state whether or not application has been, or is proposed to be, made for permission for the shares or debentures to which the prospectus relates to be listed for quotation on a stock market of a securities exchange and, if application for such permission has been, or is proposed to be, made, shall specify each securities exchange to which application for such permission has been, or is proposed to be, made;”.

Certain notices, &c., not to be published

54. Section 99 of the Principal Act is amended by omitting sub-paragraph (4) (a) (v) and substituting the following sub-paragraph:

“(v) in relation to each person who is a broker or underwriter to the issue—the name and address of the person and the name of each securities exchange of which the person is a member;”.

Application and interpretation

55. Section 134 of the Principal Act is amended by adding at the end the following sub-section:

“(6) In determining, for the purposes of a provision of this Division, whether or not a person’s contravention of such a provision was due to the person’s inadvertence or mistake or to the person not being aware of a relevant fact or occurrence, a person’s ignorance of, or a mistake on the person’s part concerning, a matter of law shall be disregarded.”.

Substantial shareholdings and substantial shareholders

56. Section 136 of the Principal Act is amended—

- (a) by inserting in sub-section (2) “(in this sub-section referred to as the ‘relevant person’), being the company or any other person,” after “a person”;
- (b) by omitting from sub-section (2) “that person” (wherever occurring) and substituting “the relevant person”;
- (c) by omitting from paragraph (2) (b) “of a person being” and substituting “where the relevant person is”;
- (d) by omitting from paragraph (3) (b) “company—a person” and substituting “company (including, in a case where the first-mentioned person is a company, the first-mentioned person)—a person (in this paragraph referred to as the ‘relevant associate’), being the company or any other person,”; and
- (e) by omitting sub-paragraphs (3) (b) (i), (ii) and (iii) and substituting the following sub-paragraphs:

“(i) by reason of which the relevant associate, or the first-mentioned person, may exercise, may directly or indirectly control the

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exercise of, or may substantially influence the exercise of, any voting power attached to a share in the company;

- (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the company;
- (iii) under which the relevant associate may acquire from the first-mentioned person, or the first-mentioned person may acquire from the relevant associate, shares in the company; or
- (iv) under which the relevant associate, or the first-mentioned person, may be required to dispose of shares in the company in accordance with the directions of the first-mentioned person, or of the relevant associate, as the case may be;”.

57. Section 141 of the Principal Act is repealed and the following section is substituted:

Copy of notice to be served on securities exchanges

“141. (1) A person who gives a notice under section 137, 138 or 139 to a company that has been admitted to the official list of a securities exchange in Australia and has not been removed from that official list, shall on the day on which the person gives the notice, serve a copy of the notice on—

- (a) if the company has been admitted to the official list of a stock exchange in Australia and has not been removed from that official list—the home stock exchange of the company; and
- (b) if the company has been admitted to the official list of a securities exchange (not being a stock exchange) in Australia and has not been removed from that official list—each such securities exchange to whose official list the company has been admitted and from whose official list the company has not been removed.

“(2) In sub-section (1), ‘home stock exchange’, in relation to a company, means the stock exchange designated to the company as its Home Exchange by the Australian Associated Stock Exchanges.”.

Powers of Court with respect to defaulting substantial shareholder

58. Section 146 of the Principal Act is amended—

- (a) by inserting after paragraph (1) (g) the following paragraphs:
 - “(ga) an order cancelling a contract, arrangement or offer relating to specified shares in the company to which the substantial shareholder is or has been entitled;
 - (gb) an order declaring a contract, arrangement or offer relating to specified shares in the company to which the substantial shareholder is or has been entitled to be voidable;”;
- (b) by omitting sub-section (4) and substituting the following sub-section:
 - “(4) Without limiting the nature of the orders that may be made by the Court under sub-section (1) directing the disposal of, or of an

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interest in, a share in a company, such an order may include one or more of the following provisions:

- (a) a provision 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 person who is, or, as a result of the disposal, would become, a substantial shareholder in the company;
- (b) a provision that a person specified in the order is liable to pay to the company an amount equal to the amount of any profit made by the person as a result of, or in connection with, the disposal of the shares;
- (c) a provision that a person specified in the order shall, for all purposes connected with the disposal of the shares, be deemed to hold the shares as a trustee for the beneficial owner of the shares.”.

Approval of deeds

59. Section 166 of the Principal Act is amended by adding at the end the following sub-sections:

“(4) Where an instrument or instruments amending a deed has or have been made, the management company shall, on being required by the Commission to do so, lodge with the Commission a printed copy (in this sub-section referred to as a ‘relevant copy’) of the deed as amended by the instrument or instruments, being a copy that—

- (a) is verified by a statement in writing;
- (b) bears an indication sufficient to distinguish it from—
 - (i) the deed as lodged, or the copy of the deed lodged, as the case may be, under sub-section (3);
 - (ii) the instrument, or each of the instruments, as the case may be; and
 - (iii) each copy (if any) of the deed previously lodged under this sub-section; and
- (c) if an amendment or amendments made by the instrument or instruments has not or have not, as at the date on which the relevant copy is lodged under this sub-section, come into operation—has marked on it, in relation to the provision, or in relation to each provision, as the case may be, altered, omitted or inserted by the amendment or amendments, a note that identifies the instrument that altered, omitted or inserted the provision and contains a statement to the effect that—
 - (i) in the case of a provision that has been altered or omitted—the alteration or omission; or
 - (ii) in the case of a provision that has been inserted—the provision inserted,has not yet come into operation,

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and a relevant copy so lodged shall for all purposes, in the absence of proof to the contrary, be regarded as a true copy of the deed as so amended.

“(5) Where a provision of an instrument affects the operation of a deed otherwise than by way of textual amendment, the management company shall not lodge a copy of the deed with the Commission under sub-section (4) unless a copy of the instrument is annexed to the copy of the deed.

“(6) In sub-sections (4) and (5), ‘instrument’ includes an instrument made before the commencement of section 59 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985*.”.

60. Section 186 of the Principal Act is repealed and the following section is substituted:

Remedy for refusal to register transfer or transmission

“186. (1) Where a relevant authority in relation to a company refuses or fails to register, or refuses or fails to give its consent or approval to the registration of, a transfer or transmission of shares in, debentures of, or an interest made available by, the company, the transferee or transmittee may apply to the Court for an order under this section.

“(2) Where, on an application made under sub-section (1), the Court is satisfied that the refusal or failure was without just cause, the Court may—

- (a) order that the transfer or transmission be registered; or
- (b) make such other order as it thinks proper, including, in the case of a transfer or transmission of shares, an order providing for the purchase of the shares by a specified member of the company or by the company and, in the case of a purchase by the company, providing for the reduction accordingly of the capital of the company.

“(3) In this section—

‘interest’ includes a prescribed interest;

‘relevant authority’, in relation to a company, means—

- (a) a person who has, 2 or more persons who together have, or a body that has, authority to register a transfer or transmission of shares in, debentures of, or interests made available by, the company; or
- (b) a person, 2 or more persons, or a body, whose consent or approval is required before a transfer or transmission of shares in, debentures of, or interests made available by, the company is registered.”.

Interpretation

61. Section 189 of the Principal Act is amended by omitting from sub-section (1) the definition of “prescribed stock exchange”.

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62. After section 205 of the Principal Act the following section is inserted:

Charges in favour of certain persons void in certain cases

“205A. (1) Where—

- (a) a company creates a charge on property of the company in favour of a person who is, or in favour of persons at least one of whom is, a relevant person in relation to the charge; and
- (b) within 6 months after the creation of the charge, the chargee purports to take a step in the enforcement of the charge without the Court having, under sub-section (3), given leave for the charge to be enforced,

the charge, and any powers purported to be conferred by an instrument creating or evidencing the charge, are, and shall be deemed always to have been, void.

“(2) Without limiting the generality of sub-section (1), a person who—

- (a) appoints a receiver of property of a company under powers conferred by an instrument creating or evidencing a charge created by the company; or
- (b) whether directly or by an agent, enters into possession or assumes control of property of a company for the purposes of enforcing a charge created by the company,

shall be taken, for the purposes of sub-section (1), to take a step in the enforcement of the charge.

“(3) On application by the chargee under a charge, the Court may, if it is satisfied that—

- (a) immediately after the creation of the charge, the company that created the charge was solvent; and
- (b) in all the circumstances of the case, it is just and equitable for the Court to do so,

give leave for the charge to be enforced.

“(4) Nothing in sub-section (1) affects a debt, liability or obligation of a company that would, if that sub-section had not been enacted, have been secured by a charge created by the company.

“(5) Nothing in sub-section (1) operates to affect the title of a person to property (other than the charge concerned or an interest in the charge concerned) purchased for value from a chargee under a charge, from an agent of a chargee under a charge, or from a receiver appointed by a chargee under a charge in the exercise of powers conferred by the charge or implied by law, if that person purchased the property in good faith and without notice that the charge was created in favour of a person who is, or in favour of persons at least one of whom is, as the case may be, a relevant person in relation to the charge.

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“(6) The onus of proving that a person purchased property in good faith and without notice that a charge was created as mentioned in sub-section (5) is on the person asserting that the property was so purchased.

“(7) In this section—

‘chargee’, in relation to a charge, means—

- (a) in any case—the holder, or all or any of the holders, of the charge; or
- (b) in the case of a charge that is an agreement to give or execute a charge in favour of a person or persons, whether upon demand or otherwise—that person, or all or any of those persons;

‘officer’, in relation to a company, includes, in the case of a registered foreign company, an agent of the registered foreign company as defined in Division 5 of Part XIII;

‘receiver’ includes a receiver and manager;

‘relevant person’, in relation to a charge created by a company, means—

- (a) a person who is at the time when the charge is created, or who has been at any time during the period of 6 months ending at that time, an officer of the company; or
- (b) a person associated, in relation to the creation of the charge, with a person of a kind referred to in paragraph (a).”.

63. After section 215C of the Principal Act the following section is inserted in Division 10 of Part IV:

Retirement village schemes

“215D. (1) Where—

- (a) there is attached to a share or debenture a right to participate in a retirement village scheme; and
- (b) each of the other rights, and each interest (if any), attached to the share or debenture is a right or interest that is merely incidental to the right referred to in paragraph (a),

nothing in a prescribed provision applies to or in relation to the share or debenture.

“(2) Nothing in a prescribed provision applies to or in relation to a prescribed interest that is constituted by a right to participate in a retirement village scheme.

“(3) In this section—

‘prescribed provision’ means a provision of Division 1, 2, 5 or 6 or of section 552;

‘retirement village scheme’ means a scheme, undertaking or enterprise (in this definition referred to as the ‘relevant scheme’), whether in the Territory or elsewhere, that is being, or is proposed to be, carried out or undertaken with the intention that the participants, or a majority of

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the participants, in the relevant scheme be provided, in connection with the relevant scheme, with residential accommodation within a retirement community, whether or not the entitlement of a participant to be provided with such accommodation derives from a proprietary interest held by the participant in the premises where the accommodation is provided, but does not include a time-sharing scheme.”.

Publication of name

64. Section 218 of the Principal Act is amended by omitting sub-section (4) and substituting the following sub-section:

“(4) A company shall paint or affix, and keep painted or affixed, in a conspicuous position and in letters easily legible, on the outside of the office or place that is its registered office, and on the outside of every other office or place at which its business is carried on and that is open and accessible to the public—

- (a) its name; and
- (b) in the case of the office or place that is its registered office—the words ‘Registered Office’,

and, if default is made in complying with this sub-section, the company is guilty of an offence.

Penalty: \$1,000.”.

Vacation of office

65. Section 222 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (e) “or”;
- (b) by omitting paragraph (1) (f) and substituting the following paragraphs:

“(f) he becomes subject to a section 562 order; or
(g) he becomes subject to a section 562A notice.”; and

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

“(4B) A person whose office is vacated by reason of paragraph (1) (g) is incapable, without the leave of the Court, of being re-appointed as a director until the expiration of the period specified in the notice referred to in that paragraph.”.

66. After section 229 of the Principal Act the following section is inserted:

Liability of directors for debts, &c., incurred by corporation acting as trustee

“229A. (1) Where—

- (a) a relevant corporation, while acting or purporting to act in a capacity of trustee of a trust, incurs a liability—
 - (i) in the case of a company—whether within or outside Australia;
 - (ii) in the case of a registered overseas foreign company—within Australia; or

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(iii) in the case of a foreign company that is neither a registered overseas foreign company nor a recognised foreign company—within the Territory; and

(b) the relevant corporation is for any reason not entitled to be fully indemnified out of the assets of the trust in respect of the liability,

the relevant corporation and the persons who were directors of the relevant corporation at the time when the liability was incurred and were not innocent directors in relation to the incurring of the liability are jointly and severally liable to discharge the liability.

“(2) For the purposes of this section, a trustee of a trust shall not, by reason only that—

(a) the trust has no assets; or

(b) the assets of the trust are insufficient to indemnify the trustee in respect of the liability concerned,

be taken not to be entitled to be fully indemnified out of the assets of the trust in respect of a liability.

“(3) In this section—

‘Australia’ includes the external Territories;

‘innocent director’, in relation to the incurring of a liability by a relevant corporation while acting or purporting to act in a capacity of trustee of a trust, means a person who—

(a) was a director of the relevant corporation at the time when the liability was incurred; and

(b) if the persons who were directors of the relevant corporation at that time had been at that time the trustees of the trust and had incurred the liability, would have been entitled to be fully indemnified in respect of the liability by one or more of the other trustees;

‘liability’ means a debt, liability or other obligation;

‘registered overseas foreign company’ means a registered foreign company that was formed or incorporated outside Australia;

‘relevant corporation’ means—

(a) a company;

(b) a registered overseas foreign company; or

(c) a foreign company that is neither a registered overseas foreign company nor a recognised foreign company.”.

Loans to directors

67. Section 230 of the Principal Act is amended—

(a) by omitting from sub-paragraph (1) (a) (iii) “or” (last occurring);

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- (b) by inserting after sub-paragraph (1) (a) (iii) the following sub-paragraph:
 - “(iiiia) a trustee of a trust under which a corporation has a beneficial interest, where a person referred to in sub-paragraph (i) or (ii) has, or 2 or more such persons together have, a relevant interest or relevant interests in shares in the corporation the nominal value of which is not less than 10% of the nominal value of the issued share capital of the corporation, being a loan made to the trustee in his capacity as trustee; or”;
- (c) by omitting from sub-paragraph (1) (a) (iv) “direct or indirect beneficial interest” and substituting “relevant interest or relevant interests”;
- (d) by omitting sub-section (2) and substituting the following sub-section:
 - “(2) For the purposes of sub-section (1), where—
 - (a) a company—
 - (i) makes a loan to a corporation, or gives a guarantee or provides security in connection with a loan made to a corporation; or
 - (ii) makes a loan to a trustee of a trust under which a corporation has a beneficial interest, or gives a guarantee or provides security in connection with a loan made to a trustee of a trust under which a corporation has a beneficial interest;
 - (b) the company has a relevant interest or relevant interests in shares in the corporation; and
 - (c) a person has, or 2 or more persons together have, a relevant interest or relevant interests in shares in the company,the matters referred to in paragraphs (b) and (c) shall be disregarded for the purpose of determining whether the person has, or the persons together have, as the case may be, a relevant interest or relevant interests in the shares referred to in paragraph (b).”;
- (e) by omitting from paragraphs (5) (a) and (b) “or” (last occurring);
- (f) by inserting after paragraph (5) (b) the following paragraph:
 - “(ba) in the case of a loan made to, or a guarantee given or security provided in relation to a loan made to, a trustee of a trust under which a corporation (in this paragraph referred to as the ‘relevant corporation’) has a beneficial interest in circumstances referred to in sub-paragraph (1) (a) (iiiia)—any director of the company, or of a corporation that is related to the company, by virtue of whose relevant interest or relevant interests in shares in the relevant corporation the making of the loan, the giving of the guarantee or the provision of the security contravened this section, and any other officers of that company or of the relevant corporation

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who are in default, are each guilty of an offence and, in addition, are jointly and severally liable to indemnify the company against any loss arising from the making of the loan, the giving of the guarantee or the providing of the security, as the case may be; or”;

- (g) by omitting from paragraph (5) (c) “beneficial interest” and substituting “relevant interest or relevant interests”; and
- (h) by omitting from paragraphs (8) (a) and (b) “the loan was made” and substituting “the guarantee was given or the security was provided”.

General duty to make disclosure

68. Section 232 of the Principal Act is amended—

- (a) by omitting paragraph (1) (e) and substituting the following paragraph:

“(e) of the date and place of the director’s birth.”; and

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

“(4A) A person who is the principal executive officer, or a secretary, of a company shall give notice in writing to the company—

- (a) of such matters and events affecting or relating to the person as are necessary for the purposes of compliance by the company with any of the provisions of section 238 that are applicable in relation to the person; and

- (b) of the date and place of the person’s birth.

“(4B) A person required to give a notice under sub-section (4A) shall give the notice—

- (a) in the case of a notice under paragraph (4A) (a)—within 14 days after the person becomes aware of the matter or the occurrence of the event; and
- (b) in the case of a notice under paragraph (4A) (b)—within 14 days after the day on which the person becomes the principal executive officer, or a secretary, as the case may be, of the company.

“(4C) Sub-section (1), as in force after the commencement of section 68 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985*, and sub-sections (4A) and (4B) of this section apply in relation to a director, principal executive officer or secretary of a company who is appointed or re-appointed after that commencement.”.

Benefits for loss of, or retirement from, office

69. Section 233 of the Principal Act is amended—

(a) by omitting sub-sections (1) to (5) (inclusive) and substituting the following sub-sections:

“(1) It is unlawful—

- (a) for a company, or for a prescribed superannuation fund in relation to a company, to give a prescribed benefit to a person in connection with the retirement of a person from a prescribed office in relation to the company;
- (b) for an associate of a company to give a prescribed benefit to a person in connection with the retirement of a person (other than the associate) from a prescribed office in relation to the company; or
- (c) for a person to give a prescribed benefit to a prescribed person in connection with the transfer of the whole or any part of the undertaking or property of a company,

unless—

- (d) particulars with respect to the proposed prescribed benefit, including—
 - (i) in the case of a proposed prescribed benefit that is a payment—the amount of the payment; or
 - (ii) in any other case—the money value of the proposed prescribed benefit; and
- (e) in a case where paragraph (a) or (b) applies—particulars of all other relevant benefits given or proposed to be given,

have been disclosed to the members of the company and the giving of the proposed prescribed benefit has been approved by the company in general meeting.

