



Co-operative Scheme Legislation Amendment Act 1989

No. 92 of 1989

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Section	
1.	Short title
2.	Commencement
3.	Principal Act

PART 2—AMENDMENTS OF COMPANIES ACT 1981: COMPUTERISED REGISTERS

4.	Registers
5.	Insertion of new section: 31A. Obtaining information from certain registers

PART 3—AMENDMENTS OF COMPANIES ACT 1981: SHARE BUY-BACKS

6.	Interpretation
7.	Relevant interests in shares
8.	Insertion of new section: 9A. Inclusion in official list
9.	Substitution of headings
10.	Issue of shares at premium
11.	Insertion of Subdivision heading
12.	Insertion of Subdivision heading
13.	Company financing dealings in its shares etc.
14.	Consequences of company financing dealings in its shares etc.
15.	Insertion of new Subdivision and heading:

Section

TABLE OF PROVISIONS—*continued*

Subdivision D—Unacceptable Self-acquisition Schemes

- 130A. Interpretation
- 130B. Self-acquisition scheme
- 130C. Relevant matters affecting self-acquisition scheme
- 130D. Declaration by Commission
- 130E. Commission may make interim orders
- 130F. Court may reverse Commission's declaration
- 130G. Court may act on Commission's declaration
- 130H. Effect of Subdivision

16. Insertion of new Division:

Division 3A—Permitted Buy-backs of Shares

Subdivision A—How this Division Works

- 133AA. Outline of structure

Subdivision B—Interpretation

- 133BA. Effect of Subdivision
- 133BB. Interpretation
- 133BC. What constitutes buying back shares
- 133BE. The 10% in 12 months limit
- 133BF. Takeover aspects of proposed resolution
- 133BG. When directors presumed to be aware of proposed or actual takeover bid
- 133BH. Solvency declaration
- 133BJ. Auditor's report on solvency declaration
- 133BK. When buy-back agreement is completed
- 133BL. When shares are transferred
- 133BM. Classes of shares

Subdivision C—Power to Buy Back Shares

- 133CA. Power to buy back shares
- 133CB. Completion of buy-back
- 133CC. Effect of Division
- 133CD. Other obligations and liabilities not affected

Subdivision D—Buy-back Authorisation in Articles

- 133DA. Articles to contain buy-back authorisation
- 133DB. Inclusion, effect and renewal of buy-back authorisation

Subdivision E—Buy-backs by Public Companies

- 133EA. Only certain buy-backs permitted

Subdivision F—Buy-back Schemes

- 133FA. Shares and classes of shares
- 133FB. Buy-back scheme
- 133FC. Withdrawal or variation of buy-back offers
- 133FD. Avoiding odd lots
- 133FE. Odd lots to be disregarded for purposes of 10% in 12 months limit

TABLE OF PROVISIONS—*continued*

Section

Subdivision G—Approval of Buy-back Schemes by Ordinary Resolution

- 133GA. When approval required
- 133GB. Buy-back offers made under a resolution
- 133GC. Resolution to approve proposed buy-back scheme
- 133GD. Notice of resolution to approve proposed buy-back scheme

Subdivision H—Employee-shares Purchases

- 133HA. Approval by ordinary resolution
- 133HB. Resolution to approve proposed employee-shares purchase
- 133HC. Notice of resolution to approve proposed employee-shares purchase

Subdivision J—Selective Buy-backs

- 133JA. Approval, by special resolution passed by special majority, of selective buy-back by public company
- 133JB. Approval by special resolution where selective buy-back by proprietary company exceeds 10% in 12 months limit

Subdivision K—Notice of Resolution to Approve Proposed Selective Buy-back

- 133KA. Notice must comply with Subdivision
- 133KB. Contents of resolution and proposed agreement
- 133KC. Availability of agreement for inspection
- 133KD. Valuation of non-cash consideration
- 133KE. Expert's opinion about whether consideration fair and reasonable
- 133KF. Matters affecting expert's objectivity
- 133KG. Expert's consent
- 133KH. Reasons for buy-back
- 133KJ. Solvency aspects
- 133KK. Directors' interests
- 133KL. Effect on control of company
- 133KM. Other relevant information
- 133KN. Notices to be the same

Subdivision L—Creditors may Object to Proposed Buy-backs

- 133LA. Advertising proposed buy-backs
- 133LB. Content of advertisement
- 133LC. Newspapers in which advertisement to be published
- 133LD. Creditor may apply to Court
- 133LE. How application to be dealt with
- 133LF. Buy-backs not to proceed while application pending
- 133LG. Company to comply with order of Court

