



Companies and Securities Legislation Amendment (Futures Industry) Act 1986

No. 74 of 1986

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Companies and Securities Legislation Amendment (Futures Industry) Act 1986

No. 74 of 1986

**An Act to amend laws relating to companies and securities
in consequence of the enactment of the *Futures Industry Act
1986***

[Assented to 24 June 1986]

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 Amendment (Futures Industry) Act 1986*.

Commencement

2. This Act shall come into operation, or shall be deemed to have come into operation, as the case requires, on the day on which the *Futures Industry Act 1986* comes into operation.

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**PART II—AMENDMENT 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.

Service of documents and publication of notices

4. Section 56 of the Principal Act is amended—

- (a) by inserting in sub-section (1) “, facsimile service” after “telex”;
and
- (b) by inserting after sub-section (1) the following sub-section:

“(1A) The amendment of sub-section (1) of this section made by section 4 of the *Companies and Securities Legislation Amendment (Futures Industry) Act 1986* is for the avoidance of doubt, and shall not be taken to affect by implication the interpretation of that sub-section as in force at any time before the commencement of that section.”.

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

Principal Act

5. The *National Companies and Securities Commission Act 1979*² is in this Part referred to as the Principal Act.

Interpretation

6. Section 3 of the Principal Act is amended by inserting after the definition of “functions” in sub-section (1) the following definition:

- “‘futures contract’ means a futures contract within the meaning of the *Futures Industry Act 1986* or of the provisions of a law of a participating State or participating Territory that correspond with that Act;”.

Functions and powers of Commission

7. Section 6 of the Principal Act is amended by omitting from sub-section (3) “or the regulation of the securities industry” and substituting “, the regulation of the securities industry or the regulation of the futures industry”.

Register of financial interests

8. Section 19 of the Principal Act is amended—

- (a) by omitting sub-section (2) and substituting the following sub-section:
 - “(2) For the purposes of this section—
 - (a) a person has a financial interest if, and only if, the person—

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- (i) is a director of a body corporate;
 - (ii) has a relevant interest in securities other than securities of a government, of a government authority or of a local government authority; or
 - (iii) has a relevant interest in a futures contract; and
- (b) the question whether a person has a relevant interest in securities, or in a futures contract, shall be determined as prescribed.”; and
- (b) by inserting in paragraph (9) (b) “, or in a futures contract” after “securities”.

Restrictions on dealings in securities and futures contracts

9. Section 48 of the Principal Act is amended—

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

“(1) A person who—

- (a) is, or has at any time been—

- (i) appointed for the purposes of this Act or any other prescribed Act;
- (ii) engaged as a member of the staff of the Commission; or
- (iii) authorised to perform or exercise any function or power of the Commission or any function or power on behalf of the Commission; and

- (b) has, by reason that the person is, or has at any time been, so appointed, engaged or authorised, information that is not generally available but, if it were, would be likely materially to affect—

- (i) the price of securities; or
- (ii) the price for dealing in a futures contract,

shall not—

- (c) in a case where sub-paragraph (b) (i) applies—deal in, or cause or procure any other person to deal in, those securities; or
- (d) in a case where sub-paragraph (b) (ii) applies—deal in, or cause or procure any other person to deal in, that futures contract or a futures contract of the same kind as that futures contract.

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

“(2) Where a person to whom sub-section (1) applies has information as mentioned in that sub-section and, in contravention of that sub-section—

- (a) deals in, or causes or procures another person to deal in, securities; or

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(b) deals in, or causes or procures another person to deal in, a futures contract,

the first-mentioned person is liable to compensate any other party to the transaction for any loss sustained by that party by reason of—

(c) any difference between the price at which the securities were dealt in in that transaction and the price at which they would be likely to have been dealt in in such a transaction at the time when the first-mentioned transaction took place if the information had been generally available; or

(d) any difference between the price at which that dealing in that futures contract took place and the price at which it would be likely to have taken place if the information had been generally available,

as the case may be.”;

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

“(5) An action under this section for recovery of compensation for a loss is not maintainable after the end of the period of 2 years commencing on the day of completion of—

(a) the transaction in which securities were dealt in and in which the loss occurred; or

(b) the dealing in a futures contract, being the dealing in which the loss occurred,

as the case requires.”; and

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

“(8) An expression (other than a reference to a futures contract) used—

(a) in sub-paragraph (1) (b) (ii), or paragraph (1) (d), (2) (b), (2) (d) or (5) (b), of this section; and

(b) in the *Futures Industry Act 1986*,

has the same meaning in that sub-paragraph or paragraph, as the case may be, as in that Act.”.