“(1A) Where, by virtue of the fact that—

- (a) the particulars required by sub-section (1) to be disclosed to the members of a company in relation to the giving to a person of a proposed prescribed benefit have been so disclosed; and
- (b) the giving to the person of the proposed prescribed benefit has been approved by the company in general meeting,

sub-section (1) does not prohibit the giving to the person of the proposed prescribed benefit, that sub-section does not prohibit the giving to the person, instead of the proposed prescribed benefit, of a prescribed benefit the amount or money value of which is less than the amount or money value of the proposed prescribed benefit.

“(2) Paragraph (1) (a) or (b) does not apply in relation to—

- (a) the giving of an exempt benefit; or
- (b) the giving of a prescribed benefit in prescribed circumstances.

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“(2A) Paragraph (1) (a) or (b) does not apply in relation to the giving of a prescribed benefit in connection with the retirement of a person from a prescribed office (in this sub-section referred to as the ‘relevant office’) in relation to a company, if—

- (a) the prescribed benefit is a *bona fide* payment by way of pension or lump sum payment in respect of past services rendered by the person to the company or to a corporation that is a related corporation, or that was, at the time when the past services were rendered, a related corporation, of the company, including any superannuation, retiring allowance, superannuation gratuity or similar payment; and
- (b) the value of the pension or lump sum payment, when added to the value of all other pensions (if any) and lump sum payments (if any) already paid or payable in connection with the retirement of the person from a prescribed office in relation to the company, does not exceed—
 - (i) in a case where, at the time when the person retired from the relevant office, the person was, and had been throughout a period (in this sub-section referred to as the ‘relevant period’), or throughout periods totalling a period (in this sub-section also referred to as the ‘relevant period’), of not less than 3 years, an eligible employee in relation to the company—the amount ascertained in accordance with the formula—

$$\frac{AB}{3},$$

where—

- A** is the amount of the total emoluments of the person during the last 3 years of the relevant period;
 - B** is the number of years in the relevant period or, if that number is greater than 7, 7; or
- (ii) in any other case—the total emoluments of the person during the period of 3 years ending when the person retired from the relevant office.

“(2B) In determining for the purposes of paragraph (2A) (b) the value of a pension or lump sum payment, any part of the pension or lump sum payment that is attributable to a contribution made by the person or by a person other than—

- (a) the company;
- (b) a corporation (in this sub-section referred to as a ‘relevant corporation’) that is a related corporation of the company, or that was, at the time when the contribution was made, such a related corporation; or

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(c) an associate of the company, or of a relevant corporation, in respect of—

(i) the payment of the pension, or the making of the lump sum payment, as the case may be; or

(ii) the making of the contribution,

shall be disregarded.

“(2C) For the purposes of sub-paragraph (2A) (b) (i), where at a particular time, or throughout a particular period—

(a) a person was a *bona fide* full-time employee of a company; or

(b) a person was a *bona fide* full-time employee of a corporation and the corporation was related to a company,

the person shall be taken to have been at that time, or throughout that period, as the case may be, an eligible employee in relation to the company.

“(2D) Paragraph (1) (a) or (b) does not apply in relation to the giving of a prescribed benefit by a person to another person if failure by the first-mentioned person to give the prescribed benefit to the other person would constitute, otherwise than by reason of breach of contract or breach of trust, a contravention of a law in force in the Territory or elsewhere.

“(2E) Where the giving of a prescribed benefit by a person to another person is unlawful by virtue of sub-section (1), the receipt of the prescribed benefit by the other person is also unlawful.

“(3) A person (other than a superannuation fund) who does an act that is unlawful by virtue of sub-section (1) or (2E) is guilty of an offence.

“(3A) Where a superannuation fund does an act that is unlawful by virtue of sub-section (1) or (2E), a person who is in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the doing of the act is guilty of an offence.

“(4) Where the giving of a prescribed benefit to a person is unlawful by virtue of sub-section (1), then—

(a) in a case where the prescribed benefit is a payment—the amount of the payment; or

(b) in any other case—the money value of the prescribed benefit, shall be deemed to be received by the person in trust for the company concerned.

“(5) This section is in addition to, and not in derogation of, any other law that requires disclosure to be made with respect to the giving or receipt of a prescribed benefit.”;

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(b) by omitting paragraph (6) (c) and substituting the following paragraphs:

“(c) a reference to the giving of a prescribed benefit by a person includes a reference to the giving of a prescribed benefit that the person is obliged under a contract to give;

(ca) a reference to the giving of a prescribed benefit, or to a pension or lump sum payment paid or payable, in connection with the retirement of a person from an office is a reference to the giving of a prescribed benefit, or to a pension or lump sum paid or payable, as the case may be—

(i) by way of compensation for, or otherwise in connection with, the loss by the person of the office; or

(ii) in connection with the retirement of the person from the office.”;

(c) by adding at the end of sub-section (6) the following word and paragraph:

“; and (e) a reference to retirement of a person from an office includes a reference to—

(i) loss by the person of the office;

(ii) resignation by the person from the office; or

(iii) death of the person at a time when the person holds the office.”;

(d) by inserting after sub-section (6) the following sub-sections:

“(6A) Without limiting the generality of paragraph (6) (ca), where a person gives a prescribed benefit to another person for the purpose, or for purposes including the purpose, of enabling or assisting a person to give to a person a prescribed benefit in connection with the retirement of a person (in this sub-section referred to as the ‘relevant person’) from an office, the first-mentioned person shall be taken, for the purposes of this section, to give the first-mentioned prescribed benefit in connection with the retirement of the relevant person from that office.

“(6B) Where a company, or an associate of a company, gives a prescribed benefit to a superannuation fund in prescribed circumstances, the superannuation fund shall be taken to be, for the purposes of this section, a prescribed superannuation fund in relation to the company.

“(6C) Where a prescribed superannuation fund in relation to a company gives a prescribed benefit to another superannuation fund in prescribed circumstances, the other superannuation fund shall be taken to be, for the purposes of this section, a prescribed superannuation fund in relation to the company.

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“(6D) For the purposes of this section, where—

- (a) a company, or an associate of a company, gives a prescribed benefit to a superannuation fund solely for the purpose of enabling or assisting the superannuation fund to give to a person a prescribed benefit in connection with the retirement of a person from a prescribed office in relation to the company; or
- (b) a superannuation fund gives a prescribed benefit to another superannuation fund solely for the purpose of enabling or assisting the other superannuation fund to give to a person a prescribed benefit in connection with the retirement of a person from a prescribed office in relation to a company,

the prescribed benefit first referred to in paragraph (a) or (b) shall be taken to be given in prescribed circumstances.”;

- (e) by inserting before the definition of “emoluments” in sub-section (7) the following definition:

“‘associate’, in relation to a corporation, means a person who is associated with the corporation;”;

- (f) by omitting from sub-section (7) the definitions of “exempt benefit” and “relevant benefit” and substituting the following definitions:

“‘exempt benefit’ means a prescribed benefit given in connection with the retirement of a person from a prescribed office in relation to a company, being a prescribed benefit—

- (a) given under an agreement entered into before 1 October 1954;
- (b) given under an agreement entered into on or after 1 October 1954 and before the commencement of this Act, where the giving of the prescribed benefit would have been lawful if this Act had not been enacted;
- (c) given under an agreement where particulars of the terms of that agreement have been disclosed to the members of the company and approved by the company in general meeting;
- (d) that is a *bona fide* payment by way of damages for breach of contract;
- (e) given to the person pursuant to an agreement made between the company and the person before the person became the holder of the prescribed office as the consideration or part of the consideration for the person agreeing to hold the prescribed office; or
- (f) that is a payment made in respect of leave of absence to which the person is entitled by virtue of an industrial instrument;

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‘give’, in relation to a prescribed benefit, includes—

- (a) in the case of a prescribed benefit that is a payment—make; and
- (b) in the case of a prescribed benefit that is an interest in property—transfer;

‘person’ includes a superannuation fund;

‘prescribed benefit’ means a payment or other valuable consideration or any other benefit and includes, without limiting the generality of the foregoing, an interest in property of any kind;

‘relevant benefit’, in relation to a proposal to give a prescribed benefit in connection with the retirement of a person from a prescribed office in relation to a company, being a prescribed benefit in relation to which paragraph (1) (a) or (b) would apply, means any other prescribed benefit (including an exempt benefit) given, or proposed to be given, in connection with the retirement of the person from the prescribed office;

‘superannuation fund’ means a provident, benefit, superannuation or retirement fund.”; and

(g) by omitting sub-section (8) and substituting the following sub-section:

“(8) The giving of approval by a company for the giving of a prescribed benefit as mentioned in paragraph (1) (c) does not relieve a director of the company of any duty to the company under section 229 or otherwise, and whether of a fiduciary nature or not, in connection with the giving of the prescribed benefit.

Penalty: \$2,500 or imprisonment for 6 months, or both.”.

Register of directors, principal executive officer and secretaries

70. Section 238 of the Principal Act is amended—

(a) by omitting paragraph (2) (a) and substituting the following paragraph:

“(a) the present Christian or given name and surname, any former Christian or given name or surname, the date and place of birth, the usual residential address, and the business occupation (if any), of the director; and”;

(b) by omitting from sub-section (4) “and address” and substituting “, date and place of birth, address”;

(c) by inserting in paragraph (7) (c) “ date and place of birth,” before “address”; and

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

“(11) Sub-sections (2), (4) and (7), as in force after the commencement of section 70 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985*, apply in relation

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to a director, principal executive officer or secretary of a company who is appointed or re-appointed after that commencement.”.

Register of Disqualified Company Directors and Other Officers

71. Section 238A of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(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) 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; and
- (b) a copy of each notice served under sub-section 562A (3) or under a provision of a law of a participating State or participating Territory that corresponds with that sub-section.”.

72. After section 255 of the Principal Act the following section is inserted:

Notices relating to non-beneficial and beneficial ownership of shares

“255A. (1) Where, at a particular time—

- (a) an instrument of transfer of shares in a company is lodged, by or on behalf of the transferee, with the company for registration of the transfer;
- (b) having regard to all relevant circumstances, it may reasonably be expected that, upon registration of the transfer, the transferee will hold non-beneficially particular shares (in this sub-section referred to as the ‘relevant shares’), being any of the shares to which the instrument of transfer relates; and
- (c) the instrument of transfer does not include a notice that—
 - (i) contains a statement to the effect that, upon registration of the transfer, the transferee will hold the relevant shares non-beneficially;
 - (ii) sets out particulars of the relevant shares; and
 - (iii) is signed by or on behalf of the transferee,

the transferee is guilty of an offence.

“(2) The fact that a person is guilty of an offence under sub-section (1) does not affect the validity of the registration of a transfer of shares in a company.

“(3) Where—

- (a) an instrument of transfer of shares in a company includes a notice of the kind referred to in paragraph (1) (c) and is lodged with the company for registration of the transfer; and
- (b) upon registration of the transfer, the transferee holds beneficially particular shares (in this sub-section referred to as the ‘relevant

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shares'), being any of the shares particulars of which are set out in the notice,

then, before the end of the period of 14 days commencing upon registration of the transfer, the transferee shall, whether or not the transferee commences before the end of that period to hold any of the relevant shares non-beneficially, give to the company a notice that—

- (c) sets out the name and address of the transferee;
- (d) contains a statement to the effect that, as from registration of the transfer, the transferee holds the relevant shares beneficially;
- (e) sets out particulars of the relevant shares; and
- (f) is signed by or on behalf of the transferee.

“(4) Where—

- (a) an instrument of transfer of shares in a company is lodged with the company for registration of the transfer; and
- (b) upon registration of the transfer, the transferee holds non-beneficially particular shares (in this sub-section referred to as the 'relevant shares'), being any of the shares to which the instrument of transfer relates (other than, in a case where the instrument of transfer includes a notice of the kind referred to in paragraph (1) (c), the shares particulars of which are set out in the notice),

then, before the end of the period of 14 days commencing upon registration of the transfer, the transferee shall, whether or not the transferee commences before the end of that period to hold any of the relevant shares beneficially, give to the company a notice that—

- (c) sets out the name and address of the transferee;
- (d) contains a statement to the effect that, as from registration of the transfer, the transferee holds the relevant shares non-beneficially;
- (e) sets out particulars of the relevant shares; and
- (f) is signed by or on behalf of the transferee.

“(5) Where—

- (a) at a particular time, a person holds beneficially shares in a company; and
- (b) immediately after that time, the person holds non-beneficially particular shares (in this sub-section referred to as the 'relevant shares'), being any of the shares referred to in paragraph (a),

then, before the end of the period of 14 days commencing at that time, the person shall, whether or not the person recommences before the end of that period to hold any of the relevant shares beneficially, give to the company a notice that—

- (c) sets out the name and address of the person;
- (d) contains a statement to the effect that, after that time, the person holds the relevant shares non-beneficially;
- (e) specifies that time and sets out particulars of the relevant shares; and

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(f) is signed by or on behalf of the person.

“(6) Where—

- (a) at a particular time, a person holds non-beneficially shares in a company; and
- (b) immediately after that time, the person holds beneficially particular shares (in this sub-section referred to as the ‘relevant shares’), being any of the shares referred to in paragraph (a),

then, before the end of the period of 14 days commencing at that time, the person shall, whether or not the person recommences before the end of that period to hold any of the relevant shares non-beneficially, give to the company a notice that—

- (c) sets out the name and address of the person;
- (d) contains a statement to the effect that, after that time, the person holds the relevant shares beneficially;
- (e) specifies that time and sets out particulars of the relevant shares; and
- (f) is signed by or on behalf of the person.

“(7) In proceedings under this section, a person shall, unless the contrary is established, be presumed to have been aware at a particular time of a circumstance of which an employee or agent of the person, being an employee or agent having duties or acting in relation to the transfer to, or ownership by, the person of a share or shares in the company concerned, was aware at that time.

“(8) In this section, unless the contrary intention appears—

‘any’ includes all;

‘company’ means a company as defined in sub-section 5 (1), but does not include a body corporate that is a company for the purposes of Division 4 of Part IV.

“(9) For the purposes of this section and of section 256—

- (a) where, at a particular time, a person—
 - (i) holds shares in a capacity other than that of sole beneficial owner; or
 - (ii) without limiting the generality of sub-paragraph (i), holds shares as trustee for, as nominee for, or otherwise on behalf of or on account of, another person,

the first-mentioned person shall be taken to hold the shares non-beneficially at that time; and

- (b) a person who holds shares at a particular time shall be taken to hold the shares beneficially at that time unless the person holds the shares non-beneficially at that time.

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

Register and index of members

73. Section 256 of the Principal Act is amended—

(a) by omitting paragraph (1) (a) and substituting the following paragraphs:

“(a) the names and addresses of the members;

(aa) in the case of a non-listed company having a share capital—in relation to each member—

(i) if the member holds shares in the company beneficially—a statement of the shares that the member so holds; and

(ii) if the member holds shares in the company non-beneficially—a statement of the shares that the member so holds and, in relation to that statement, a notation to the effect that the member holds the shares non-beneficially within the meaning of this section;

(ab) in the case of a listed company having a share capital—a statement of the shares held by each member;”;

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

“(1A) A statement in the register of members of a company, being a statement of shares held by a member, shall—

(a) distinguish each share by its number (if any) or by the number (if any) of the certificate evidencing the member’s holding; and

(b) set out the amount paid, or agreed to be considered as paid, on the shares.

“(2) Notwithstanding sub-sections (1) and (1A), where a company has converted any of its shares into stock and given notice of the conversion to the Commission, the company shall enter in its register of members—

(a) in the case of a non-listed company—in relation to each member who holds stock—

(i) if the member holds stock beneficially—a statement of the amount of stock, or of the number of stock units, as the case requires, that the member so holds; and

(ii) if the member holds stock non-beneficially—a statement of the amount of stock, or of the number of stock units, as the case requires, that the member so holds and a notation to the effect that the member holds the stock non-beneficially within the meaning of this section; or

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(b) in the case of a listed company—a statement of the amount of stock, or of the number of stock units, as the case requires, held by each member who holds stock,
and shall alter or delete accordingly the statements in the register that relate to shares held by members.

“(2A) For the purposes of paragraphs (1) (aa) and (ab) and of sub-sections (1A) and (2), where 2 or more persons jointly hold shares in a company, whether or not any of the persons holds any other shares in the company, the persons shall together be deemed, in relation to the first-mentioned shares, to be a member of the company.

“(2B) In determining for the purposes of sub-sections (1) and (2) whether a member of a non-listed company holds shares in the company beneficially or non-beneficially, regard shall be had only to prescribed information in relation to the company.

“(2C) Where—

(a) an instrument of transfer of shares in a company includes a notice of the kind referred to in paragraph 255A (1) (c) and is lodged with the company for registration of the transfer; and

(b) the company registers the transfer,

the information contained in the notice shall be taken, for the purposes of sub-section (2B) of this section, to be prescribed information in relation to the company.

“(2D) Information contained in a notice given to a non-listed company under sub-sections 255A (3), (4), (5) and (6), or in a statement furnished to a non-listed company pursuant to a notice given to a person under sub-section 261 (2) or (3), shall be taken, for the purposes of sub-section (2B) of this section, to be prescribed information in relation to the company.”; and

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

“(8) In this section—

‘listed company’ means a company that is a company for the purposes of Division 4 of Part IV;

‘non-listed company’ means a company other than a listed company.”.

Trustee, &c., may be registered as owner of shares

74. Section 260 of the Principal Act is amended—

(a) by omitting from sub-section (8) “and section 261” and substituting “and section 256”;

(b) by omitting from sub-section (8) “or section 261” and substituting “of this section or pursuant to section 256 ”; and

(c) by inserting after sub-section (8) the following sub-section:

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“(8A) Notwithstanding the amendments of sub-section (8) of this section that were made by section 74 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985*, that sub-section as in force immediately before the commencement of that section continues to apply in relation to anything done, before that commencement, pursuant to section 261.”.