Subdivision M—Solvency Requirements

- 133MA. Solvency requirements for buy-back scheme
- 133MB. Solvency requirements for other buy-backs
- 133MC. Copy of solvency declaration and auditor's report to be lodged with Commission
- 133MD. Revocation of solvency declaration
- 133ME. Solvency requirements for completion of buy-back under buy-back scheme
- 133MF. Company not to register certain transfers during solvency period

TABLE OF PROVISIONS—*continued*

Section

Subdivision N—Share Buy-backs and other Securities Issues

- 133NA. Buy-back consideration not to consist of other securities of the company
- 133NB. No buy-backs during rights issue or placement
- 133NC. No rights issue or placement during offer period or within 3 months after buy-back

Subdivision P—Effect of Buy-back on Shares

- 133PA. Rights attaching to bought back shares
- 133PB. Company not to dispose of bought back shares
- 133PC. Cancellation of shares after transfer to company
- 133PD. Accounting for money spent on buy-back where amount exceeds nominal value of shares

Subdivision Q—Effect of Insolvency

- 133QA. Buy-back offer by externally-administered company void
- 133QB. Effect of supervening insolvency on buy-back scheme
- 133QC. Directors to indemnify insolvent company where consideration provided, or partly-paid shares acquired, under buy-back agreements
- 133QD. Relief from liability under section 133QC

Subdivision R—Rights of Unpaid Sellers

- 133RA. Specific performance of buy-back agreements
- 133RB. Buy-back agreement unenforceable while company insolvent
- 133RC. Unpaid seller may prove in winding up of company
- 133RD. Ranking of seller's claim in winding up

Subdivision S—Certificates and Declarations of Compliance

- 133SA. Certificate of compliance
- 133SB. Presumptions about certain matters
- 133SC. Who must sign compliance certificate
- 133SD. Offences relating to compliance certificates: buy-back schemes
- 133SE. Offences relating to compliance certificates: other buy-backs
- 133SF. Declaration by Court of substantial compliance

Subdivision T—Notifying Commission and Securities Exchanges about Buy-backs

- 133TA. Company to notify Commission of buy-backs
- 133TB. Listed company to notify securities exchanges of buy-backs

Subdivision U—Listed Company to Notify Members about Share Cancellations

- 133UA. Notifying member whose shares were cancelled
- 133UB. Notifying members generally

Subdivision V—Register of Buy-backs

- 133VA. Company to keep register
- 133VB. Particulars of buy-back schemes
- 133VC. Particulars of other buy-backs
- 133VD. Alteration of register where buy-back does not proceed
- 133VE. Entries in register after cancellation of shares
- 133VF. Inspection and copies of register

17. Proofs of debts

TABLE OF PROVISIONS—*continued*

Section

PART 4—AMENDMENTS OF COMPANIES ACT 1981:
ON-MARKET SHARE BUY-BACKS

- 18. Interpretation
- 19. Insertion of new section:
 - 133BD. On-market purchase
- 20. Approval, by special resolution passed by special majority, of off-market selective buy-back by public company
- 21. Advertising proposed buy-backs

PART 5—AMENDMENTS OF COMPANIES ACT 1981:
BUY-BACKS OF PRESCRIBED INTERESTS

- 22. Interpretation
- 23. Covenants to be included in deeds
- 24. Insertion of new section:
 - 174A. Buy-back covenant and buy-back arrangements

PART 6—AMENDMENTS OF COMPANIES ACT 1981: ANNUAL
RETURNS

- 25. Annual return

PART 7—PILOT SCHEME FOR THE FLEXIBLE ACCELERATED
SECURITY TRANSFER SYSTEM

Division 1—Amendments of Companies Act 1981

- 26. Interpretation
- 27. What is a sufficient instrument of transfer
- 28. Repeal of section 194 and substitution of new sections:
 - 194. Effect where instrument purports to bear transferor's broker's stamp
 - 194A. Warranties by securities exchange where instrument purports to bear its stamp
 - 194B. Indemnities by securities exchange and broker where instruments purport to bear their stamps
 - 194C. Joint and several warranties and liabilities
 - 194D. Additional operation of sections 194 to 194C
- 29. Offences
- 30. Powers of Commission: Divisions 1, 2, 5 and 6 and section 552
- 31. Insertion of new sections:
 - 215DA. Powers of Commission: Divisions 7 and 8 and Schedule 4
 - 215DB. Exemptions and declarations under sections 215C and 215DA
- 32. Schedule 4

Division 2—Amendments of Securities Industry Act 1980

- 33. Interpretation
- 34. Payments out of Fund
- 35. Insertion of new Division:

Division 6A—Unauthorised transfer

- 122PA. Interpretation
- 122PB. Execution of transfer on a person's behalf as transferor
- 122PC. Unauthorised execution of transfer
- 122PD. Claim by transferor
- 122PE. Claim by transferee or sub-transferee
- 122PF. How and when claim may be made
- 122PG. How claim is to be satisfied
- 122PH. Discretionary further compensation to transferor
- 122PJ. Nexus between dealer and Territory
- 122PK. Preventing double recovery