Notification of interests

10. Section 49 of the Principal Act is amended—

(a) by inserting after paragraph (1) (c) the following paragraphs:

“(ca) a futures contract in which the person has a relevant interest;

(cb) a futures contract that is of the same kind as a futures contract in which the person has a relevant interest.”;

(b) by omitting from sub-section (3) “or particular securities” and substituting “, particular securities, or a particular futures contract,”; and

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- (c) by inserting in sub-section (4) “, or in a futures contract, whether a futures contract is of the same kind as another futures contract” after “securities”.

PART IV—AMENDMENTS OF SECURITIES INDUSTRY ACT 1980

Principal Act

11. The *Securities Industry Act 1980*³ is in this Part referred to as the Principal Act.

Interpretation

12. Section 4 of the Principal Act is amended—

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

“(ea) a futures contract within the meaning of the *Futures Industry Act 1986* or of the provisions of a law of a participating State or participating Territory that correspond with that Act;” and

- (b) by inserting after sub-section (5) the following sub-sections:

“(5A) In determining for the purposes of this Act whether or not a person deals in securities, carries on a business of dealing in securities, or holds himself, herself or itself out as carrying on a business of dealing in securities, an act done by the person that constitutes, or 2 or more acts done by the person that together constitute, for the purposes of the *Futures Industry Act 1986* or of the provisions of a law of a participating State or participating Territory that correspond with that Act, a dealing by the person in a futures contract, shall be disregarded.

“(5B) In determining for the purposes of this Act whether a market, exchange, place or facility is a stock market, regard shall not be had to the making at that market, exchange or other place, or by means of that facility, as the case may be, of futures contracts within the meaning of the *Futures Industry Act 1986* or the provisions of a law of a participating State or participating Territory that correspond with that Act.”.

Register of Licence Holders

13. Section 54 of the Principal Act is amended by omitting from subparagraph (2) (a) (ii) “names of the directors and secretary” and substituting “name of each person who is a director, and the name of each person who is a secretary,”.

Application of Part

14. Section 70 of the Principal Act is amended—

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

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“(2) This Part does not affect, and shall be deemed never to have affected, the operation of Part VI of the *Companies Act 1981* in relation to a company within the meaning of that Act that is the holder of a dealers licence or in relation to a business of dealing in securities that is carried on by such a company.”.

Removal and resignation of auditors

15. Section 76 of the Principal Act is amended—

- (a) by omitting sub-section (7); and
- (b) by omitting sub-section (9) and substituting the following sub-sections:

“(9) This section does not apply in relation to a body corporate (other than an exempt proprietary company) in relation to which section 282 of the *Companies Act 1981*, or a provision of a law of a participating State or participating Territory that corresponds with that section, applies.

“(10) In sub-section (9), ‘exempt proprietary company’ means a body corporate that is an exempt proprietary company 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.”.

16. After section 103 of the Principal Act the following section is inserted:

Payment to the credit of the fidelity fund of a futures exchange or futures association

“103A. Where a body corporate that is a securities exchange, or that is related to a securities exchange, becomes a relevant organisation for the purposes of Part VII of the *Futures Industry Act 1986*, or for the purposes of the provisions of a law of a participating State or participating Territory that correspond with that Part—

- (a) the Ministerial Council may approve in writing, on such conditions (if any) as are specified in the approval—
 - (i) the payment of an amount so specified out of the fidelity fund kept under this Part by the body corporate, or by the securities exchange, as the case may be; and
 - (ii) the payment of that amount to the credit of the fidelity fund established or to be established by the body corporate under that Part, or under those provisions, as the case may be; and
- (b) if the Ministerial Council does so, the amount so specified shall, in accordance with the conditions (if any) so specified—
 - (i) be paid out of the fidelity fund referred to in sub-paragraph (a) (i); and
 - (ii) be paid to the credit of the fidelity fund referred to in sub-paragraph (a) (ii).”.

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Restrictions on use of titles “stockbroker”, “sharebroker” and “stock exchange”

17. Section 133 of the Principal Act is amended by adding the following at the end of sub-section (2):

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

NOTES

1. No. 64, 1980, as amended. For previous amendments, see Nos. 2, 94 and 153, 1981; No. 26, 1982; No. 108, 1983; No. 192, 1985; and No. 68, 1986.
2. No. 173, 1979, as amended. For previous amendments, see Nos. 1 and 153, 1981; No. 108, 1983; No. 63, 1984; and No. 192, 1985.
3. No. 66, 1980, as amended. For previous amendments, see Nos. 3, 96 and 153, 1981; No. 26, 1982; No. 108, 1983; No. 13, 1984; and No. 192, 1985.

*[Minister's second reading speech made in—
House of Representatives on 16 April 1986
Senate on 7 May 1986]*