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

75. (1) Section 261 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 company as defined in sub-section 5 (1) and includes a body (whether incorporated or not) that is a company for the purposes of Division 4 of Part IV;”;

- (b) by inserting after sub-section (12) the following sub-sections:

“(12A) A company is not, by reason of anything done under this section or section 261A—

- (a) to be taken for any purpose to have notice of; or
(b) put upon inquiry as to,

the right of a person to or in relation to a share in the company.

“(12B) Sub-section (12A) shall be deemed to have come into operation on 1 January 1984.”.

(2) Section 261 of the Principal Act is amended by inserting after sub-section (17) the following sub-section:

“(17A) In determining, for the purposes of sub-section (17), whether or not a failure by a person to comply with sub-section (7) or (8) was due to the inadvertence or mistake of the person, the person’s ignorance of, or a mistake on the person’s part concerning, a matter of law shall be disregarded.”.

Powers of Court

76. Section 261A of the Principal Act is amended—

- (a) by inserting after paragraph (2) (g) the following paragraphs:

“(ga) an order cancelling a contract, arrangement or offer relating to the shares;
(gb) an order declaring a contract, arrangement or offer relating to the shares to be voidable;”;

- (b) by omitting sub-section (6) and substituting the following sub-section:

“(6) Without limiting the nature of the orders that may be made by the Court under sub-section (1) directing the disposal of, or of an

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interest in, a share in a company, such an order may include one or more of the following provisions:

- (a) a provision 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 person or persons or to persons included in a particular class or classes of persons;
 - (b) a provision that a person specified in the order is liable to pay to the company an amount equal to the amount of any profit made by the person as a result of, or in connection with, the disposal of the shares;
 - (c) a provision that a person specified in the order shall, for all purposes connected with the disposal of the shares, be deemed to hold the shares as a trustee for the beneficial owner of the shares.”; and
- (c) by inserting after sub-section (10) the following sub-section:

“(10A) In determining, for the purposes of sub-section (10), whether or not a failure by a person to comply with sub-section 261 (7) or (8) was due to the person’s inadvertence or mistake, the person’s ignorance of, or a mistake on the person’s part concerning, a matter of law shall be disregarded.”.

77. After section 265A of the Principal Act the following Division is inserted in Part V:

“Division 6—Inspection of Records

Inspection of records

“265B. (1) Where—

- (a) a member of a company applies to the Court for an order authorising a registered company auditor, or a duly qualified legal practitioner, acting on behalf of the member to inspect books of the company; and
- (b) the Court is satisfied that the member is acting in good faith and that the inspection is to be made for a proper purpose,

the Court may—

- (c) make an order authorising a registered company auditor, or a duly qualified legal practitioner, acting on behalf of the member, at such time as is specified in the order, to inspect and to make copies of, or take extracts from, the books of the company or such of the books of the company as are specified in the order; and
- (d) make such other order or orders (if any) as it thinks fit including, without limiting the generality of the foregoing, an order relating to the use that may be made of the information disclosed to the member by the registered company auditor or the duly qualified legal practitioner as a result of the inspection.

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“(2) The right of a member of a company to apply for an order under sub-section (1) is in addition to and not in derogation of any right in relation to the inspection of books of a company that a member of a company has under any other law.

Disclosure of information

“265C. A registered company auditor, or a duly qualified legal practitioner, who inspects books of a company pursuant to an order of the Court under section 265B shall not disclose to a person other than—

- (a) the member of the company on whose application the order was made; or
- (b) an employee, or a member or acting member, of the Commission, information acquired in the course of the inspection.”.

Interpretation

78. Section 266 of the Principal Act is amended—

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

“ ‘accounts’ means profit and loss accounts and balance-sheets and includes—

- (a) statements, reports and notes, other than auditors’ reports and directors’ reports, attached to or intended to be read with any of those profit and loss accounts or balance sheets; and
- (b) in a case where the directors of a company—
 - (i) are required by sub-section 269 (3A) to cause a cash statement relating to a financial year of the company to be made out; or
 - (ii) not being required by sub-section 269 (3A) to cause a cash statement relating to a financial year of the company to be made out, cause such a cash statement to be made out for the purpose of laying it before the next annual general meeting of the company,

that cash statement;”;

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

“ ‘cash statement’ means a statement of cash movements;”;

- (c) by omitting from sub-section (1) the definition of “group accounts” and substituting the following definition:

“ ‘group accounts’, in relation to a holding company, means—

- (a) a set of consolidated accounts for the group of companies of that holding company;

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- (b) 2 or more sets of consolidated accounts together covering that group;
- (c) separate accounts for each corporation in that group; or
- (d) a combination of one or more sets of consolidated accounts and one or more sets of separate accounts together covering that group,

and includes, in a case where the directors of the holding company—

- (e) are required by sub-section 269 (3A) to cause a consolidated cash statement relating to respective financial years of the holding company and its subsidiaries to be made out; or
- (f) not being required by sub-section 269 (3A) to cause a consolidated cash statement relating to respective financial years of the holding company and its subsidiaries to be made out, cause such a cash statement to be made out for the purpose of laying it before the next annual general meeting of the holding company,

that cash statement, but does not include any other cash statement;”;

- (d) by inserting after the definition of “holding company” in sub-section (1) the following definitions:

“ ‘prescribed company’ means a company, or a company included in a class of companies, prescribed for the purposes of this definition;

‘relevant time’, in relation to a financial year of a company, means—

- (a) in a case where, before the end of the period within which section 240 requires the company to hold an annual general meeting in relation to that financial year, the company so holds an annual general meeting notice of which was sent, not less than 14 days before the end of that period, to persons entitled to receive notice of general meetings of the company—
 - (i) unless sub-paragraph (ii) applies—the time when notice of the last-mentioned meeting was so sent; or
 - (ii) if notice of the last-mentioned meeting was so sent not less than 14 days before the meeting—the end of the fourteenth day before the meeting; or

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- (b) in any other case—the end of the fourteenth day before the end of the period within which section 240 requires the company to hold an annual general meeting in relation to that financial year;” and
- (e) by inserting after sub-section (1) the following sub-section:

“(1A) Where, in accordance with sub-section 269 (9) or (10), the directors of a company, or of a holding company, as the case may be, cause a statement to be attached to accounts of the company, or to group accounts of the holding company, the statement shall be deemed, for the purposes of this Part (other than that sub-section and sub-section 279 (6A)), to form part of those accounts or group accounts, as the case may be.”

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

Annual report

“266G. (1) The Board shall, as soon as practicable after 30 June, and in any event before 31 October, in each year—

- (a) prepare a report describing the operations of the Board during the year that ended on 30 June in that year;
- (b) furnish the report to the Ministerial Council; and
- (c) furnish to the Minister a copy of the report.

“(2) Where a copy of a report is furnished to the Minister under sub-section (1), the Minister shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the first-mentioned copy is received by him.”

Profit and loss account, balance-sheet, group accounts, &c.

80. (1) Section 269 of the Principal Act is amended—

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

“(1) The directors of a company shall, before the relevant time in relation to a financial year of the company, cause to be made out a profit and loss account for that financial year that gives a true and fair view of the profit or loss of the company for that financial year.

“(2) The directors of a company shall, before the relevant time in relation to a financial year of the company, cause to be made out a balance-sheet as at the end of that financial year that gives a true and fair view of the state of affairs of the company as at the end of that financial year.”;

- (b) by omitting from sub-section (3) all the words from and including “not less” (first occurring) to and including “that period” and substituting “before the relevant time in relation to that financial year”;

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

“(3A) Where, at the end of a financial year of a company, the company is a prescribed company, the directors of the company shall, before the relevant time in relation to that financial year, cause to be made out—

- (a) in a case where paragraph (b) does not apply—a cash statement relating to that financial year that gives a true and fair view of the cash movements of the company during that financial year; or
- (b) in a case where, at the end of that financial year, the company is a holding company (other than a holding company that is a wholly-owned subsidiary of a company or of a recognised company)—a consolidated cash statement relating to the respective last financial years of the company and its subsidiaries, being a cash statement that gives a true and fair view of the cash movements of the company and its subsidiaries during their respective last financial years.

“(3B) Where the directors of a company—

- (a) are not required by sub-section (3A) to cause a cash statement relating to a financial year of the company to be made out; and
- (b) cause a cash statement relating to that financial year to be made out for the purpose of laying it before the next annual general meeting of the company,

the directors of the company shall cause the cash statement to be made out so as to give a true and fair view of the cash movements of the company during that financial year.

“(3C) Where the directors of a holding company—

- (a) are not required by sub-section (3A) to cause a consolidated cash statement relating to respective financial years of the holding company and its subsidiaries to be made out; and
- (b) cause a consolidated cash statement relating to those respective financial years of the company and its subsidiaries to be made out for the purpose of laying it before the next annual general meeting of the company,

the directors of the company shall cause the cash statement to be made out so as to give a true and fair view of the cash movements of the company and its subsidiaries during those respective financial years.”;

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

“(4) The directors of a company, other than a company that pursuant to sections 278 and 279 did not appoint an auditor to audit the accounts concerned, shall take reasonable steps to ensure that the accounts of the company relating to a financial year of the company and, if the company is a holding company for which group accounts

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relating to that financial year are required, those group accounts are audited as required by this Part before the relevant time in relation to that financial year.”;

- (e) by omitting from sub-section (6) all the words after “subsidiary” and substituting “of a company or of a recognised company”.
 - (f) by omitting from sub-section (9) all the words from and including “56 days” (first occurring) to and including “that period” and substituting “42 days before the relevant time in relation to the last financial year (in this sub-section referred to as the ‘financial year’) of the company”;
 - (g) by omitting sub-paragraphs (9) (a) (i) and (ii) and substituting the following sub-paragraphs:
 - “(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 the financial year;
 - (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;
 - (iia) if the accounts include a cash statement—the cash statement is drawn up so as to give a true and fair view of the cash movements of the company during the financial year; and”;
 - (h) by omitting from sub-section (10) all the words from and including “56 days” (first occurring) to and including “that period” and substituting “42 days before the relevant time in relation to the last financial year of the company”;
 - (j) by inserting after paragraph (10) (a) the following paragraph:
 - “(aa) if the group accounts include a cash statement—stating whether, in the opinion of the directors, the cash statement is drawn up so as to give a true and fair view of the cash movements of the company and its subsidiaries during their respective last financial years;”;
 - (k) by omitting from paragraph (11) (a) “and (ii)” and substituting “, (ii) and (iia)”;
 - (m) by omitting from paragraph (12) (a) “paragraph (10) (a)” and substituting “paragraphs (10) (a) and (aa)”.
- (2) Section 269 of the Principal Act is amended—
- (a) by omitting paragraph (9A) (b) and substituting the following paragraph:
 - “(b) if the company, pursuant to section 278 or 279, did not appoint an auditor to audit the accounts—before the relevant time in relation to the financial year of the company to which the accounts relate.”; and
 - (b) by omitting paragraph (10A) (b) and substituting the following paragraph:

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- “(b) if the holding company, pursuant to section 278 or 279, did not appoint an auditor to audit the group accounts—before the relevant time in relation to the financial year of the holding company to which the group accounts relate.”.

Directors’ reports

81. Section 270 of the Principal Act is amended—

- (a) by omitting from sub-section (1) all the words from and including “not less than 14” (first occurring) to and including “that period” and substituting “within the period of 42 days ending at the relevant time in relation to a financial year of the company”;
- (b) by omitting from sub-paragraph (1) (a) (ii) “its last” and substituting “that”;
- (c) by omitting from sub-section (2) all the words from and including “The directors” to and including “that period” and substituting “Where, at the end of a financial year of a company, the company is a holding company (other than a holding company that is a wholly-owned subsidiary of a company or of a recognised company), the directors of the company shall, within the period of 42 days ending at the relevant time in relation to that financial year”;
- (d) by omitting from paragraph (9) (a) “on the prescribed day” and substituting “at the relevant time in relation to that financial year”;
- (e) by omitting from sub-paragraph (9) (b) (i) “on the prescribed day” and substituting “at the relevant time in relation to that financial year”; and
- (f) by omitting sub-section (10).

Relief from requirements as to accounts and reports

82. Section 273 of the Principal Act is amended—

- (a) by inserting in sub-section (1) “, relieving the company, or relieving the auditor (if any) of the company,” after “them”;
- (b) by inserting in sub-section (1) “, the company, or the auditor of the company, as the case may be,” after “directors” (second occurring);
- (c) by inserting in sub-section (1) “, the company complies, or the auditor of the company complies, as the case may be,” after “the directors comply”;
- (d) by omitting from sub-section (5) “in that class” and substituting “included in that class, relieving a company included in that class, or relieving the auditor (if any) of a company included in that class,”;
- (e) by inserting in sub-section (5) “, the company complies, or the auditor of the company complies, as the case may be,” after “comply”; and
- (f) by omitting sub-section (7) and substituting the following sub-sections:

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“(6A) A reference in sub-section (1) or (5) to requirements of this Act relating to, or to the audit of, accounts or group accounts does not include a reference to the requirements of section 267.

“(6B) Without limiting the generality of sub-sections (1) and (5), a reference in either of those sub-sections to requirements of this Act relating to, or to the audit of, accounts or group accounts includes—

- (a) a reference to a requirement that an annual return of a company or holding company be accompanied by a copy of accounts of the company, or a copy of group accounts of the holding company, as the case may be; and
- (b) a reference to a requirement that particulars relating to—
 - (i) the profit or loss of a company for a financial year of the company;
 - (ii) the state of affairs of a company as at the end of a financial year of the company;
 - (iii) the profit or loss of a holding company and its subsidiaries for respective financial years of the holding company and its subsidiaries; or
 - (iv) the state of affairs of a holding company and its subsidiaries as at the end of respective financial years of the holding company and its subsidiaries,be contained in an annual return of the company or holding company, as the case may be.

“(7) The Commission shall not make an order in relation to a company, or in relation to a class of companies, unless—

- (a) in relation to each requirement of this Act that is specified in the order, the Commission is of the opinion that compliance with the requirement—
 - (i) would render accounts or group accounts, or a report required by sub-section 270 (1) or (2), misleading;
 - (ii) would be inappropriate to the circumstances of the company, or of the companies included in that class, as the case may be; or
 - (iii) would impose unreasonable burdens on—
 - (A) the company, an officer of the company or the auditor (if any) of the company; or
 - (B) the companies, or officers or auditors of the companies, included in that class,as the case may be; or
- (b) the company is a company (in this paragraph referred to as a ‘relevant company’)—
 - (i) not carried on for the purposes of profit or gain to its individual members;

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- (ii) prohibited, by the terms of its memorandum or articles, from making any distribution, whether in money, property or otherwise, to its members; and
- (iii) required by or under any law of the Commonwealth, of a State or of a Territory to prepare annually a statement of its income and expenditure or a statement as to its financial position, or both,

or that class is a class of relevant companies, as the case may be.

“(7A) The reference in sub-section (7) to an order in relation to a company, or in relation to a class of companies, is a reference to—

- (a) an order under sub-section (1) relieving the directors of the company, relieving the company, or relieving the auditor (if any) of the company; or
- (b) an order under sub-section (5) relieving the directors of a company included in that class, relieving a company included in that class, or relieving the auditor (if any) of a company included in that class,

from compliance with specified requirements of this Act.”.

Members of company entitled to balance-sheet, &c.

83. Section 274 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “not less than 14 days before each annual general meeting, send” and substituting “at or before the time when it sends notice of an annual general meeting of the company to prescribed persons in relation to the company, or, in a case where the company sends notice of an annual general meeting of the company to prescribed persons in relation to the company more than 14 days before the meeting, not less than 14 days before the meeting, send to each prescribed person in relation to the company”;
- (b) by omitting from sub-section (1) “, to all persons entitled to receive notice of general meetings of the company”; and
- (c) by inserting after sub-section (1) the following sub-section:

“(1A) In sub-section (1), ‘prescribed person’, in relation to a company, means a person who is entitled to receive notice of general meetings of the company.”.

Accounts and reports to be laid before annual general meeting

84. Section 275 of the Principal Act is amended—

- (a) by omitting paragraphs (a) and (b) and substituting the following paragraph:
 - “(a) a copy of the accounts made out in accordance with section 269 for the last financial year of the company;”;
- (b) by omitting from paragraph (d) “sub-section 269 (3)” and substituting “section 269”.

Appointment of auditors

85. Section 280 of the Principal Act is amended by omitting sub-section (11) and substituting the following sub-sections:

“(11) Where, after the removal from office of an auditor of a company, the company fails to appoint an auditor under sub-section (10), the company shall, within the period of 7 days commencing on the day of the failure, give to the Commission notice of the failure, and, subject to sub-section (11A), the Commission—

- (a) in a case where the company, before the expiration of that period, gives to the Commission notice of the failure—shall, upon receiving the notice; or
- (b) in any other case—
 - (i) may, at any time after the expiration of that period and before the Commission receives from the company notice of the failure; and
 - (ii) if the company, after the expiration of that period, gives to the Commission notice of the failure—shall, upon receiving the notice,

appoint as auditor or auditors of the company a person or persons, a firm or firms, or a person or persons and a firm or firms, who or which consents or consent to be so appointed.

“(11A) Where, after the removal from office of an auditor of a company, the company fails to appoint an auditor under sub-section (10), the Commission shall not appoint an auditor of the company under sub-section (11)—

- (a) in any case—if there is another auditor of the company whom the Commission believes to be able to carry out the responsibilities of auditor alone and who agrees to continue as auditor;
- (b) in the case of an exempt proprietary company—if—
 - (i) all the members have, since the removal from office of the first-mentioned auditor, agreed that it is not necessary for an auditor to be appointed; and
 - (ii) the company has given to the Commission notice of the failure and has, at the time of giving to the Commission notice of the failure, given to the Commission notice that all the members have so agreed; or
- (c) in a case where, at the expiration of the period of 7 days commencing on the day of the failure, the company has not given to the Commission notice of the failure—if the Commission has, at any time after the expiration of that period, already appointed an auditor of the company under sub-section (11).”.