TABLE OF PROVISIONS—*continued*

Section

- 36. No claim in certain other cases
- 37. Substitution of heading
- 38. Repeal of section 122YD and substitution of new section:
122YD. Application of Fund in respect of certain claims
- 39. Arbitration of amount of cash settlement of certain claims
- 40. Subrogation of Corporation to claimant's rights etc.
- 41. Instalment payments

**PART 8—PARTICIPANTS IN THE SECURITIES AND FUTURES
INDUSTRIES**

Division 1—Amendments of Securities Industry Act 1980

- 42. Insertion of heading and new section:

PART 1A—INTERPRETATION

- 3A. Effect of this Part
- 43. Interpretation
- 44. Insertion of new sections:
 - 6A. Businesses of a particular kind
 - 6B. Carrying on a business: alone or together with others
 - 6C. Exempt dealers and exempt investment advisers
 - 6D. Inclusion in official list
 - 6E. Investment advice business
 - 6F. Proper authority; invalid authority
 - 6G. Recognised licensee must be connected with State or Territory concerned
 - 6H. Representatives
 - 6J. Securities business
- 45. Heading to Part IV
- 46. Repeal of sections 43 to 50, inclusive, and substitution of heading and new sections:

Division 1—Dealers and investment advisers

- 43. Dealers
- 45. Investment advisers
- 47. Application for a licence
- 48. Grant of licence to natural person
- 48A. Grant of licence to body corporate
- 48B. Effect of certain provisions
- 47. Conditions of licence
- 48. Licensee to notify breach of licence condition
- 49. Register of Licence Holders
- 50. Repeal of sections 55 and 56 and substitution of new sections:
 - 55. Notifying change in particulars
 - 56. Annual statement of licensee
- 51. When annual statement to be lodged
- 52. Repeal of sections 59, 60, 61 and 62 and substitution of new Divisions:

Division 2—Agreements with unlicensed persons

- 59A. Certain persons not clients
- 59B. Agreements with unlicensed persons
- 59C. Client may give notice of rescission
- 59D. Effect of notice under section 59C
- 59E. Client may apply to Court for partial rescission
- 59F. Court may make consequential orders
- 59G. Agreement unenforceable against client
- 59H. Non-licensee not entitled to recover commission
- 59I. Onus of establishing non-application of section 59G or 59H
- 59K. Client may recover commission paid to non-licensee
- 59L. Remedies under this Division additional to other remedies

TABLE OF PROVISIONS—*continued*

Section

Division 3—Representatives

- 60A. Representatives of dealers
- 60B. Representatives of investment advisers
- 60C. Defence
- 60D. Body corporate not to act as representative
- 60E. Licensee to keep register of holders of proper authorities
- 60F. Licensee to notify Commission of location and contents of register
- 60G. Inspection and copying of register
- 60H. Disclosure to client by representative
- 60J. Commission may require production of authority
- 60K. Commission may give licensee information about representative
- 60L. Holder of authority may be required to return it

Division 4—Liability of principals for representatives' conduct

- 61A. Conduct engaged in as a representative
- 61B. Liability where identity of principal unknown
- 61C. Liability of principals where act done in reliance on representative's conduct
- 61D. Presumptions about certain matters
- 61E. No contracting out of liability for representative's conduct
- 61F. Effect of Division

Division 5—Excluding persons from the securities industry

- 62A. Power to revoke, without a hearing, licence held by natural person
- 62B. Power to revoke, without a hearing, licence held by body corporate
- 62C. Power to revoke licence after a hearing
- 62D. Power to suspend licence instead of revoking it
- 62E. Power to make banning order where licence revoked or suspended
- 62F. Power to make banning order against unlicensed person
- 62G. Nature of banning order
- 62H. Exceptions to banning order
- 62J. Variation or revocation of banning order on application
- 62K. Revocation of banning order in certain cases
- 62L. Effect and publication of orders under this Division
- 62M. Contravention of banning order
- 62N. Banned person ineligible for licence
- 62P. Opportunity for hearing
- 62Q. Disqualification by the Court
- 62R. Effect of order under section 62Q or corresponding law
- 62S. Effect of order under previous Territory law corresponding with section 62Q
- 53. Insertion of Division heading
- 54. Issue of contract notes
- 55. Repeal of sections 65 and 65A
- 56. Insertion of Division heading
- 57. Insertion of new Division:

Division 3—Recommendations about securities

- 68B. Recommendation made by partner or officer
- 68C. Client to be told if adviser's interests may influence recommendation
- 68D. Defences to alleged breach of subsection 68C (2)
- 68E. Adviser must have reasonable basis for recommendation
- 68F. Adviser who breaches this Division liable to compensate client
- 68G. Qualified privilege for adviser when complying with this Division
- 58. Interpretation
- 59. Repeal of section 88 and substitution of new section:
 - 88. Application of Part

TABLE OF PROVISIONS—*continued*

- Section
60. Repeal of sections 90 and 91 and substitution of new sections:
90. Commission to be notified of certain matters on establishment of Register
90A. Commission to be notified of changes in certain matters
91. Defences
61. Repeal of section 93 and substitution of new section:
93. Power of Commission to require certain information
62. Interpretation

Division 2—Amendments of Futures Industry Act 1986

63. Insertion of heading and new section:

PART IA—INTERPRETATION

- 3A. Effect of this Part
64. Interpretation
65. Insertion of new sections:
6A. Businesses of a particular kind
6B. Carrying on a business: alone or together with others
66. Dealing in futures contracts
67. Repeal of section 10 and substitution of new sections:
10. Exempt brokers and exempt futures advisers
10A. Futures advice business
10B. Proper authority; invalid authority
68. Repeal of section 11 and substitution of new section:
11. Recognised licensee must be connected with State or Territory concerned
69. Insertion of new section:
11A. Representatives
70. Heading to Part IV
71. Repeal of sections 60 to 71, inclusive, and substitution of heading and new sections:

Division 1—Futures brokers and futures advisers

61. Futures brokers
63. Futures advisers
65. Application for a licence
66. Grant of licence to natural person
- 66A. Grant of licence to body corporate
- 66B. Effect of certain provisions
69. Conditions of licence: general
- 69A. Conditions of futures broker's licence: membership of relevant organisation
- 69B. Conditions of futures broker's licence: assets and liabilities
- 69C. Conditions of licence: supervision of representatives
- 69D. Revocation and variation of licence conditions
- 69E. Relevant organisations to be informed about conditions of futures broker's licence
70. Licensee to notify breach of licence condition
71. Commission may require licensed futures broker to give information
72. Register of Licence Holders
73. Repeal of sections 73 and 74 and substitution of new sections:
73. Notifying change in particulars
74. Annual statement of licensee
74. When annual statement to be lodged
75. Repeal of sections 77, 78, 79 and 80 and substitution of new Divisions:

TABLE OF PROVISIONS—*continued*

Section

Division 2—Agreements with unlicensed persons

Subdivision A—Agreements affected

- 77A. Excluded clients
- 77B. Agreement about a dealing in breach of section 61
- 77C. Agreement with person acting in breach of section 63

Subdivision B—Effect on agreements

- 77D. Client may give notice of rescission
- 77E. Effect of notice under section 77D
- 77F. Client may apply to Court for partial rescission
- 77G. Court may make consequential orders
- 77H. Agreement unenforceable against client
- 77J. Non-licensee not entitled to recover commission
- 77K. Onus of establishing non-application of section 77H or 77J
- 77L. Client may recover commission paid to non-licensee
- 77M. Remedies under this Division additional to other remedies

Division 3—Representatives

- 78A. Representatives of futures brokers
- 78B. Representatives of futures advisers
- 78C. Defence
- 78D. Body corporate not to act as representative
- 78E. Licensee to keep register of holders of proper authorities
- 78F. Licensee to notify Commission of location and contents of register
- 78G. Inspection and copying of register
- 78H. Commission may require production of authority
- 78J. Commission may give licensee information about representative
- 78K. Holder of authority may be required to return it

Division 4—Liability of principals for representatives' conduct

- 79A. Conduct engaged in as a representative
- 79B. Liability where identity of principal unknown
- 79C. Liability of principals where act done in reliance on representative's conduct
- 79D. Presumptions about certain matters
- 79E. No contracting out of liability for representative's conduct
- 79F. Effect of Division

Division 5—Excluding persons from the futures industry

- 80A. Power to revoke, without a hearing, licence held by natural person
- 80B. Power to revoke, without a hearing, licence held by body corporate
- 80C. Power to revoke licence after a hearing
- 80D. Power to suspend licence instead of revoking it
- 80E. Power to make banning order where licence revoked or suspended
- 80F. Power to make banning order against unlicensed person
- 80G. Nature of banning order
- 80H. Exceptions to banning order
- 80J. Variation or revocation of banning order on application
- 80K. Revocation of banning order in certain cases
- 80L. Effect and publication of orders under this Division
- 80M. Contravention of banning order
- 80N. Banned person ineligible for licence
- 80P. Opportunity for hearing
- 80Q. Disqualification by the Court
- 80R. Effect of order under section 80Q or corresponding law
- 80S. Effect of order under previous Territory law corresponding with section 80Q