Powers and duties of auditors as to reports on accounts

86. Section 285 of the Principal Act is amended—

(a) by omitting paragraphs (3) (b) and (c) and substituting the following paragraph:

“(b) in the case of group accounts—

- (i) the names of the subsidiaries (if any) of which he has not acted as auditor;
- (ii) where there are included in the group accounts (whether separately or consolidated with other accounts) the accounts of a subsidiary of which he has not acted as auditor, and he has not examined those accounts and the auditor’s report (if any) on those accounts—the name of the subsidiary; and
- (iii) where the auditor’s report on the accounts of any subsidiary was made subject to any qualification, or included any comment made under sub-section (4)—the name of the subsidiary and particulars of the qualification or comment;”;

(b) by omitting from paragraph (3) (e) “, (aa), (b) or (c)” and substituting “or (aa)”;

(c) by omitting paragraph (4) (d) and substituting the following paragraph:

“(d) where the company is a holding company—

- (i) whether the accounts of the subsidiaries that are to be consolidated with other accounts are in form and content appropriate and proper for the purposes of the preparation of the consolidated accounts, and whether he has received satisfactory information and explanations as required by him for that purpose; and
- (ii) whether the procedures and methods used by the company and by each of its subsidiaries in arriving at the amounts taken into any consolidated accounts were appropriate to the circumstances of the consolidation; and”.

Interpretation and application

87. Section 289 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

“(1A) In this Part, a reference to a statement made at an examination includes a reference to a question asked, an answer given, or any other comment or remark made, at an examination.”.

Record of examination

88. Section 298 of the Principal Act is amended—

- (a) by omitting from sub-sections (1), (2) and (3) “questions asked and the answers given” and substituting “statements made”; and
- (b) by omitting from sub-sections (5) and (10) “questions asked and answers given” and substituting “statements made”.

Admissibility of record of examination in evidence in proceedings against person examined

89. Section 299 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “questions asked and answers given” and substituting “statements made”;
- (b) by omitting from sub-section (2) “an answer given” and substituting “a statement made”;
- (c) by inserting in paragraph (2) (a) “where the statement is an answer given by the person to a question —” before “the proceedings”;
- (d) by omitting from paragraph (2) (b) “question and answer are” and substituting “statement is”;
- (e) by omitting from paragraph (2) (c) “answer” (wherever occurring) and substituting “statement”;
- (f) by omitting from paragraph (2) (c) “given” and substituting “made”;
and
- (g) by omitting from paragraph (2) (d) “answer” and substituting “statement”.

Admissibility in other proceedings of statements at an examination

90. Section 300 of the Principal Act is amended—

- (a) by omitting “a question asked of, and answer given by,” and substituting “a statement made by”;
- (b) by omitting “are” (first occurring) and substituting “is”; and
- (c) by omitting from paragraph (b) “question and answer” and substituting “statement”.

Weight of evidence

91. Section 301 of the Principal Act is amended—

- (a) by omitting “questions and answers” and substituting “statements”;
and
- (b) by omitting from paragraph (b) “answers” and substituting “statements”.

Credibility of person who made statements

92. Section 302 of the Principal Act is amended by omitting from sub-section (1) “questions and answers” and substituting “statements”.

Determination of objection to admissibility of statement

93. Section 303 of the Principal Act is amended—

- (a) by omitting from sub-section (2) “questions and answers” (wherever occurring) and substituting “statements”; and
- (b) by omitting from sub-section (3) “question and answer” and substituting “statement”.

Power to compromise with creditors and members

94. Section 315 of the Principal Act is amended—

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

“(2) The Court shall not make an order pursuant to an application under sub-section (1) unless—

- (a) 14 days notice of the hearing of the application, or such lesser period of notice as the Court or the Commission permits, has been given to the Commission; and
- (b) the Court is satisfied that the Commission has had a reasonable opportunity—
 - (i) to examine the terms of the proposed compromise or arrangement to which the application relates and a draft explanatory statement relating to the proposed compromise or arrangement; and
 - (ii) to make submissions to the Court in relation to the proposed compromise or arrangement and the draft explanatory statement.

“(2A) In sub-section (2), ‘draft explanatory statement’, in relation to a proposed compromise or arrangement between a company and its creditors or any class of them or between a company and its members or any class of them, means a statement—

- (a) explaining the effect of the proposed compromise or arrangement and, in particular, stating any material interests of the directors of the company, whether as directors, as members or creditors of the company or otherwise, and the effect on those interests of the proposed compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons; and
- (b) setting out such information as is prescribed and any other information that is material to the making of a decision by a creditor or member of the company whether or not to agree to the proposed compromise or arrangement, being information that is within the knowledge of the directors of the company and has not previously been disclosed to the creditors or members of the company.”; and

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

“(23) A reference in this section or section 316 to the directors of a company is a reference to the directors of the company or any one or more of them.”.

Powers of receiver

95. Section 324A of the Principal Act is amended—

(a) by omitting from paragraph (2) (q) all the words after “do” (second occurring) and substituting “, or that it is unreasonable to expect the receiver to do, in person”; and

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

“(6) Notwithstanding the amendment of sub-section (2) of this section made by section 95 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985*, that sub-section as in force immediately before the commencement of that section continues to have effect in relation to a receiver appointed before that commencement.”.

Reports by receiver

96. Section 324C of the Principal Act is amended—

(a) by omitting from paragraph (1) (c) “report the matter to the Commission” and substituting “lodge with the Commission a report with respect to the matter”;

(b) by omitting from sub-section (3) “made a report to the Commission” and substituting “lodged with the Commission a report”; and

(c) by omitting from sub-section (3) “to make” and substituting “so to lodge”.

Prosecution of delinquent officers and members

97. Section 324D of the Principal Act is amended—

(a) by omitting from sub-section (1) “is made” and substituting “has been made or lodged”; and

(b) by omitting from sub-section (2) “a report to the Commission” and substituting “the making or lodging of a report”.

Receiver to enjoy qualified privilege in certain circumstances

98. Section 325A of the Principal Act is amended by inserting in sub-section (1) “or lodged” after “made” (first occurring).

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

99. Section 331 of the Principal Act is amended by omitting from paragraphs (2) (c) and (2A) (b) “441 (e) or (g)” and substituting “441 (1) (e), (g) or (ga)”.

Certain provisions applicable to official management

100. Section 351 of the Principal Act is amended by inserting in paragraph (4) (d) “or lodged” after “made” (twice occurring).

Avoidance of dispositions of property, attachments, &c.

101. Section 368 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “a disposition made by the liquidator pursuant to a power conferred on him by this Act or by an order of the Court” and substituting “an exempt disposition”; and
- (b) by inserting after sub-section (1) the following sub-section:

“(1A) In sub-section (1), ‘exempt disposition’, in relation to a company that has commenced to be wound up by the Court, means—

- (a) a disposition made by the liquidator of the company pursuant to a power conferred on the liquidator by this Act or by an order of the Court; or
- (b) a payment of money by a banking corporation out of an account maintained by the company with the banking corporation, being a payment made by the banking corporation—
 - (i) on or before the day on which the court makes the order for the winding up of the company; and
 - (ii) in good faith and in the ordinary course of the banking business of the banking corporation.”.

Powers of liquidator

102. Section 377 of the Principal Act is amended—

- (a) by omitting from paragraph (2) (k) “himself” and substituting “, or that it is unreasonable to expect the liquidator to do, in person”; and
- (b) by inserting after sub-section (2) the following sub-section:

“(2A) A liquidator of a company is entitled to inspect at any reasonable time any books of the company and a person who refuses or fails to allow the liquidator to inspect such books at such a time is guilty of an offence.”.

Reports by liquidator

103. Section 418 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (d) “report the matter to the Commission” and substituting “lodge with the Commission a report with respect to the matter”;
- (b) by omitting from sub-section (3) “made a report to the Commission” and substituting “lodged with the Commission a report”; and
- (c) by omitting from sub-section (3) “to make” and substituting “so to lodge”.

Expenses of winding up where property insufficient

104. Section 429 of the Principal Act is amended by omitting from sub-section (3) “make a report under section 418 or to lodge a document” and substituting “lodge a document (including a report)”.

Priority payments

105. Section 441 of the Principal Act is amended—

- (a) by omitting “Subject to” and substituting “(1) Subject to”;
- (b) by omitting from paragraph (1) (e) “any one employee” and substituting “an excluded employee of the company”;
- (c) by omitting paragraph (1) (g) and substituting the following paragraphs:
 - “(g) seventh, all amounts due—
 - (i) on or before the relevant date;
 - (ii) by virtue of an industrial instrument;
 - (iii) to, or in respect of, employees of the company; and
 - (iv) in respect of leave of absence, but not exceeding \$1,500 in respect of an excluded employee of the company;
 - (ga) eighth, retrenchment payments payable to employees of the company (other than excluded employees of the company);”;
- (d) by omitting from paragraph (1) (h) “eighth” and substituting “ninth”;
- (e) by omitting from paragraph (1) (j) “ninth” and substituting “tenth”;
- and
- (f) by adding at the end the following sub-section:

“(2) In this section—

‘company’ means a company that is being wound up;

‘employee’, in relation to a company, means a person—

- (a) who has been or is an employee of the company, whether remunerated by salary, wages, commission or otherwise; and
- (b) whose employment by the company commenced before the relevant date;

‘excluded employee’, in relation to a company, means—

- (a) an employee of the company who has been—
 - (i) at any time during the period of 12 months ending on the relevant date; or
 - (ii) at any time since the relevant date,
- or who is, a director of the company;
- (b) an employee of the company who has been—
 - (i) at any time during the period of 12 months ending on the relevant date; or

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- (ii) at any time since the relevant date,
or who is, the spouse of an employee of the kind referred to in paragraph (a); or
- (c) an employee of the company who is a relative (other than a spouse) of an employee of the kind referred to in paragraph (a);

‘retrenchment payment’, in relation to an employee of a company, means an amount payable by the company to the employee, by virtue of an industrial instrument, in respect of the termination of the employee’s employment by the company, whether the amount becomes payable before, on or after the relevant date.”.

Debts due to employees

106. Section 443 of the Principal Act is amended—

- (a) by inserting in sub-section (2) “, or any entitlement to a retrenchment amount in respect of employment” after “absence”;
- (b) by omitting from sub-section (3) “becomes due” and substituting “, or a retrenchment amount, becomes payable”;
- (c) by inserting in sub-section (4) “, or to any retrenchment amount in respect of employment by the company,” after “extended leave”;
- (d) by omitting from paragraph (4) (b) “to be an amount referred to in paragraph 441 (g)” and substituting “, for the purposes of section 441, to be an amount referred to in paragraph 441 (1) (g), or a retrenchment payment payable to the person, as the case may be”;
- (e) by adding at the end the following sub-section:

“(5) In this section, ‘retrenchment amount’, in relation to employment of a person, means an amount payable to the person, by virtue of an industrial instrument, in respect of termination of the employment.”.

Debts of a class to rank equally

107. Section 444 of the Principal Act is amended—

- (a) by omitting “441 (a)” and substituting “441 (1) (a)”;
- (b) by omitting “section 441” and substituting “sub-section 441 (1)”.

Advances in respect of wages, retrenchment payments and leave of absence

108. Section 445 of the Principal Act is amended by inserting “, or termination of employment,” after “leave of absence”.

Priority of employees’ claims over floating charges

109. Section 446 of the Principal Act is amended—

- (a) by omitting from paragraph (a) “paragraphs 441 (e) and (g)” and substituting “paragraph 441 (1) (e), (g) or (ga)”;

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- (b) by omitting from paragraph (b) “441 (e) or (g)” and substituting “441 (1) (e), (g) or (ga)”.

Provisions relating to injury compensation

110. Section 448 of the Principal Act is amended by omitting from sub-sections (1) and (2) “441(f)” and substituting “441 (1) (f)”.

Priority where security given for payment of taxes

111. Section 449 of the Principal Act is amended by omitting “441(h)” and substituting “441 (1) (h)”.

Prosecution of delinquent officers and members

112. Section 457 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “is made” and substituting “has been made or lodged”; and
- (b) by omitting from sub-section (2) “a report to the Commission” and substituting “the making or lodging of a report”.

Publication of name, &c., of recognised company or recognised foreign company

113. Section 509 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “(other than a banking corporation)”;
- (b) by inserting in paragraph (1)(a) “, except in the case of a recognised company or recognised foreign company that is a banking corporation,” after “company and”;
- (c) by inserting in paragraph (1) (b) “(other than a banking corporation)” after “foreign company”;
- (d) by omitting from sub-section (2) “(other than a banking corporation)”;
- (e) by omitting from sub-section (4) “on the outside of every office or place in the Territory in which its business is carried on, in a conspicuous position and in letters easily legible” and substituting “, in a conspicuous position and in letters easily legible, on the outside of the office or place that is its principal office in the Territory, and on the outside of every other office or place in the Territory at which its business is carried on and that is open and accessible to the public”;
- (f) by omitting from paragraph (4) (c) “the principal” and substituting “its principal”; and
- (g) by inserting after sub-section (4) the following sub-section:

“(4A) A recognised company or recognised foreign company that is a banking corporation shall paint or affix its name, and shall keep its name painted or affixed, in a conspicuous position and in letters easily legible, on the outside of the office or place that is its principal office in the Territory, and on the outside of every other office or place in the

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Territory at which its business is carried on and that is open and accessible to the public, and, if default is made in complying with this sub-section, the recognised company or recognised foreign company is guilty of an offence.

Penalty: \$1,000.”.

Unregistered foreign company not to establish place of business or carry on business in the Territory

114. Section 512 of the Principal Act is amended—

- (a) by omitting from paragraph (2) (c) “or the members of its committee of management, council or other governing body, by whatever name called,” and “or members”; and
- (b) by omitting from paragraph (2) (d) “, or members of a committee of management, council or other governing body,” “, committee of management, council or other governing body” and “or members” (second occurring).

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

115. Section 515 of the Principal Act is amended by omitting from paragraph (2) (b) “, or the members of the committee of management, council or other governing body,”.

Balance-sheets and other documents

116. Section 516 of the Principal Act is amended by inserting after sub-section (6) the following sub-sections:

“(6A) A foreign company that—

- (a) is required by or under this section to lodge with the Commission a profit and loss account, or a copy of a profit and loss account, relating to a period (in this sub-section referred to as the ‘relevant period’) that ended at or after the commencement of section 116 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985*; and
- (b) is a prescribed foreign company in relation to the relevant period, shall lodge with the profit and loss account or copy a report relating to the relevant period—
- (c) stating the amount, ascertained in accordance with the regulations, of the profit or loss of the foreign company for the relevant period resulting from the foreign company’s operations within Australia;
- (d) giving such particulars in relation to the amount referred to in paragraph (c), and such particulars in relation to the manner in which that amount was ascertained, as are prescribed;
- (e) setting out a balance-sheet as at the end of the relevant period—
 - (i) prepared in accordance with the regulations; and

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- (ii) relating to the state of affairs of the foreign company's operations within Australia;
- (f) containing a review of the operations, within Australia, of the foreign company during the relevant period and of the results of those operations;
- (g) giving particulars of any significant change in the state of affairs of the foreign company that occurred during the relevant period;
- (h) giving particulars of any matter or circumstance that has arisen since the end of the relevant period and that has significantly affected or may significantly affect—
 - (i) the operations, within Australia, of the foreign company;
 - (ii) the results of those operations; or
 - (iii) the state of affairs of the foreign company, since the end of the relevant period or in the future;
- (j) referring to—
 - (i) likely developments in the operations, within Australia, of the foreign company; and
 - (ii) the expected results of those operations, in the future; and
- (k) in the case of a foreign company that is a subsidiary of another corporation—setting out the name of the corporation that the foreign company believes to be its ultimate holding company and, if known to the foreign company, the country in which that ultimate holding company is incorporated or formed.

“(6B) Where, in the opinion of the agent of a foreign company, it would prejudice the interests of the foreign company if particular information, being some or all of the information required by paragraph (6A) (j) 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.

“(6C) The Commission may, on application by a foreign company, declare, by instrument in writing, that it is satisfied that the documents lodged with the Commission pursuant to the preceding sub-sections of this section (other than sub-section (6A)) by the foreign company in respect of a specified period contain, in relation to the operations, within Australia, of the foreign company, all the information that the foreign company would be required to include in a report prepared pursuant to sub-section (6A) in respect of that period and, where the Commission so declares, the foreign company is not required to comply with sub-section (6A) in relation to that period.

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“(6D) In sub-sections (6A), (6B) and (6C) and in this sub-section—

‘Australia’ includes the external Territories;

‘prescribed foreign company’, in relation to a period, means a registered foreign company incorporated or formed outside Australia that conducted operations outside Australia at any time during that period.”.

Publication of name, &c., of foreign company

117. Section 517 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “(other than a banking corporation)”;
- (b) by inserting in paragraph (1) (a) “, except in the case of a foreign company that is a banking corporation,” after “company and”;
- (c) by inserting in paragraph (1) (b) “(other than a banking corporation)” after “foreign company”;
- (d) by omitting from sub-section (2) “(other than a banking corporation)”;
- (e) by omitting from sub-section (4) “on the outside of every office or place in the Territory in which its business is carried on, in a conspicuous position and in letters easily legible” and substituting “, in a conspicuous position and in letters easily legible, on the outside of the office or place that is its registered office in the Territory, and on the outside of every other office or place in the Territory at which its business is carried on and that is open and accessible to the public”;
- (f) by inserting in paragraph (4) (c) “or place” before “that”; and
- (g) by inserting after sub-section (4) the following sub-section:

“(4A) A foreign company that is a banking corporation shall paint or affix its name, and shall keep its name painted or affixed, in a conspicuous position and in letters easily legible, on the outside of the office or place that is its registered office in the Territory, and on the outside of every other office or place in the Territory at which its business is carried on and that is open and accessible to the public and, if default is made in complying with this sub-section, the foreign company is guilty of an offence.

Penalty: \$1,000.”.

Service of documents on recognised company or recognised foreign company

118. Section 529 of the Principal Act is amended by inserting in sub-section (6) “recognised company or” before “recognised foreign company”.