TABLE OF PROVISIONS—*continued*

Section

Division 3—Consequential amendments of the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980

- 76. Definitions
- 77. Insertion of new section:
 - 38C. Qualified privilege

PART 9—AMENDMENTS OF CO-OPERATIVE SCHEME FEES ACTS

Division 1—Amendment of Companies (Fees) Act 1981

- 78. Repeal of sections 3, 4 and 5 and substitution of new sections:
 - 3. Interpretation
 - 4. Power to prescribe fees
 - 5. Aspects of the power to prescribe fees
 - 6. Fees payable
 - 7. Maximum fees payable for one matter
 - 8. Fee where document taken to be lodged
 - 9. Lodgment of document without payment of fee
 - 10. Doing of act without payment of fee
 - 11. Effect of sections 9 and 10
 - 12. Commission may require payment of deposit on account of fee
 - 13. Fee not ascertainable when it becomes payable
 - 14. Waiver and refund of fees
 - 15. Debts due to the Commonwealth
 - 16. Act not to impose taxation
 - 17. Payment of fee does not give right to inspect or search

Division 2—Amendment of Companies (Acquisition of Shares—Fees) Act 1980

- 79. Repeal of sections 3, 4 and 5 and substitution of new sections:
 - 3. Interpretation
 - 4. Power to prescribe fees
 - 5. Aspects of the power to prescribe fees
 - 6. Fees payable
 - 7. Maximum fees payable for one matter
 - 8. Lodgment of document without payment of fee
 - 9. Doing of act without payment of fee
 - 10. Effect of sections 8 and 9
 - 11. Commission may require payment of deposit on account of fee
 - 12. Fee not ascertainable when it becomes payable
 - 13. Waiver and refund of fees
 - 14. Debts due to the Commonwealth
 - 15. Act not to impose taxation
 - 16. Payment of fee does not give right to inspect or search

Division 3—Amendment of Securities Industry (Fees) Act 1980

- 80. Repeal of sections 3, 4 and 5 and substitution of new sections:
 - 3. Interpretation
 - 4. Power to prescribe fees
 - 5. Aspects of the power to prescribe fees
 - 6. Fees payable
 - 7. Maximum fees payable for one matter
 - 8. Lodgment of document without payment of fee
 - 9. Doing of act without payment of fee
 - 10. Effect of sections 8 and 9
 - 11. Commission may require payment of deposit on account of fee
 - 12. Fee not ascertainable when it becomes payable
 - 13. Waiver and refund of fees
 - 14. Debts due to the Commonwealth
 - 15. Act not to impose taxation
 - 16. Payment of fee does not give right to inspect or search

TABLE OF PROVISIONS—*continued*

Section

Division 4—Amendment of Futures Industry (Fees) Act 1986

81. Repeal of sections 3, 4 and 5 and substitution of new sections:
3. Interpretation
 4. Power to prescribe fees
 5. Aspects of the power to prescribe fees
 6. Fees payable
 7. Maximum fees payable for one matter
 8. Lodgment of document without payment of fee
 9. Doing of act without payment of fee
 10. Effect of sections 8 and 9
 11. Commission may require payment of deposit on account of fee
 12. Fee not ascertainable when it becomes payable
 13. Waiver and refund of fees
 14. Debts due to the Commonwealth
 15. Act not to impose taxation
 16. Payment of fee does not give right to inspect or search

Division 5—Saving of existing Fees Regulations

82. Effect of regulations after commencement of this section



Co-operative Scheme Legislation Amendment Act 1989

No. 92 of 1989

**An Act to amend laws relating to companies, securities and
the futures industry, and for related purposes**

[Assented to 27 June 1989]

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

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Co-operative Scheme Legislation
Amendment Act 1989*.

Commencement

2. (1) Sections 1 and 2 commence on the day on which this Act receives
the Royal Assent.

(2) Part 4 commences on a day to be fixed by Proclamation.

(3) Part 9 commences on a day to be fixed by Proclamation.

(4) The Governor-General's power to fix by Proclamation the commencement of Part 4 or 9 shall be exercised only in accordance with advice that is consistent with resolutions of the Ministerial Council.

(5) Subject to subsection (6), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

(6) If a provision referred to in subsection (5) does not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

Principal Act

3. In this Act, "Principal Act" means the Act referred to in the heading:

- (a) if the expression occurs in a Division of a Part—to that Division;
or
- (b) otherwise—to the Part in which the expression occurs.