Offences by officers of certain companies

119. Section 554 of the Principal Act is amended by adding at the end the following sub-section:

“(7) Where, in proceedings under sub-section (6), it is necessary to establish that a person has taken property in pawn or pledge, or otherwise received property—

- (a) in circumstances mentioned in sub-section (5); and
- (b) with the knowledge mentioned in that sub-section,

the matter referred to in paragraph (b) of this sub-section may be established on the balance of probabilities.”.

Offences relating to incurring of debts or fraudulent conduct

120. Section 556 of the Principal Act is amended by inserting after sub-section (3) the following sub-section:

“(3A) In proceedings brought under sub-section (1) for the recovery of a debt, the liability of a person under that sub-section in respect of the debt may be established on the balance of probabilities.”.

Falsification of books

121. Section 560 of the Principal Act is amended by omitting paragraph (2) (c) and substituting the following paragraph:

- “(c) having a duty to record or store matter by means of that device, fails to record or store the matter by means of that device—
- (i) with intent to falsify any entry made or intended to be compiled, wholly or in part, from matter so recorded or stored; or
 - (ii) knowing that the failure so to record or store the matter will render false or misleading in a material particular other matter so recorded or stored,”.

Court may disqualify person from acting as director, &c., in certain circumstances

122. Section 562 of the Principal Act is amended—

- (a) by omitting from sub-section (2) “company” and substituting “corporation”; and
- (b) by inserting after sub-section (4) the following sub-section:

“(4A) A person who, immediately before the commencement of section 122 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985*, was subject to a section 562 order made under this section or under a corresponding provision of a previous law of the Territory shall not be taken to contravene or fail to comply with the order by reason only that, after that commencement,

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the person is concerned in or takes part in the management of, a body referred to in paragraph 469 (1) (b), not being a corporation.”.

123. After section 562 of the Principal Act the following section is inserted:

Commission may order persons not to manage corporations

“562A. (1) For the purposes of this section—

(a) a reference to a company is a reference to—

(i) a corporation; or

(ii) a body of the kind referred to in paragraph 469 (1) (b),

and includes a reference to such a corporation or body that has been dissolved;

(b) a company shall be taken to be a relevant company at a particular time if, and only if, within the period of 7 years ending at that time, a liquidator of the company has, under—

(i) sub-section 418 (1);

(ii) a provision of a previous law of the Territory with which sub-section 418 (1) corresponds;

(iii) a provision of a law of a participating State or participating Territory that corresponds with sub-section 418 (1); or

(iv) a provision of a previous law of a participating State or participating Territory with which a provision of the kind referred to in sub-paragraph (iii) corresponds,

reported, or lodged a report with respect to, a matter relating to the ability of the company to pay its unsecured creditors; and

(c) a person shall be taken to be a relevant person in relation to a company that is or was a relevant company if, and only if, the person was a director of the company at any time during the period of 12 months ending on the date of the commencement of the winding up of the company.

“(2) The Commission may serve on a person who is a relevant person in relation to 2 or more companies that are, at the time of service, relevant companies a notice in writing requiring the person to show cause why the Commission should not serve on the person a notice under sub-section (3).

“(3) Where the Commission—

(a) has served on a person a notice under sub-section (2); and

(b) has given the person an opportunity of being heard in relation to the matter,

the Commission shall, unless it is satisfied that it is not appropriate to do so, serve on the person a notice in writing prohibiting the person, for such period not exceeding 5 years as is specified in the notice, from being a director or promoter of, or from being in any way (whether directly or indirectly)

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concerned in or taking part in the management of, a corporation without the leave of the Court.

“(4) Where—

- (a) the Commission has served a notice under sub-section (2) on a person who is a relevant person in relation to 2 or more companies that were, at the time of service, relevant companies; and
- (b) those 2 companies have at any time been related to each other, or any of those companies has at any time been related to any other of those companies, as the case may be,

the Commission shall have regard to that fact in considering whether or not it is appropriate to serve on the person a notice under sub-section (3).

“(5) A person shall not contravene a notice served under sub-section (3) that is applicable to the person.

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

“(6) A person shall not contravene a notice served under a provision of a law of a participating State or participating Territory that corresponds with sub-section (3), being a notice that is applicable to the person.

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

False or misleading statements

124. Section 563 of the Principal Act is amended—

- (a) by inserting after sub-section (2) the following sub-section:

“(2A) A person who makes or authorises the making of a statement that is based on information that to his knowledge—

- (a) is false or misleading in a material particular; or
- (b) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect,

shall, for the purposes of sub-section (2), be deemed to have made or authorised the making of a statement that to his knowledge was false or misleading in a material particular.”; and

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

“(3A) A person who makes or authorises the making of a statement without having taken reasonable steps to ensure that the information on which the statement was based—

- (a) was not false or misleading in a material particular; and
- (b) did not have omitted from it a matter or thing the omission of which would render the information misleading in a material respect,

shall, for the purposes of sub-section (3), be deemed to have made or authorised the making of a statement without having taken reasonable steps to ensure that the statement was not false or misleading.”.

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125. Section 564 of the Principal Act is repealed and the following section is substituted:

False information, &c.

“564. (1) An officer of a corporation who makes available or furnishes information, or authorises or permits the making available or furnishing of information, to—

- (a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation;
- (b) in the case of a corporation that is a subsidiary—an auditor of the holding company; or
- (c) a securities exchange in Australia or elsewhere or an officer of such a securities exchange,

being information, whether in documentary or any other form, that relates to the affairs of the corporation and that, to the knowledge of the officer—

- (d) is false or misleading in a material particular; or
- (e) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect,

is guilty of an offence.

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

“(2) An officer of a corporation who makes available or furnishes information, or authorises or permits the making available or furnishing of information, to—

- (a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation;
- (b) in the case of a corporation that is a subsidiary—an auditor of the holding company; or
- (c) a securities exchange in Australia or elsewhere or an officer of such a securities exchange,

being information, whether in documentary or any other form, relating to the affairs of the corporation that—

- (d) is false or misleading in a material particular; or
- (e) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect,

without having taken reasonable steps to ensure that the information—

- (f) was not false or misleading in a material particular; and
- (g) did not have omitted from it a matter or thing the omission of which rendered the information misleading in a material respect,

is guilty of an offence.

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

“(3) The references in sub-sections (1) and (2) to a person making available or furnishing, or authorising or permitting the making available or

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furnishing of, information relating to the affairs of a corporation include references to a person making available or furnishing, or authorising or permitting the making available or furnishing of, information as to the state of knowledge of that person with respect to the affairs of the corporation.

“(4) Where information is made available or furnished to a person referred to in paragraph (1) (a), (b) or (c) or (2) (a), (b) or (c) in response to a question asked by that person, the question and the information shall be considered together in determining whether the information was false or misleading.”.

Dividends payable from profits only

126. Section 565 of the Principal Act is amended by inserting after sub-section (2) the following sub-sections:

“(2A) Proceedings may be brought under sub-section (2) for the recovery of an amount whether or not a person has been convicted of an offence under that sub-section.

“(2B) In proceedings brought under sub-section (2) for the recovery of an amount, the liability of a person under that sub-section in respect of the amount may be established on the balance of probabilities.”.

General penalty provisions

127. Section 570 of the Principal Act is amended by inserting in sub-section (6) “of this section and by sub-section 571 (5)” after “(5)”.

128. Section 571 of the Principal Act is repealed and the following section is substituted:

Continuing offences

“571. (1) Where—

- (a) by or under a provision, an act is required to be done within a particular period or before a particular time;
- (b) failure to do the act within that period or before that time constitutes an offence; and
- (c) the act is not done within that period or before that time,

then—

- (d) the obligation to do the act continues, notwithstanding that that period has expired or that time has passed, and whether or not a person is convicted of a primary substantive offence in relation to failure to do the act, until the act is done; and
- (e) sub-sections (3) and (4) apply.

“(2) Where—

- (a) by or under a provision, an act is required to be done but neither a period within which, nor a time before which, the act is to be done is specified;

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- (b) failure to do the act constitutes an offence; and
- (c) a person is convicted of a primary substantive offence in relation to failure to do the act,

then—

- (d) the obligation to do the act continues, notwithstanding the conviction, until the act is done; and
- (e) sub-sections (3) and (4) apply.

“(3) Where—

- (a) at a particular time, a person is first convicted of a substantive offence, or is convicted of a second or subsequent substantive offence, in relation to failure to do the act; and
- (b) the failure to do the act continues after that time,

the person is, in relation to failure to do the act, guilty of a further offence in respect of so much of the period throughout which the failure to do the act continues as elapses after that time and before the relevant day in relation to the further offence.

“(4) Where—

- (a) the provision referred to in paragraph (1) (a) or (2) (a), as the case may be, provides that—
 - (i) an officer of a corporation; or
 - (ii) a person,who is in default is guilty of an offence; and
- (b) throughout a particular period (in this sub-section referred to as the ‘relevant period’)—
 - (i) the failure to do the act continues;
 - (ii) a person (in this sub-section referred to as the ‘derivative offender’) is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the failure to do the act; and
 - (iii) in a case where sub-paragraph (a) (i) applies—the derivative offender is an officer of the corporation,

then—

- (c) in a case where either or both of the following events occurs or occur:
 - (i) a person is convicted, before or during the relevant period, of a primary substantive offence in relation to failure to do the act;
 - (ii) the derivative offender is convicted, before or during the relevant period, of a primary derivative offence in relation to failure to do the act,

the derivative offender is, in relation to failure to do the act, guilty of an offence (in this paragraph referred to as the ‘relevant offence’) in respect of so much (if any) of the relevant period as elapses—

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- (iii) after the conviction referred to in sub-paragraph (i) or (ii), or after the earlier of the convictions referred to in sub-paragraphs (i) and (ii), as the case may be; and
- (iv) before the relevant day in relation to the relevant offence; and
- (d) in a case where, at a particular time during the relevant period, the derivative offender is first convicted of a secondary derivative offence, or is convicted of a second or subsequent secondary derivative offence, in relation to failure to do the act—the derivative offender is, in relation to failure to do the act, guilty of a further offence in respect of so much of the relevant period as elapses after that time and before the relevant day in relation to the further offence.

“(5) Where a person is guilty, by virtue of sub-section (3) or (4), of an offence in respect of the whole or a part of a particular period, the penalty applicable to the offence is a fine of the amount obtained by multiplying \$50 by the number of days in that period, or in that part of that period, as the case may be.

“(6) In this section—

‘act’ includes thing;

‘primary derivative offence’, in relation to failure to do an act, means an offence (other than an offence of which a person is guilty by virtue of this section) of which a person is guilty by virtue of being an officer of a corporation, or a person, who is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to failure to do the act;

‘primary substantive offence’, in relation to failure to do an act, means an offence (other than an offence of which a person is guilty by virtue of this section) constituted by failure to do the act, or by failure to do the act within a particular period or before a particular time;

‘provision’ means a section, or a sub-section of a section, of this Act;

‘relevant day’, in relation to an offence of which a person is guilty by virtue of this section, means—

- (a) in a case where the information relating to the offence specifies a day in relation to the offence for the purposes of this section, being a day not later than the day on which the information is laid—the day the information so specifies; or
- (b) in any other case—the day on which the information relating to the offence is laid;

‘required’ includes directed;

‘secondary derivative offence’, in relation to failure to do an act, means an offence or further offence of which a person is, in relation to failure to do the act, guilty by virtue of paragraph (4) (c) or (d);

‘substantive offence’, in relation to failure to do an act, means—

- (a) a primary substantive offence in relation to failure to do the act; or

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- (b) a further offence of which a person is, in relation to failure to do the act, guilty by virtue of sub-section (3).

“(7) Sub-sections (1) to (6), inclusive, of this section do not apply in relation to an obligation to do an act or thing, being an obligation that arose before the commencement of section 128 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985*, and, notwithstanding the repeal effected by that section, section 571 of this Act as in force at any time before that commencement continues to have effect in relation to such an obligation.”.

Officers and other persons in default

129. Section 572 of the Principal Act is amended by omitting from sub-section (2) “sub-section (1)” and substituting “this Act”.

Regulations

130. Section 577 of the Principal Act is amended by inserting after sub-section (6) the following sub-section:

“(6A) The regulations may provide that, subject to any prescribed terms and conditions, the provisions of section 552, or specified provisions of that section—

- (a) do not have effect in relation to a specified person, or in relation to a person who is a member of a specified class of persons;
- (b) have effect in relation to a specified person, or in relation to a person who is a member of a specified class of persons, to such extent only as is prescribed;
- (c) do not have effect in relation to a specified transaction or class of transactions; or
- (d) do not have effect in relation to a specified transaction or class of transactions entered into by a specified person or class of persons.”.

Operation of certain Ordinances

131. Section 581 of the Principal Act is amended—

- (a) by inserting after sub-section (2) the following sub-sections:

“(2A) Notwithstanding sub-section 469 (1), Division 6 of Part XII does not apply to—

- (a) a society registered under the *Co-operative Societies Ordinance 1939*; or
- (b) a body corporate constituted under the *Unit Titles Ordinance 1970*.

“(2B) An Ordinance may provide that, where an incorporated association is being wound up under Division 6 of Part XII of this Act, specified provisions of the Ordinance apply, and where an Ordinance so provides, that Division has effect subject to the specified provisions.

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“(2C) An Ordinance may provide that the provisions of Division 6 of Part XII of this Act shall, subject to the modifications and adaptations prescribed by the Ordinance, apply to and in relation to the winding up of an incorporated association, and where an Ordinance so provides, the provisions of that Division apply accordingly.

“(2D) In sub-sections (2B) and (2C)—

‘incorporated association’ means an association, society, institution or body incorporated under the *Associations Incorporation Ordinance 1953*;

‘modification’ includes the addition or omission of a provision and the substitution of a provision for another provision.”; and

- (b) by omitting “section 24” from sub-section (3) and substituting “sections 23 and 24”.

Schedule 4

132. Schedule 4 to the Principal Act is amended by omitting from Forms 3 and 7 “Stock Exchange” and substituting “Securities Exchange”.

Further amendments relating to securities exchanges

133. The Principal Act is amended as set out in Schedule 2.

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

Principal Act

134. The *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980*³ is in this Part referred to as the Principal Act.

Regard to be had to purpose or object of relevant Act

135. Section 5A of the Principal Act is amended by omitting sub-section (2).

136. After section 5A of the Principal Act the following section is inserted:

Use of extrinsic material in interpretation of relevant Act

“5B. (1) Subject to sub-section (3), in the interpretation of a provision of a relevant Act, if any material not forming part of the relevant Act is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material—

- (a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the relevant Act and the purpose or object underlying the relevant Act; or

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- (b) to determine the meaning of the provision when—
 - (i) the provision is ambiguous or obscure; or
 - (ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the relevant Act and the purpose or object underlying the relevant Act leads to a result that is manifestly absurd or is unreasonable.

“(2) Without limiting the generality of sub-section (1), the material that may be considered in accordance with that sub-section in the interpretation of a provision of a relevant Act includes—

- (a) all matters not forming part of the relevant Act that are set out in the document containing the text of the relevant Act as printed by the Government Printer;
- (b) any relevant report of the Companies and Securities Law Review Committee that was given to the Ministerial Council before the time when the provision was enacted;
- (c) any relevant report of a Royal Commission, Law Reform Commission, committee of inquiry or other similar body that was laid before either House of the Parliament before the time when the provision was enacted;
- (d) any relevant report of a committee of the Parliament or of either House of the Parliament that was made to the Parliament or that House of the Parliament before the time when the provision was enacted;
- (e) any treaty or other international agreement that is referred to in the relevant Act;
- (f) any explanatory memorandum relating to the Bill containing the provision, or any other relevant document, that was laid before, or furnished to the members of, either House of the Parliament by a Minister before the time when the provision was enacted;
- (g) the speech made to a House of the Parliament by a Minister on the occasion of the moving by that Minister of a motion that the Bill containing the provision be read a second time in that House;
- (h) any document (whether or not a document to which a preceding paragraph applies) that is declared by the relevant Act to be a relevant document for the purposes of this section; and
- (j) any relevant material in the Journals of the Senate, in the Votes and Proceedings of the House of Representatives or in any official record of debates in the Parliament or either House of the Parliament.

“(3) In determining whether consideration should be given to any material in accordance with sub-section (1), or in considering the weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to—

- (a) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in

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the relevant Act and the purpose or object underlying the relevant Act;
and

- (b) the need to avoid prolonging legal or other proceedings without compensating advantage.”.

Definitions

137. Section 9 of the Principal Act is amended—

- (a) by inserting before the definition of “calendar year” the following definition:

“ ‘calendar month’ means a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no corresponding day in the next month, ending at the expiration of the last-mentioned month;”;

- (b) by inserting after the definition of “committed for trial” the following definition:

“ ‘Companies and Securities Law Review Committee’ means the Companies and Securities Law Review Committee established by the Agreement;”;

- (c) by inserting after the definition of “Constitution” the following definition:

“ ‘contravene’ includes fail to comply with;”;

- (d) by inserting after the definition of “Crown” the following definition:

“ ‘daily newspaper’ means a newspaper that is ordinarily published on each day other than—

(a) a Saturday or a Sunday; or

(b) a public holiday or bank holiday in the place where the newspaper is published,

whether or not the newspaper is ordinarily published on days of a kind referred to in paragraph (a) or (b);”;

- (e) by inserting after the definition of “regulations” the following definition:

“ ‘relevant Act’ means an Act that is a relevant Act for the purposes of this Act;”.

138. After section 11 of the Principal Act the following section is inserted:

References to persons, things and matters

“11A. (1) Express references in a relevant Act to companies, corporations or bodies corporate shall not be taken to imply that references in the relevant Act to persons do not also include references to companies, corporations or bodies corporate.

“(2) Except so far as the contrary intention appears, a provision of a relevant Act shall be interpreted in such a manner that any 2 or more references

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in the provision are capable of having the same referent or referents, or of having a referent or referents in common, as the case requires.

“(3) In sub-section (2), ‘referent’, in relation to a reference in a provision, means—

- (a) in so far as the reference is interpreted as being in the singular number—a person, thing or matter to which; or
- (b) in so far as the reference is interpreted as being in the plural number—any one of 2 or more persons, things or matters to which,

the reference is taken, in the application of the provision, to refer.

“(4) The amendments of provisions (in this sub-section referred to as the ‘relevant provisions’) of relevant Acts made by section 5, sub-sections 8 (2) and 32 (2), sections 33 and 56, sub-section 166 (2), and section 167, of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985*—

- (a) are for the avoidance of doubt;
- (b) shall not be taken to affect by implication the interpretation of the relevant provisions as in force at any time before the commencement of those sections and sub-sections; and
- (c) shall be disregarded in determining, for the purposes of the application of sub-section (2) of this section in relation to a provision of a relevant Act, the extent (if any) to which there appears a contrary intention within the meaning of the last-mentioned sub-section.”.

References to writing, printing and documents

139. Section 13 of the Principal Act is amended—

- (a) by inserting in sub-paragraph (c) (i) “figures,” before “symbols”; and
- (b) by omitting sub-paragraph (c) (ii) and substituting the following sub-paragraph:

“(ii) a disk, tape or other article, or any material, from which sounds, images, writings or messages are capable of being reproduced with or without the aid of any other article or device,”.

140. After section 13 of the Principal Act the following section is inserted:

Production of records kept by means of computers, &c.

“13A. (1) Where a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under a relevant Act to produce the information or a document containing the information to, or make a document containing the information available for inspection by, another person, then, unless the other person otherwise directs, the requirement shall be deemed to oblige the first-mentioned person to produce or make available for inspection, as the case may be, a writing that reproduces the information in a form capable of being understood by the other person, and the

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production of such a writing to the other person constitutes compliance with the requirement.

“(2) In sub-section (1), ‘person’ includes a court, tribunal or other body.”.

141. After section 14 of the Principal Act the following section is inserted:

Service of documents on certain persons

“14A. (1) For the purposes of a relevant Act that requires or permits a document to be served on a person, whether the expression ‘serve’, ‘give’ or ‘send’ or any other expression is used, the document may, unless the contrary intention appears in the relevant Act, be served on the person—

- (a) in the case of a natural person—
 - (i) by delivering it to the person personally; or
 - (ii) by leaving it at, or by sending it by post to, the address of the place of residence or business of the person last known to the person serving the document; or
- (b) in the case of a body corporate other than—
 - (i) a company;
 - (ii) a recognised company;
 - (iii) a registered foreign company; or
 - (iv) a recognised foreign company,as defined in sub-section 5 (1) of the *Companies Act 1981*— by leaving it at, or sending it by post to, the head office, a registered office or a principal office of the body corporate.

“(2) Nothing in sub-section (1)—

- (a) affects the operation of any other law of the Commonwealth, or any law of a State or Territory, that authorises the service of a document otherwise than as provided in that sub-section; or
- (b) affects the power of a court to authorise service of a document otherwise than as provided in that sub-section.”.

Mention of officer in general terms

142. Section 20 of the Principal Act is amended by inserting “, or perform the duties of,” after “occupy”.

143. After section 20 of the Principal Act the following sections are inserted in Division 2 of Part II:

Alterations of names and constitutions

“20A. (1) Where a relevant Act alters the name of a body (whether or not the body is incorporated) or alters the name of an office, then, unless the contrary intention appears—

- (a) the body or office continues in existence under the new name so that its identity is not affected; and

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- (b) in any Act, in any instrument under an Act, in any award or other industrial determination or order or any industrial agreement, in any other order (whether executive, judicial or otherwise), in any contract, in any pleading in, or process issued in connection with, any legal or other proceedings or in any other instrument, a reference to the body or the office under the former name shall, except in relation to matters that occurred before the alteration took place, be construed as a reference to the body or the office under the new name.

“(2) Where a relevant Act alters the constitution of a body (whether or not the body is incorporated), then, unless the contrary intention appears—

- (a) the body continues in existence as newly constituted so that its identity is not affected;
- (b) the alteration does not affect any functions, powers, property, rights, liabilities or obligations of the body;
- (c) the alteration does not affect any legal or other proceedings instituted or to be instituted by or against the body, and any legal or other proceedings that might have been continued or commenced by or against the body as previously constituted may be continued or commenced by or against the body as newly constituted; and
- (d) the alteration does not affect any investigation or inquiry being or proposed to be undertaken by any tribunal, authority or person into any action taken or practice engaged in by the body before the alteration took place, and any investigation or inquiry that might have been continued or commenced into any such action or practice may be continued or commenced as if the action had been taken or the practice had been engaged in by the body as newly constituted.

Compliance with forms

“20B. Where a relevant Act prescribes a form, then, unless the contrary intention appears, strict compliance with the form is not required and substantial compliance is sufficient.

Contents of statements of reasons for decisions

“20C. Where a relevant Act requires a tribunal, body or person making a decision to give written reasons for the decision, whether the expression ‘reasons’, ‘grounds’ or any other expression is used, the instrument giving the reasons shall also set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.

Attainment of particular age

“20D. (1) For the purposes of a relevant Act, unless the contrary intention appears, the time at which a person attains a particular age expressed in years is the commencement of the relevant anniversary of the date of the birth of that person.

“(2) Sub-section (1) applies only where the relevant anniversary falls on or after 1 January 1986.”

Conferral of power to make, grant or issue an instrument

144. Section 22 of the Principal Act is amended—

- (a) by omitting “Where” and substituting “(1) Where”; and
- (b) by adding at the end the following sub-sections:

“(2) Where a relevant Act confers on a person or authority the power to make, grant or issue any instrument (including rules, regulations or by-laws) with respect to particular matters, the power shall be construed as including a power to make, grant or issue such an instrument with respect to some only of those matters or with respect to a particular class or particular classes of those matters and to make different provision with respect to different matters or different classes of matters.

“(3) Where a relevant Act confers on a person or authority the power to make, grant or issue any instrument (including rules, regulations or by-laws), the power shall not be taken, by implication, not to include the power to make provision for or in relation to a particular aspect of a matter by reason only that provision is made by the relevant Act in relation to another aspect of that matter or in relation to another matter.

“(4) Where a relevant Act confers on a person or authority the power to make, grant or issue an instrument (including rules, regulations or by-laws) prescribing penalties not exceeding a specified amount or imprisonment for a specified period, that limitation on the penalties that may be prescribed does not prevent the instrument from requiring the making of a statutory declaration.”

Power to appoint

145. Section 23 of the Principal Act is amended—

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

“(1) Subject to sub-section (2), where a relevant Act confers on a person or authority the power to make appointments to an office or position, the power shall, unless the contrary intention appears, be construed as including—

- (a) a power to appoint a person to act in the office or position until—

- (i) a person is appointed to the office or position; or
 - (ii) the expiration of 12 months after the office or position was created or became vacant, as the case requires,

whichever first happens; and

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- (b) a power to remove or suspend a person appointed, and to appoint another person temporarily in place of a person so removed or suspended or in place of a sick or absent holder of the office or position.”; and
- (b) by omitting from sub-section (2) “the power of removal or suspension is” and substituting “the power to make an appointment to act in an office or position, the power of removal or suspension, or the power to appoint a person temporarily in place of another person, is”.

146. After section 23 of the Principal Act the following section is inserted:

Delegations

“23A. Where a relevant Act confers power to delegate a function, duty or power, then, unless the contrary intention appears, the power of delegation shall not be construed as being limited to delegating the function, duty or power to a specified person but shall be construed as including a power to delegate the function, duty or power to any person from time to time holding, occupying, or performing the duties of, a specified office or position.”.

References to amended, re-enacted or remade laws

147. Section 33 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:

“(2) Where a relevant Act contains a reference to a short title or other citation that is or was provided by the law of a State or Territory for the citation of a law of that State or Territory as originally enacted or made, or as amended, then, except so far as the contrary intention appears—

- (a) the reference shall be construed as a reference to that law as originally enacted or made and as amended from time to time; and
- (b) where that law has been repealed and re-enacted or remade, with or without modifications, the reference shall be construed as including a reference to the re-enacted or remade law as originally enacted or made and as amended from time to time and, where, in connection with that reference, particular provisions of the repealed law are referred to, being provisions to which provisions of the re-enacted or remade law correspond, the reference to those particular provisions shall be construed as including a reference to those corresponding provisions.”.

Heading to Part III

148. The heading to Part III of the Principal Act is omitted and the following heading is substituted:

“PART III—LEGAL PROCEEDINGS”.

Insertion of Division heading

149. Before section 34 of the Principal Act the following heading is inserted in Part III:

“Division 1—Offences and Penalties”.

150. After section 36 of the Principal Act the following section is inserted:

Effect of alterations of penalties

“36A. (1) Where a relevant Act increases the penalty or maximum penalty for an offence, the penalty or maximum penalty as increased applies only to offences committed after the commencement of the provision of the relevant Act increasing the penalty or maximum penalty.

“(2) Where a relevant Act reduces the penalty or maximum penalty for an offence, the penalty or maximum penalty as reduced extends to offences committed before the commencement of the provision of the relevant Act reducing the penalty or maximum penalty, but the reduction does not affect any penalty imposed before that commencement.”.

151. After section 38A of the Principal Act the following Division is inserted in Part III:

“Division 2—Civil Proceedings

Standard of proof

“38B. Where, in proceedings other than proceedings for an offence, it is necessary to establish, or for the Court to be satisfied, for any purpose relating to a matter arising under a relevant Act, that—

- (a) a person has contravened a provision of a relevant Act;
- (b) default has been made in complying with a provision of a relevant Act;
- (c) an act or omission was unlawful by virtue of a provision of a relevant Act; or
- (d) a person has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to a contravention, or a default in complying with, a provision of a relevant Act,

it is sufficient if the matter referred to in paragraph (a), (b), (c) or (d) is established, or the Court is so satisfied, as the case may be, on the balance of probabilities.”.

**PART V—AMENDMENT OF COMPANIES AND SECURITIES
LEGISLATION (MISCELLANEOUS AMENDMENTS) ACT 1983**

Principal Act

152. The *Companies and Securities Legislation (Miscellaneous Amendments) Act 1983*⁴ is in this Part referred to as the Principal Act.

Schedule 1

153. Schedule 1 to the Principal Act is amended by omitting “A” from the amendment of paragraph 238 (7) (c) of the *Companies Act 1981* and substituting “a”.

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

Principal Act

154. The *National Companies and Securities Commission Act 1979*⁵ is in this Part referred to as the Principal Act.

Interpretation

155. Section 3 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the definition of “investment contract”;
- (b) by omitting from sub-section (1) the definitions of “prescribed interest” and “securities” and substituting the following definitions:

“‘prescribed interest’ means a prescribed interest within the meaning of the *Companies Act 1981* or of the provisions of a law of a participating State or participating Territory that correspond with that Act;

‘securities’ has the same meaning as that expression has in the *Securities Industry Act 1980*”; and

- (c) by omitting sub-section (2).

Membership of Commission

156. Section 11 of the Principal Act is amended by omitting from sub-section (1) “5” and substituting “8”.

Acting appointments

157. Section 17 of the Principal Act is amended by omitting from paragraphs (3) (a) and (b) “5” and substituting “8”.

Meetings of Commission

158. Section 20 of the Principal Act is amended—

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

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“(3A) If all the members of the Commission who are neither absent from duty nor absent from Australia so agree, a meeting, or a part of a meeting, of the Commission may be held by means of any of, or by means of a combination of any 2 or more of, the following methods of communication:

- (a) telephone;
- (b) closed-circuit television;
- (c) a method or methods of communication approved by the Commission for the purposes of that meeting.

“(3B) All the members of the Commission who take part in a meeting held as mentioned in sub-section (3A) shall be deemed, for the purposes of this section, to have been present at the meeting, notwithstanding that they were not all present at the same place at the time when the meeting was so held.”; and

- (b) by adding at the end of sub-section (7) “at the meeting”.

Divisions of Commission

159. Section 21 of the Principal Act is amended by inserting after sub-section (4) the following sub-sections:

“(4A) If all the full-time members of the Commission who are—

- (a) members of a particular Division; and
- (b) neither absent from duty nor absent from Australia,

so agree, a meeting, or a part of a meeting, of that Division may be held by means of any of, or by means of a combination of any 2 or more of, the following methods of communication:

- (c) telephone;
- (d) closed-circuit television;
- (e) a method or methods of communication approved by that Division for the purposes of that meeting.

“(4B) All the members of a particular Division of the Commission who take part in a meeting held as mentioned in sub-section (4A) shall be deemed, for the purposes of this section, to have been present at the meeting, notwithstanding that they were not all present at the same place at the time when the meeting was so held.”.

Engagement of consultants

160. Section 25 of the Principal Act is amended by omitting from sub-section (2) “, with the approval of the Public Service Board,”.

Proceedings at hearings

161. Section 38 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “relevant”;
- (b) by omitting from paragraph (1) (d) “and”; and

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(c) by omitting paragraph (1) (e) and substituting the following paragraphs:

“(e) except in the case of a hearing before a Division of the Commission—the provisions of section 20 (other than sub-sections 20 (3A) and (3B)) apply, so far as they are capable of application, as if the hearing were a meeting of the Commission; and

(f) in the case of a hearing before a Division of the Commission—the provisions of section 20 (other than sub-sections 20 (3A) and (3B)) and of section 21 (other than sub-sections 21 (4A) and (4B)) apply, so far as they are capable of application, as if the hearing were a meeting of that Division.”.

Delegation by Commission

162. Section 45 of the Principal Act is amended—

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

“(1A) Without limiting the generality of sub-section (1), the Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to a member or acting member all or any—

(a) powers of the Commission under Part VI; or

(b) powers that relate to the holding of hearings and that are conferred, or expressed to be conferred, on the Commission by or under a State Act (other than powers the delegation of which is prohibited by the State Act concerned).”;

(b) by inserting after sub-section (6) the following sub-section:

“(6A) Any act or thing done in the exercise of a power by a person to whom that power has been delegated by the Commission under sub-section (1A) shall be deemed to have been done by the Commission.”;

(c) by inserting in sub-sections (7), (8), (10) and (13) “or (1A)” after “(1)”; and

(d) by omitting from paragraph (13) (a) “paragraph 38 (1) (e) ’ and substituting “paragraphs 38 (1) (e) and (f)”.

Repeal of section 50

163. Section 50 of the Principal Act is repealed.

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

Principal Act

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

Interpretation

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

(a) by inserting after the definition of “accounting records” in sub-section (1) the following definition:

“ ‘approved securities organisation’ means a body corporate that is approved by the Ministerial Council under section 38A;”;

(b) by inserting “or” after “1959;” in paragraph (a) of the definition of “banking corporation” in sub-section (1);

(c) by omitting paragraph (b) of the definition of “banking corporation” in sub-section (1);

(d) by omitting “and” (last occurring) from paragraph (a) of the definition of “director” in sub-section (1);

(e) by adding at the end of the definition of “director” in sub-section (1) the following word and paragraph:

“and (c) in the case of a body corporate incorporated or formed outside the Territory—

(i) a member of the committee of management, council or other governing body of the body corporate;

(ii) any person occupying or acting in the position of member of the committee of management, council or other governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and

(iii) any person in accordance with whose instructions the members of the committee of management, council or other governing body of the body corporate are accustomed to act;”;

(f) by omitting from sub-paragraph (c) (iv) of the definition of “exempt dealer” in sub-section (1) “or” (last occurring);

(g) by adding at the end of the definition of “exempt dealer” in sub-section (1) the following word and paragraph:

“; or (e) a person who, as Public Trustee, carries on a business of dealing in securities by virtue of that person’s powers under the *Public Trustee Ordinance 1985*;”;

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- (h) by inserting after the definition of “exempt dealer” in sub-section (1) the following definition:
 - “ ‘exempt stock market’ means a stock market in relation to which, or a stock market included in a class of stock markets, being a class in relation to which, a declaration under sub-section 37 (1A) is in force;”;
- (j) by omitting “, the Primary Industry Bank of Australia” from paragraph (a) of the definition of “investment adviser” in sub-section (1);
- (k) by inserting after the definition of “officer” in sub-section (1) the following definition:
 - “ ‘on’, in relation to a stock market, includes at or by means of;”;
- (m) by omitting the definition of “prescribed interest” in sub-section (1) and substituting the following definitions:
 - “ ‘participation interest’ means any right to participate, or any interest—
 - (a) in any profits, assets or realisation of any financial or business undertaking or scheme whether in the Territory or elsewhere;
 - (b) 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
 - (c) in any investment contract,
whether or not the right or interest is enforceable, whether the right or interest is actual, prospective or contingent, whether or not the right or interest is evidenced by a formal document and whether or not the right or interest relates to a physical asset, but does not include—
 - (d) such a right that is a right to participate in a time-sharing scheme;
 - (e) any share in, or debenture of, a corporation;
 - (f) any interest in, or arising out of, a policy of life insurance; or
 - (g) an interest in a partnership agreement, unless the agreement or proposed agreement—
 - (i) relates to an undertaking, scheme, enterprise or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts, whether or not that person is, or is to become, a party to the agreement or proposed agreement; or

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

'prescribed interest' means—

- (a) a participation interest; or
- (b) a right, whether enforceable or not, whether actual, prospective or contingent and whether or not evidenced by a formal document, to participate in a time-sharing scheme,

but does not include 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;";

- (n) by inserting after the definition of "quarter day" in sub-section (1) the following definition:

"'quotation', in relation to securities, in relation to a stock market of a securities exchange, includes the displaying or providing, on a stock market of the securities exchange, of information concerning—

- (a) in a case where offers to sell, purchase or exchange the securities at particular prices, or for particular consideration, are made or accepted on that stock market—those prices or that consideration;
- (b) in a case where offers or invitations are made on that stock market, being offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange the securities at particular prices or for particular consideration—those prices or that consideration; or
- (c) in any case—the price at which, or the consideration for which, particular persons, or particular classes of persons, propose, or may reasonably be expected, to sell, purchase or exchange the securities;";

- (p) by omitting paragraph (c) of the definition of "securities" in sub-section (1) and substituting the following paragraph:

"(c) an option contract to which this Act applies; or";

- (q) by omitting "bank" from paragraph (g) of the definition of "securities" in sub-section (1) and substituting "banking corporation";

- (r) by inserting after the definition of "securities" in sub-section (1) the following definition:

"'securities exchange' means a stock exchange or an approved securities organisation;";

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- (s) by omitting from sub-section (1) the definition of “stock market” and substituting the following definition:
- “ ‘stock market’ means a market, exchange or other place at which, or a facility by means of which—
- (a) offers to sell, purchase or exchange securities are regularly made or accepted;
 - (b) offers or invitations are regularly made, being offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange securities; or
 - (c) information is regularly provided concerning the prices at which, or the consideration for which, particular persons, or particular classes of persons, propose, or may reasonably be expected, to sell, purchase or exchange securities;”;
- (t) by inserting “, whether in the Territory or elsewhere” after “enterprise” (first occurring) in the definition of “time-sharing scheme” in sub-section (1);
- (u) by inserting after the definition of “time-sharing scheme” in sub-section (1) the following definition:
- “ ‘trading’, in relation to securities, in relation to a stock market, includes—
- (a) making or accepting on that stock market offers to sell, purchase or exchange the securities; and
 - (b) making on that stock market offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange the securities;”;
- (v) by inserting after sub-section (7) the following sub-section:
- “(7A) A regulation made for the purposes of sub-paragraph (g) (ii) of the definition of ‘participation interest’ in sub-section (1) does not apply to an agreement or a class of agreements relating to a partnership—
- (a) being a partnership for the carrying on of a profession or trade where a person carrying on that profession or trade is required by any law of the Commonwealth, of a State or of a Territory to be registered, licensed or otherwise authorised in order to do so; and
 - (b) the business of which does not include any business other than the business of a partnership referred to in paragraph (a).”;
- (w) by inserting after sub-section (8) the following sub-section:

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“(8A) A reference in this Act to an option contract to which this Act applies is a reference to—

- (a) a contract under which a party to the contract acquires from another party to the contract an option or right, exercisable at or before a specified time, to purchase from, or to sell to, that other party a specified number of specified securities, or of securities included in a specified class of securities, at a price specified in, or to be determined in accordance with, the contract; or
- (b) a contract entered into on a stock market of a securities exchange or on an exempt stock market, being a contract under which a party to the contract acquires from another party to the contract an option or right, exercisable at or before a specified time—
 - (i) to purchase from, or to sell to, that other party a specified amount of a specified foreign currency, or a specified quantity of a specified commodity, at a price specified in, or to be determined in accordance with, the contract; or
 - (ii) to be paid by that other party an amount of money to be determined by reference to the amount by which a specified number is greater or less than the number of a specified index, being the Australian Stock Exchanges All Ordinaries Price Index or a prescribed index, as at the time when the option or right is exercised.”.