PART 2—AMENDMENTS OF COMPANIES ACT 1981: COMPUTERISED REGISTERS

Registers

4. Section 31 of the Principal Act is amended by inserting after subsection (4) the following subsections:

"(4A) A person is not entitled under paragraph (2) (a) to require the production of the original of a document or certificate if the Commission keeps by means of a mechanical, electronic or other device a record of information set out in the document or certificate and:

- (a) the Commission produces to the person for inspection a writing that sets out, in a form the person can understand, what purports to be the contents of the document or certificate; or
- (b) the Commission causes to be displayed for the person, in a form the person can understand, what purports to be the contents of the document or certificate and, as at the time of the displaying, the person has not asked for the production of a writing of the kind referred to in paragraph (a).

"(4B) Where:

- (a) a person makes under paragraph (2) (c) a requirement that relates to a document or certificate and does not involve certifying a copy or extract;
- (b) the Commission keeps by means of a mechanical, electronic or other device a record of information set out in the document or certificate; and
- (c) pursuant to that requirement, the Commission gives:

- (i) a writing that sets out, in a form the person can understand;
or
- (ii) a document that sets out, in a form requested by the person;
what purports to be the contents of:
 - (iii) the whole of the document or certificate; or
 - (iv) a part of the document or certificate;

then, for the purposes of that paragraph, the Commission shall be taken to have given, pursuant to that requirement:

- (d) if subparagraph (c) (iii) applies—a copy of the document or certificate; or
- (e) if subparagraph (c) (iv) applies—an extract from the document or certificate setting out that part of it.”.

5. After section 31 of the Principal Act the following section is inserted:

Obtaining information from certain registers

“31A. (1) In this section:

- ‘data processor’ means a mechanical, electronic or other device;
- ‘register’ means a register kept by the Commission under this Act;
- ‘search’ includes inspect.

“(2) The Commission may permit a person to search, otherwise than by using a data processor, a prescribed register.

“(3) The Commission may permit a person to search a prescribed register by using a data processor in order to obtain prescribed information from the register.

“(4) The Commission may make available to a person prescribed information (in the form of a document or otherwise) that the Commission has obtained from a prescribed register by using a data processor.

“(5) Nothing in this section limits:

- (a) a power or function that the Commission has apart from this section; or
- (b) a right that a person has apart from this section.”.

PART 3—AMENDMENTS OF COMPANIES ACT 1981: SHARE BUY-BACKS

Interpretation

6. Section 5 of the Principal Act is amended by inserting in subsection (1) the following definitions:

- “‘approving holding company’, in relation to a body corporate, means:
 - (a) a listed corporation of which the body is a subsidiary; or
 - (b) if the body is a subsidiary of no listed corporation but the ultimate holding company (if any) of the body is incorporated

Co-operative Scheme Legislation Amendment No. 92, 1989

- in Australia or an external Territory—that ultimate holding company;
- ‘included’, in relation to an official list, has the meaning given by section 9A;
- ‘make’, in relation to a takeover bid, includes cause to be made;
- ‘offer’, in relation to a takeover bid, means one of the offers, or an offer made by virtue of the announcement, as the case requires, constituting the takeover bid;
- ‘participating employee’, in relation to a corporation, means:
- (a) an employee of the corporation or of a related corporation; or
 - (b) without limiting the generality of paragraph (a), a director of the corporation or of a related corporation who holds a salaried employment or office in the corporation or in a related corporation;
- ‘redeemable preference share’ means a preference share in a body corporate that is, or at the body’s option is to be, liable to be redeemed;
- ‘takeover bid’ means:
- (a) offers made under a takeover scheme within the meaning of the *Companies (Acquisition of Shares) Act 1980*; or
 - (b) a takeover announcement within the meaning of that Act;”.

Relevant interests in shares

7. Section 8 of the Principal Act is amended by omitting from paragraph (1) (a) “for the purposes of Division 4 of Part IV or of section 261,” and substituting “except for the purposes of sections 230, 231 and 232,”.

8. After section 9 of the Principal Act the following section is inserted:

Inclusion in official list

“9A. A reference in this Act to a body corporate or other person included in an official list of a body corporate is a reference to:

- (a) a body corporate or other person whose name is included in that official list; or
- (b) a body corporate or other person whose name has been changed but whose previous name was included in that official list immediately before the change and is still so included.”.

Substitution of headings

9. The heading to Division 3 of Part IV of the Principal Act is repealed and the following headings are substituted:

“Division 3—Capital Structure of Companies

“Subdivision A—Shares Generally”.

Issue of shares at premium

10. Section 119 of the Principal Act is amended:

- (a) by omitting from subparagraph (2) (e) (ii) “or” (last occurring);
- (b) by inserting after paragraph (2) (e) the following paragraph:
“(ea) as provided by subsection 133PD (2); or”.

Insertion of Subdivision heading

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

“Subdivision B—Class Rights”.

Insertion of Subdivision heading

12. After section 128 of the Principal Act the following heading is inserted:

“Subdivision C—Company Financing Dealings in its Shares etc.”.

Company financing dealings in its shares etc.

13. Section 129 of the Principal Act is amended:

- (a) by inserting in subparagraph (1) (b) (ii) “acquire or” before “purport”;
- (b) by omitting from paragraph (9) (b) all the words after “benefit of” and substituting the following:
“participating employees in relation to the company, where:
 - (i) if the company has an approving holding company or approving holding companies—the company, and that holding company or those holding companies, have each, at a general meeting; or
 - (ii) otherwise—the company has, at a general meeting; approved a scheme for providing money for such acquisitions and the financial assistance is given in accordance with the scheme.”;
- (c) by omitting from paragraph (10) (j) “and”;
- (d) by adding at the end of subsection (10) the following word and paragraph:
“; and (m) none of the following:
 - (i) the contract or transaction under which the company gives the financial assistance;
 - (ii) a contract or transaction made or engaged in, or proposed to be made or engaged in, as a result of, by means of or in relation to the financial assistance;was, is, or is proposed to be, made or engaged in by a person for the purpose, or for purposes including

the purpose, of enabling the company to avoid the operation of paragraph (1) (b).”.

Consequences of company financing dealings in its shares etc.

14. Section 130 of the Principal Act is amended:

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

“(ba) the validity of a contract or transaction is not affected by a contravention of paragraph 129 (1) (b) constituted by:

(i) a buy-back, within the meaning of Division 3A, of ordinary shares; or

(ii) the transfer to a company, pursuant to such a buy-back by the company, of the shares;”;

(b) by omitting from paragraph (1) (b) “a contravention” and substituting “any other contravention”.

15. After section 130 of the Principal Act the following Subdivision and heading are inserted:

“Subdivision D—Unacceptable Self-acquisition Schemes

Interpretation

“130A. (1) In this Subdivision, unless the contrary intention appears:

‘agreement’ means an agreement, arrangement or understanding:

(a) whether formal or informal or partly formal and partly informal;

(b) whether written or oral or partly written and partly oral; and

(c) whether or not having legal or equitable force and whether or not based on legal or equitable rights;

‘connected transaction’, in relation to a self-acquisition scheme relating to a company, means a transaction that:

(a) is or will be, or forms or will form part of, the scheme; or

(b) has been, or is proposed to be, entered into in connection with the scheme;

whether or not the company is or will be a party to the transaction;

‘eligible agreement’ means:

(a) an agreement;

(b) a proposed agreement;

(c) an agreement as varied or as proposed to be varied;

(d) where an agreement has been varied—the agreement as in force at any time before the variation; or

(e) where an agreement has been discharged—the agreement as in force at any time before its discharge;

‘enter into’ includes engage in or become a party to;

'in connection with', in relation to a scheme or transaction, includes in the course of carrying out the scheme or transaction;

'party', in relation to a scheme or transaction, includes:

- (a) in so far as the scheme or transaction consists of an eligible agreement—a party to the eligible agreement;
- (b) in so far as the scheme or transaction consists of a proposed or discharged agreement—a person who would be a party to the agreement if it were in effect; and
- (c) otherwise—a person who has entered into or carried out, or proposes to enter into or carry out, the whole or a part of the scheme or transaction;

'scheme' includes:

- (a) a transaction;
- (b) any plan, proposal, action, course of action, or course of conduct, even if unilateral; and
- (c) a unilateral scheme;

'transaction' includes conduct (even if unilateral) and an eligible agreement.

“(2) A reference in this Subdivision to a person carrying out a scheme includes a reference to the person carrying out the scheme together with any other person or persons.

Self-acquisition scheme

“130B. (1) A reference in this Subdivision, in relation to a company, to a self-acquisition scheme is a reference to a scheme to which the company has become a party for the purpose, or for purposes including the purpose, of doing any of the following, even if only at a future time or in particular circumstances:

- (a) obtaining, securing, retaining, increasing the extent of, or exercising, power:
 - (i) to exercise, or control the exercise of, the right to vote attached to voting shares in the company; or
 - (ii) to dispose of, or to exercise control over the disposal of, shares in the company;
- (b) bringing about a situation where, or ensuring that, a body corporate that has such power is, or the directors of such a body are, accustomed or under an obligation, whether formal or informal, to act in accordance with the company's directions, instructions or wishes in relation to the exercise of the power;
- (c) obtaining, securing, retaining, or increasing the extent of, a controlling interest in such a body;
- (d) obtaining, securing, retaining, increasing the extent of, or exercising, the voting power attached to not less than the prescribed percentage of the voting shares in such a body;

Co-operative Scheme Legislation Amendment No. 92, 1989

- (e) otherwise obtaining, securing, or retaining, a relevant interest in a share in itself.