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

(a) by inserting before the definition of “securities” in sub-section (1) the following definition:

“‘retirement village scheme’ means a scheme, undertaking or enterprise (in this definition referred to as the ‘relevant scheme’), whether in the Territory or elsewhere, that is being, or is proposed to be, carried out or undertaken with the intention that the participants, or a majority of the participants, in the relevant scheme be provided, in connection with the relevant scheme, with residential accommodation within a retirement community, whether or not the entitlement of a participant to be provided with such accommodation derives from a proprietary interest held by the participant in the premises where the accommodation is provided, but does not include a time-sharing scheme;” and

(b) by omitting paragraphs (f) and (g) of the definition of “securities” in sub-section (1) and substituting the following paragraphs:

- “(f) promissory notes;
- (g) certificates of deposit issued by a banking corporation;

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- (h) in a case where—
 - (i) there is attached to a share or debenture a right to participate in a retirement village scheme; and
 - (ii) each of the other rights, and each interest (if any), attached to that share or debenture is a right or interest that is merely incidental to the right referred to in sub-paragraph (i),
that share or debenture; or
- (j) a prescribed interest that is constituted by a right to participate in a retirement village scheme;”.

Relevant interests in securities

166. (1) Section 5 of the Principal Act is amended—

- (a) by omitting sub-sections (4) and (5) and substituting the following sub-sections:

“(4) Without limiting the generality of sub-sections (1), (2) and (3), where a body corporate has, or is by virtue of this section to be deemed to have, power—

- (a) to exercise, or to control the exercise of, a right to vote carried by securities; or
- (b) to dispose of, or to exercise control over the disposal of, securities,

and—

- (c) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to the exercise of the power; or

(d) a person has a controlling interest in the body corporate, that person shall, for the purposes of this section, be deemed to have the same power in relation to those securities as the body corporate has or is to be deemed to have.

“(5) Where a body corporate has, or is by virtue of this section (other than this sub-section) to be deemed to have, power—

- (a) to exercise, or to control the exercise of, the right to vote carried by securities; or
- (b) to dispose of, or to exercise control over the disposal of, securities,

a person (in this sub-section referred to as the ‘relevant person’) shall, for the purposes of this section, be deemed to have the same power in relation to those securities as the body corporate has, or is to be deemed to have, if—

- (c) the relevant person has;
- (d) a person associated with the relevant person has;

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- (e) persons associated with the relevant person together have; or
- (f) the relevant person and a person or persons associated with the relevant person together have,

the power to exercise, or to control the exercise of, the voting power attached to not less than the prescribed percentage of the voting shares in the body corporate.”;

- (b) by omitting from sub-section (7) “deemed by sub-section (6)” and substituting “to be deemed, by virtue of sub-section (6),”; and
- (c) by omitting from sub-paragraph (8) (c) (i) “is deemed, by sub-section (6),” and substituting “is to be deemed, by virtue of sub-section (6),”.

(2) Section 5 of the Principal Act is amended by inserting after sub-section (9) the following sub-section:

“(9A) A person may, by virtue of this section, be taken or deemed, for the purposes of this Act, to have a relevant interest in securities issued or made available by the person.”.

Associated persons

167. Section 6 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (b) “body corporate, a person” and substituting “body corporate (including, in a case where the other person is a body corporate, the other person)—a person (including the body corporate)”; and
- (b) by omitting sub-paragraphs (1) (b) (i), (ii) and (iii) and substituting the following sub-paragraphs:
 - “(i) by reason of which the first-mentioned person, or the other person, may exercise, may directly or indirectly control the exercise of, or may substantially influence the exercise of, any voting power attached to a share in the body corporate;
 - (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the body corporate;
 - (iii) under which the first-mentioned person may acquire from the other person, or the other person may acquire from the first-mentioned person, shares in the body corporate; or
 - (iv) under which the first-mentioned person, or the other person, may be required to dispose of shares in the body corporate in accordance with the directions of the other person, or of the first-mentioned person, as the case may be;”.

Power of Commission to require production of books

168. Section 8 of the Principal Act is amended—

- (a) by omitting paragraph (1A) (a) and substituting the following paragraph:
 - “(a) for the purpose of—
 - (i) the performance of a function, or the exercise of a power, by the Commission under a relevant Act (other than the exercise of a power of the Commission under sub-section 6 (3) of the *National Companies and Securities Commission Act 1979*); or
 - (ii) ensuring compliance with the provisions of a relevant Act; or”;
- (b) by omitting from sub-paragraph (1A) (b) (i) “such a relevant Act or corresponding law” and substituting “a relevant Act”;
- (c) by inserting after sub-section (1A) the following sub-section:

“(1B) A reference in sub-section (1A) to a relevant Act includes a reference to the provisions of a law of a participating State or participating Territory that correspond with a relevant Act.”; and
- (d) by omitting from sub-section (4) “stock exchange” and “stock exchanges” and substituting “securities exchange” and “securities exchanges”, respectively.

Disclosure to Commission

169. Section 12 of the Principal Act is amended—

- (a) by omitting from paragraph (3A) (d) “referred to in sub-section 60 (7)” and substituting “of a kind referred to in sub-section 60 (1)”; and
- (b) by omitting from paragraph (3A) (e) “referred to in sub-section 60 (7A)” and substituting “of a kind referred to in sub-section 60 (3)”.

170. Section 13 of the Principal Act is repealed and the following section is substituted:

Investigation of certain matters

“13. Where the Commission has reason to suspect that—

- (a) an offence under a provision of a relevant Act or against any other law with respect to dealing in securities; or
- (b) an offence relating to securities that involves fraud or dishonesty,

may have been committed, the Commission may make such investigation as the Commission thinks expedient for the due administration of a relevant Act.”.

Power of Court to make certain orders

171. Section 14 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “committed an offence under this Act, or under” and substituting “contravened this Act, or”; and
- (b) by omitting from paragraph (1) (a) “an offence or” and substituting “a”.

Interpretation

172. Section 15 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

“(1A) In this Division, a reference to a statement made at an examination includes a reference to a question asked, an answer given, or any other comment or remark made, at the examination.”.

Record of examination

173. Section 21 of the Principal Act is amended—

- (a) by omitting from sub-sections (1), (2) and (3) “questions asked and the answers given” and substituting “statements made”; and
- (b) by omitting from sub-section (5) “questions asked and answers given” and substituting “statements made”.

Record to accompany report

174. Section 22 of the Principal Act is amended by omitting “questions asked and answers given” and substituting “statements made”.

Admissibility of record of examination in evidence in proceedings against person examined

175. Section 23 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “questions asked and answers given” and substituting “statements made”;
- (b) by omitting from sub-section (2) “an answer given” and substituting “a statement made”;
- (c) by inserting in paragraph (2) (a) “where the statement is an answer given by the person to a question—” before “the proceedings”;
- (d) by omitting from paragraph (2) (b) “question and answer are” and substituting “statement is”;
- (e) by omitting from paragraph (2) (c) “answer” (wherever occurring) and substituting “statement”;
- (f) by omitting from paragraph (2) (c) “given” and substituting “made”; and
- (g) by omitting from paragraph (2) (d) “answer” and substituting “statement”.

Admissibility in other proceedings of statements at an examination

176. Section 24 of the Principal Act is amended—

- (a) by omitting “a question asked of, and answer given by,” and substituting “a statement made by”;
- (b) by omitting “are” (first occurring) and substituting “is”; and
- (c) by omitting from paragraph (b) “question and answer” and substituting “statement”.

Weight of evidence

177. Section 25 of the Principal Act is amended—

- (a) by omitting “questions and answers” and substituting “statements”;
and
- (b) by omitting from paragraph (b) “answers” and substituting “statements”.

Credibility of person who made statements

178. Section 26 of the Principal Act is amended by omitting from sub-section (1) “questions and answers” and substituting “statements”.

Determination of objection to admissibility of statement

179. Section 27 of the Principal Act is amended—

- (a) by omitting from sub-section (2) “questions and answers” (wherever occurring) and substituting “statements”; and
- (b) by omitting from sub-section (3) “question and answer” and substituting “statement”.

Provisions relating to reports

180. Section 30 of the Principal Act is amended by inserting after sub-section (9) the following sub-sections:

“(9A) A copy of a report of an inspector under this Division purporting to be certified as such a report by the Commission is admissible in civil proceedings as evidence of any facts or matters stated in the report to have been found to exist by the inspector.

“(9B) A copy of a report of the Commission under this Division purporting to be certified as such a report by the Commission is admissible in civil proceedings as evidence of any facts or matters stated in the report to have been found to exist by the Commission.”.

Power of Commission to make certain orders

181. Section 35 of the Principal Act is amended by omitting sub-section (6).

Heading to Part III

182. The heading to Part III of the Principal Act is amended by omitting “STOCK” and substituting “SECURITIES”.

Establishment, &c., of stock markets

183. Section 37 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “not the stock market of a stock exchange” and substituting “neither a stock market of a securities exchange nor an exempt stock market”; and
- (b) by inserting after sub-section (1) the following sub-sections:

“(1A) The Ministerial Council may, by instrument in writing, declare that a specified stock market, or a stock market included in a specified class of stock markets, is, subject to any specified conditions, an exempt stock market for the purposes of this Act.

“(1B) Without limiting the matters to which the Ministerial Council may have regard in considering whether to vary or revoke a declaration in force under sub-section (1A), the Ministerial Council may, in so considering, have regard to a breach of a condition specified in the declaration.”.

Power of Ministerial Council to approve stock exchange

184. Section 38 of the Principal Act is amended by omitting from sub-section (1) “the prescribed form” and substituting “writing”.

185. After section 38 of the Principal Act the following sections are inserted:

Power of Ministerial Council to approve body corporate as approved securities organisation

“38A. (1) A body corporate that proposes to establish, maintain or provide a stock market may lodge with the Commission an application in writing for approval by the Ministerial Council as an approved securities organisation.

“(2) The Ministerial Council may, by instrument in writing, approve as an approved securities organisation a body corporate that makes an application under sub-section (1) if it is satisfied—

- (a) that the business rules of the body corporate make satisfactory provision—
 - (i) for efficient, honest, fair, competitive and informed trading in securities on the stock market or stock markets of the proposed approved securities organisation (in this sub-section referred to as the ‘organisation’); and

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- (ii) generally for the carrying on of the business of the organisation with due regard to the interests of the public,
and, without limiting the generality of the foregoing, make satisfactory provision in relation to such of the following matters as appear to the Ministerial Council to be relevant in relation to the application:
 - (iii) the admission, suspension, expulsion and discipline of members;
 - (iv) dealings in securities by members;
 - (v) the listing of securities for trading on the stock market or stock markets of the organisation;
 - (vi) trading in securities on the stock market or stock markets of the organisation;
 - (vii) the clearing and settlement of dealings in securities that result from trading in securities on the stock market or stock markets of the organisation;
 - (viii) the quotation of securities on, and the reporting of trading in securities on, the stock market or stock markets of the organisation;
 - (ix) the monitoring of compliance with, and the enforcement of, the business rules of the organisation;
- (b) that the body corporate has made or adopted listing rules and, where the listing rules are adopted, has made provision to the effect that an amendment of the rules so adopted made by another person is of no effect until the body corporate adopts the amendment;
- (c) that the listing rules made or adopted by the body corporate make satisfactory provision—
 - (i) with respect to conditions under which securities may be traded on the stock market or stock markets of the organisation; and
 - (ii) generally for the protection of the interests of the public; and
- (d) that the interests of the public will be served by the granting of its approval.

Publication of instruments executed under section 37, 38 or 38A

“38B. The Commission shall cause a copy of an instrument executed by the Ministerial Council under sub-section 37 (1A), 38 (2) or 38A (2) to be published in the *Gazette*, but failure of the Commission to do so does not affect the validity of the instrument.”.

Securities exchanges to provide assistance to Commission

186. Section 41 of the Principal Act is amended—

- (a) by omitting from sub-section (3) “of a stock market of a stock exchange” and substituting “or trading floors of a securities exchange”;

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- (b) by omitting from sub-section (4) “the trading floor of a stock market of a stock exchange” and substituting “a trading floor of a securities exchange”; and
- (c) by omitting sub-section (5) and substituting the following sub-section:

“(5) In this section, ‘trading floor’, in relation to a securities exchange, means a place or facility maintained or provided by the securities exchange for—

- (a) the making or acceptance, by members of the securities exchange, or by such members and other persons, of offers to sell, purchase or exchange securities;
- (b) the making, by members of the securities exchange, or by such members and other persons, of offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange securities; or
- (c) the provision of information concerning the prices at which, or the consideration for which, particular persons, or particular classes of persons, propose, or may reasonably be expected, to sell, purchase or exchange securities.”.

Power of Court to order observance or enforcement of business rules or listing rules of securities exchange

187. Section 42 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:

“(2) For the purposes of sub-section (1), a person (in this sub-section referred to as the ‘relevant person’), being—

- (a) a body corporate that has, with its agreement, consent or acquiescence, been admitted to the official list of a securities exchange and has not been removed from that official list; or
- (b) a person associated with a body corporate that has, with its agreement, consent or acquiescence, been admitted to the official list of a securities exchange and has not been removed from that official list,

shall be deemed to be under an obligation to comply with, observe and give effect to the listing rules of that securities exchange to the extent to which those rules purport to apply in relation to the relevant person.”.

188. After section 42 of the Principal Act the following section is inserted:

Certain laws not applicable to option contracts to which this Act applies

“42A. For the purposes of any law, an option contract to which this Act applies is not a contract by way of gaming or wagering if it was entered into on a stock market of a securities exchange or on an exempt stock market.”.

Further provisions relating to revocation and suspension of licences

189. Section 60 of the Principal Act is amended by adding at the end the following sub-section:

“(6) Without limiting the matters to which the Commission may have regard in determining whether it has reason to believe that a person who is the holder of a dealers licence, an investment advisers licence or a representatives licence has not performed the duties of a holder of such a licence efficiently, honestly and fairly, the Commission may, in so determining, have regard to a contravention by the person of sub-section 65A (1).”.

Issue of contract notes

190. Section 64 of the Principal Act is amended by omitting from sub-paragraph (2) (h) (i) “stock exchanges” and substituting “securities exchanges”.

191. After section 65 of the Principal Act the following section is inserted:

Recommendations

“65A. (1) An adviser who—

- (a) makes a recommendation with respect to securities or a class of securities to a person who may reasonably be expected to rely on the recommendation; and
- (b) does not have a reasonable basis for making the recommendation to the person,

contravenes this sub-section.

“(2) For the purposes of sub-section (1), an adviser does not have a reasonable basis for making a recommendation to a person unless—

- (a) the adviser has, for the purpose of ascertaining that the recommendation is appropriate having regard to the information possessed by the adviser concerning the investment objectives, financial situation and particular needs of the person, given such consideration to, and conducted such investigation of, the subject matter of the recommendation as is reasonable in all the circumstances; and
- (b) the recommendation is based on that consideration and investigation.

“(3) An adviser who contravenes sub-section (1) is not guilty of an offence by virtue of that sub-section or section 141.

“(4) Where—

- (a) an adviser contravenes sub-section (1) by making a recommendation to a person;
- (b) the person, in reliance on the recommendation, does a particular act, or refrains from doing a particular act;

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- (c) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the person to do that act, or to refrain from doing that act, as the case may be, in reliance on the recommendation; and
- (d) the person suffers loss or damage as a result of doing that act, or refraining from doing that act, as the case may be,

the adviser is liable to pay damages to the person in respect of that loss or damage.

“(5) An adviser who—

- (a) makes a recommendation with respect to securities or a class of securities to a person (in this sub-section referred to as the ‘client’) who may reasonably be expected to rely on the recommendation; and
- (b) in so making the recommendation, does not contravene sub-section (1),

is not, in the absence of malice on the adviser’s part, liable to an action for defamation at the suit of a person in respect of a statement made to the client by the adviser, whether orally or in writing, in the course of, or in connection with, the making of the recommendation to the client.

“(6) Sub-section (5) does not limit or affect any right, privilege or immunity that an adviser has, apart from that sub-section, as defendant in an action for defamation.

“(7) In this section—

- (a) a reference to an adviser is a reference to a person who is a dealer, investment adviser, dealer’s representative or investment representative; and
- (b) a reference to the making of a recommendation is a reference to the making of a recommendation whether expressly or by implication.”.

Short selling

192. Section 68 of the Principal Act is amended—

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

“; or (e) a sale of securities where—

- (i) the securities are included in a class of securities, being a class in relation to which there is in force a declaration, made by the committee of a securities exchange as provided by the business rules of the securities exchange, to the effect that the class is a class of securities to which this paragraph applies;
- (ii) the sale is effected as provided by the business rules of the securities exchange; and

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- (iii) at the time of the sale, neither the person who sold the securities, nor any person on behalf of whom the first-mentioned person sold the securities, was associated, in relation to the sale, with the body corporate that issued or made available the securities.”; and
- (c) by omitting from sub-section (4) “or (d)” and substituting “, (d) or (e)”.

193. After section 68 of the Principal Act the following section is inserted in Part V:

Power of Commission to prohibit short selling in certain cases

“68A. (1) Where the Commission forms the opinion that it is necessary to prohibit securities, or securities included in a particular class of securities, from being sold on a stock market of a securities exchange in a manner that, but for paragraph 68 (3) (e), would contravene sub-section 68 (1), in order to protect persons who might sustain financial loss if they were to buy or sell those securities in that manner or in order to protect the public interest, the Commission may give notice in writing to the securities exchange stating that it has formed that opinion and setting out the reasons for the formation of that opinion.

“(2) If, after the receipt of such a notice—

- (a) the securities exchange does not take action to prevent the selling on a stock market of the securities exchange of securities, or of securities included in a class specified in the notice, as the case requires, in the manner referred to in sub-section (1); and
- (b) the Commission is still of the opinion that it is necessary to prohibit the selling on that stock market of those securities in that manner,

the Commission may, by a further notice in writing given to the securities exchange, prohibit the selling on that stock market of those securities in that manner during such period, not exceeding 21 days, as is specified in the further notice.

“(3) As soon as practicable after giving a notice to a securities exchange under sub-section (2), the Commission shall furnish to the Ministerial Council a written report setting out the reasons for the giving of the notice and send a copy of the report to the securities exchange.

“(4) On receipt of a report furnished under sub-section (3), the Ministerial Council may, if it thinks fit, direct the Commission to revoke the notice given under sub-section (2), and, if such a direction is given, the Commission shall forthwith revoke the notice.

“(5) A securities exchange shall not permit the selling of securities on a stock market of the securities exchange in a manner that contravenes a notice given under sub-section (2).

Penalty: \$1,000 for each day on which the securities exchange contravenes this sub-section.”

Dealers’ trust accounts

194. Section 73 of the Principal Act is amended—

- (a) by omitting from sub-section (4) “sub-section (2)” and substituting “sub-sections (2) and (8)”;
- (b) by adding at the end the following sub-section:

“(8) Where a dealer is prohibited, by virtue of a condition or restriction to which a licence granted to him under this Act is subject, from holding moneys in trust for the dealer’s clients, this section does not apply in relation to the dealer unless and until the dealer holds moneys in trust for a client.”

Certain matters to be reported to Commission

195. Section 80 of the Principal Act is amended by inserting in paragraph (2) (b) “, except in a case where the securities exchange concerned is not a stock exchange,” before “Part VIII”.

Fraudulently inducing persons to deal in securities

196. Section 126 of the Principal Act is amended—

- (a) by omitting from paragraph (b) “or”;
- (b) by inserting after paragraph (c) the following word and paragraph:
 - “; or (d) by recording or storing in, or by means of, any mechanical, electronic or other device information that he knows to be false or misleading in a material particular;”;
- (c) by adding at the end the following sub-section:

“(2) It is a defence to a prosecution for an offence under sub-section (1) constituted by recording or storing information as mentioned in paragraph (1) (d) if it is established that, at the time when the defendant so recorded or stored the information, he had no reasonable grounds for expecting that the information would be available to any other person.”

Restrictions on use of titles “stockbroker”, “sharebroker” and “stock exchange”

197. Section 133 of the Principal Act is amended—

- (a) by omitting “A person” and substituting “(1) A person”; and
- (b) by adding at the end the following sub-section:
 - “(2) A body corporate that is not—
 - (a) a stock exchange; or
 - (b) a stock exchange within the meaning of the corresponding law of a participating State or of a participating Territory,

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shall not take or use, or by inference adopt, the name or title of stock exchange or take or use or have attached to or exhibited at any place a name, title or description implying or tending to create the belief that the body corporate is—

- (c) a stock exchange; or
- (d) a stock exchange within the meaning of the corresponding law of a participating State or of a participating Territory.”.

198. Section 142 of the Principal Act is repealed and the following section is substituted:

Continuing offences

“142. (1) Where—

- (a) by or under a provision, an act is required to be done within a particular period or before a particular time;
- (b) failure to do the act within that period or before that time constitutes an offence; and
- (c) the act is not done within that period or before that time,

then—

- (d) the obligation to do the act continues, notwithstanding that that period has expired or that time has passed, and whether or not a person is convicted of a primary substantive offence in relation to failure to do the act, until the act is done; and
- (e) sub-sections (3) and (4) apply.

“(2) Where—

- (a) by or under a provision, an act is required to be done but neither a period within which, nor a time before which, the act is to be done is specified;
- (b) failure to do the act constitutes an offence; and
- (c) a person is convicted of a primary substantive offence in relation to failure to do the act,

then—

- (d) the obligation to do the act continues, notwithstanding the conviction, until the act is done; and
- (e) sub-sections (3) and (4) apply.

“(3) Where—

- (a) at a particular time, a person is first convicted of a substantive offence, or is convicted of a second or subsequent substantive offence, in relation to failure to do the act; and
- (b) the failure to do the act continues after that time,

the person is, in relation to failure to do the act, guilty of a further offence in respect of so much of the period throughout which the failure to do the act

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continues as elapses after that time and before the relevant day in relation to the further offence.

“(4) Where—

- (a) a body corporate is guilty of a primary substantive offence in relation to failure to do the act; and
- (b) throughout a particular period (in this sub-section referred to as the ‘relevant period’)—
 - (i) the failure to do the act continues;
 - (ii) a person (in this sub-section referred to as the ‘derivative offender’) is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the failure to do the act; and
 - (iii) the derivative offender is an officer of the body corporate,

then—

- (c) in a case where either or both of the following events occurs or occur:
 - (i) the body corporate is convicted, before or during the relevant period, of the primary substantive offence;
 - (ii) the derivative offender is convicted, before or during the relevant period, of a primary derivative offence in relation to failure to do the act,
the derivative offender is, in relation to failure to do the act, guilty of an offence (in this paragraph referred to as the ‘relevant offence’) in respect of so much (if any) of the relevant period as elapses—
 - (iii) after the conviction referred to in sub-paragraph (i) or (ii), or after the earlier of the convictions referred to in sub-paragraphs (i) and (ii), as the case may be; and
 - (iv) before the relevant day in relation to the relevant offence; and
- (d) in a case where, at a particular time during the relevant period, the derivative offender is first convicted of a secondary derivative offence, or is convicted of a second or subsequent secondary derivative offence, in relation to failure to do the act—the derivative offender is, in relation to failure to do the act, guilty of a further offence in respect of so much of the relevant period as elapses after that time and before the relevant day in relation to the further offence.

“(5) Notwithstanding sub-section 141 (6), where a person is guilty, by virtue of sub-section (3) or (4) of this section, of an offence in respect of the whole or a part of a particular period, the penalty applicable to the offence is a fine of the amount obtained by multiplying \$50 by the number of days in that period, or in that part of that period, as the case may be.

“(6) In this section—

‘act’ includes thing;

‘primary derivative offence’, in relation to failure to do an act, means an offence (other than an offence of which a person is guilty by virtue of

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this section) of which a person is guilty by virtue of being an officer of a body corporate who is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission by the body corporate of a primary substantive offence in relation to failure to do the act;

‘primary substantive offence’, in relation to failure to do an act, means an offence (other than an offence of which a person is guilty by virtue of this section) constituted by failure to do the act, or by failure to do the act within a particular period or before a particular time;

‘provision’ means a section, or a sub-section of a section, of this Act;

‘relevant day’, in relation to an offence of which a person is guilty by virtue of this section, means—

- (a) in a case where the information relating to the offence specifies a day in relation to the offence for the purposes of this section, being a day not later than the day on which the information is laid—the day the information so specifies; or
- (b) in any other case—the day on which the information relating to the offence is laid;

‘required’ includes directed;

‘secondary derivative offence’, in relation to failure to do an act, means an offence or further offence of which a person is, in relation to failure to do the act, guilty by virtue of paragraph (4) (c) or (d);

‘substantive offence’, in relation to failure to do an act, means—

- (a) a primary substantive offence in relation to failure to do the act; or
- (b) a further offence of which a person is, in relation to failure to do the act, guilty by virtue of sub-section (3).

“(7) Sub-sections (1) to (6), inclusive, of this section do not apply in relation to an obligation to do an act or thing, being an obligation that arose before the commencement of section 198 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985*, and, notwithstanding the repeal effected by that section, section 142 of this Act as in force at any time before that commencement continues to have effect in relation to such an obligation.”.

Offences by bodies corporate

199. Section 143 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) Where a body corporate is guilty of an offence against this Act (other than an offence of which the body corporate is guilty by virtue of sub-section 142 (3) or (4) of this Act as in force after the commencement of section 198 of

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the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985*—

- (a) any officer of the body corporate (including a person who has subsequently ceased to be an officer of the body corporate) who was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence is guilty of an offence; and
- (b) notwithstanding sub-section 141 (6), the penalty applicable to an offence of which such an officer is guilty by virtue of paragraph (a) of this sub-section is the penalty applicable to the offence of which the body corporate is guilty.

Further amendments relating to securities exchanges

200. The Principal Act is amended as set out in Schedule 3.⁷

SCHEDULE 1

Section 28

FURTHER AMENDMENTS OF THE COMPANIES (ACQUISITION OF SHARES) ACT 1980 RELATING TO SECURITIES EXCHANGES

Provisions	Amendments
Section 6 (definitions of "business rules" and "listing rules")	Omit "stock exchange" (wherever occurring), substitute "securities exchange".
Section 6 (definition of "marketable parcel")	(a) Omit "public" (wherever occurring). (b) Omit "the stock exchange that is the home exchange", substitute "a notifiable securities exchange".
Section 6 (definition of "recorded")	(a) Omit "public". (b) Omit "stock exchange", substitute "securities exchange".
Sub-section 8 (5)	Omit "public" (twice occurring).
Sub-section 8 (9)	Omit "stock exchange" (wherever occurring), substitute "securities exchange".
Sub-paragraph 14 (3) (a) (i)	(a) Omit "listed public company", substitute "stock exchange listed company". (b) Insert "stock" after "home".
Sub-paragraph 14 (3) (a) (ii)	Omit "listed public company", substitute "stock exchange listed company".
Sub-paragraph 16 (2) (e) (ii)	(a) Omit "public". (b) Omit "the stock exchange that is the home exchange", substitute "each notifiable securities exchange".
Sub-section 17 (1)	Omit "listed public company", substitute "stock exchange listed company".

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SCHEDULE 1—continued

Provisions	Amendments
Sub-section 17 (2) . . .	(a) Omit “listed public company”, substitute “stock exchange listed company”. (b) Insert “stock” after “home”.
Sub-paragraph 17 (10) (a) (ii)	Insert “stock” after “home”.
Sub-section 17 (18) . . .	Insert “stock” after “home”.
Paragraph 22 (4) (a) . . .	(a) Omit “public”. (b) Omit “the stock exchange that is the home exchange”, substitute “each notifiable securities exchange”.
Paragraph 24 (1) (b) . . .	(a) Omit “public”. (b) Omit “the stock exchange that is the home exchange”, substitute “each notifiable securities exchange”.
Paragraph 26 (3) (a) . . .	Omit “public”.
Paragraph 27 (11) (c) . . .	(a) Omit “public”. (b) Omit “the stock exchange that is the home exchange”, substitute “each notifiable securities exchange”.
Sub-section 32 (1) . . .	Insert “stock” after “home”.
Sub-section 39 (1) . . .	Omit “public”.
Sub-section 39 (2) . . .	Omit “public”.
Paragraph 39 (2) (a) . . .	(a) Omit “the stock exchange that is the home exchange”, substitute “each notifiable securities exchange”. (b) Omit “stock exchange” (second occurring), substitute “securities exchange”.
Paragraph 39 (2) (b) . . .	(a) Omit “that stock exchange” (first and second occurring), substitute “each notifiable securities exchange in relation to the company”. (b) Omit “stock exchange” (last occurring), substitute “securities exchange”.
Sub-section 39 (3) . . .	(a) Omit “public”. (b) Omit “the stock exchange that is the home exchange”, substitute “each notifiable securities exchange”.
Paragraph 39 (4) (a) . . .	Omit “public”.
Sub-section 39 (4) . . .	(a) Omit “the stock exchange that is the home exchange”, substitute “each notifiable securities exchange”. (b) Omit “stock exchange” (second occurring), substitute “securities exchange”.
Paragraph 39 (5) (a) . . .	Omit “public”.
Sub-section 39 (5) . . .	(a) Omit “the stock exchange that is the home exchange”, substitute “each notifiable securities exchange”.

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SCHEDULE 1—continued

Provisions	Amendments
	(b) Omit “stock exchange” (second occurring), substitute “securities exchange”.
Sub-section 39 (6)	Omit “stock exchange” (twice occurring), substitute “securities exchange”.
Paragraph 46 (2) (b)	(a) Omit “public”. (b) Omit “the stock exchange that is the home exchange”, substitute “each notifiable securities exchange”.
Sub-sections 56 (1), (2) and (3)	Omit “stock exchange” (wherever occurring), substitute “securities exchange”.
Sub-section 62 (4)	(a) Omit “stock exchange”, substitute “securities exchange”. (b) Omit “stock exchanges”, substitute “securities exchanges”.
Schedule, Part A, clauses 7, 8 and 9	Omit “stock exchange” (wherever occurring), substitute “securities exchange”.

SCHEDULE 2

Section 133

**FURTHER AMENDMENTS OF THE COMPANIES ACT 1981 RELATING TO
SECURITIES EXCHANGES**

1. The following provisions of the *Companies Act 1981* are amended by omitting “stock exchange” (wherever occurring) and substituting “securities exchange”:

Sub-section 5 (1) (definition of “listed corporation”); paragraphs 100 (4) (a) and (b); sub-sections 105 (1), (7) and (8); sub-section 131 (5B); paragraph 134 (2) (a); paragraph 191 (3) (d); sub-sections 194 (1) and (2); paragraph 195 (1) (c); sub-section 198 (2); paragraph 552 (4) (a); paragraph 552 (6) (h).

2. The following provisions of the *Companies Act 1981* are amended by omitting “prescribed stock exchange” (wherever occurring) and substituting “securities exchange”:

Sub-section 189 (1) (definition of “broker” and paragraph (b) of the definition of “prescribed corporation”); paragraph 191 (3) (d); sub-sections 194 (1) and (2); paragraph 195 (1) (c); sub-section 198 (2); Schedule 4 (Forms 3 and 7).

SCHEDULE 3

Section 200

**FURTHER AMENDMENTS OF THE SECURITIES INDUSTRY ACT 1980
RELATING TO SECURITIES EXCHANGES**

The following provisions of the *Securities Industry Act 1980* are amended by omitting “stock exchange” (wherever occurring) and substituting “securities exchange”:

Sub-section 4 (1) (definitions of “committee”, “marketable parcel”, “member”, “member firm” and “sole trader”); sub-section 4 (6); sub-paragraphs 8 (1) (a) (i), (ii), (v) and (vi); sub-section 8 (2); sub-section 12 (3); paragraphs 14 (1) (a), (b) and (c); sub-section 37 (2); sub-sections 39 (1) and (6); section 40; sub-sections 41 (1) and (2); sub-section 42 (1); sub-section 51 (8); sub-paragraph 64 (2) (h) (i); paragraph 64 (5) (a); paragraph 65 (7) (a); sub-sections 65 (8) and (9); sub-section 66 (5); paragraph 68 (3) (a); sub-paragraph 68 (3) (d) (iii); sub-section 68 (5); sub-section 71 (4); sub-section 79 (1); sub-section 80 (1); sub-section 80 (2) (other than paragraph 80 (2) (b)); paragraph 81 (1) (b); section 82; paragraph 87 (4) (a); sections 100, 101, 103 to 115 (inclusive) and 117 to 122 (inclusive); sub-section 128 (9); sub-section 131 (1); sub-section 136 (3).

NOTES

1. No. 64, 1980, as amended. For previous amendments, see Nos. 2, 94 and 153, 1981; No. 26, 1982; and No. 108, 1983.
2. No. 89, 1981, as amended. For previous amendments, see No. 153, 1981; Nos. 26 and 80, 1982; No. 108, 1983; and No. 13, 1984.
3. No. 68, 1980, as amended. For previous amendments, see Nos. 4, 98 and 153, 1981; No. 108, 1983; and No. 13, 1984.
4. No. 108, 1983.
5. No. 173, 1979, as amended. For previous amendments, see Nos. 1 and 153, 1981; No. 108, 1983; and No. 63, 1984.
6. No. 66, 1980, as amended. For previous amendments, see Nos. 3, 96 and 153, 1981; No. 26, 1982; No. 108, 1983; and No. 13, 1984.
7. On the day on which section 200 of this Act comes into operation, the headings to sections 82, 109, 118 and 121 of the *Securities Industry Act 1980* are altered by omitting “stock exchange” and substituting “securities exchange”.

*[Minister's second reading speech made in—
House of Representatives on 11 October 1985
Senate on 26 November 1985]*