“(2) Section 9 of the *Companies (Acquisition of Shares) Act 1980* has effect for the purposes of this section as if:

- (a) subsection (1) of this section were a provision of that section; and
- (b) without limiting the generality of anything in that section, a reference in subsection 9 (2) of that Act to power included a reference to power sought to be obtained.

“(3) Without limiting the matters to which regard may be had in determining what constitutes:

- (a) a self-acquisition scheme relating to a company; or
- (b) a connected transaction in relation to such a scheme;

regard may be had to the giving, or proposed giving, by the company of financial assistance as mentioned in paragraph 129 (1) (a), even if subsection 129 (10) permits the giving by the company of the financial assistance.

“(4) A transaction permitted by section 133CA or 133CB:

- (a) shall not be taken to be a connected transaction in relation to; and
- (b) shall be disregarded in determining what constitutes;

a self-acquisition scheme relating to the company.

Relevant matters affecting self-acquisition scheme

“130C. (1) For the purposes of this Subdivision, each of the following is a relevant matter affecting a self-acquisition scheme relating to a company:

- (a) to how many shares in the company the scheme relates;
- (b) the likely effect of the scheme or a connected transaction on the company’s state of affairs;
- (c) what consideration the company has provided, or is to provide, in connection with the scheme or a connected transaction;
- (d) how much information about the scheme or a connected transaction the company has given to its members or creditors, or to securities exchanges;
- (e) what opportunity the company’s members or creditors have had to consider the likely effects of the scheme or of a connected transaction;
- (f) whether or not the company’s members or creditors have been consulted about, or have participated in making, the decision for the company to become a party to the scheme;
- (g) whether or not the company’s members have had reasonable and equal opportunities to participate, or to become entitled to participate, in benefits accruing, whether directly or indirectly and whether immediately or in the future, in connection with the scheme or a connected transaction, to a party to the scheme or a connected transaction or to a person associated with such a party;
- (h) the effect of the scheme or a connected transaction on:

Co-operative Scheme Legislation Amendment No. 92, 1989

- (i) a takeover bid in relation to shares in the company that a person has made or proposes to make; or
- (ii) the likelihood of a person making such a takeover bid;
- (j) any other matter that appears to the Commission to be relevant in all the circumstances of the case.

“(2) Nothing in subsection (1) limits the generality of anything else in it.

Declaration by Commission

“130D. (1) This section applies where the Commission is satisfied that:

- (a) a transaction that has been, or is proposed to be, entered into is a connected transaction in relation to a self-acquisition scheme relating to a company;
- (b) one or more of the following subparagraphs applies:
 - (i) both of the following are the case:
 - (A) as a result of the entering into or carrying out of the scheme or of a connected transaction, the company acquired a relevant interest in voting shares in itself;
 - (B) immediately after the acquisition, the company had a relevant interest or relevant interests in more than 10% of the voting shares in itself;
 - (ii) it is reasonable to expect that:
 - (A) as a result of the entering into or carrying out of the scheme or of a connected transaction, the company will acquire a relevant interest in voting shares in itself; and
 - (B) immediately after the acquisition, the company will have a relevant interest or relevant interests in more than 10% of the voting shares in itself;
 - (iii) the scheme or a connected transaction was entered into or carried out at a time when the company had, or it is reasonable to expect that the scheme or a connected transaction will be entered into or carried out at a time when the company has, a relevant interest or relevant interests in more than 10% of the voting shares in itself; and
- (c) having regard to the relevant matters affecting the scheme, the entering into or carrying out of the scheme or a connected transaction has prejudiced materially, or is likely to prejudice materially, the rights or interests of the company, of its creditors or members, or of a class of its creditors or members.

“(2) The Commission:

- (a) if the transaction referred to in paragraph (1) (a) has been entered into—may, within 90 days after the day on which it was entered into, declare the transaction; or

(b) otherwise—may declare the proposed transaction referred to in paragraph (1) (a);
to form part of an unacceptable self-acquisition scheme relating to the company.

“(3) The Commission may make a declaration under this section in relation to the scheme even if it has already become entitled on at least one occasion to make such a declaration.

“(4) A declaration under this section shall be in writing.

“(5) As soon as practicable after making a declaration under this section, the Commission shall:

- (a) give a copy of the declaration to the company; and
- (b) cause such a copy to be published in the *Gazette*.

“(6) The validity of a declaration is not affected by a contravention of subsection (5).

Commission may make interim orders

“130E. (1) Subject to this section, where the Commission makes a declaration under section 130D, it may, even if it has already made at least one order under this section in reliance on the declaration, make, by writing published in the *Gazette*, one or more of the following:

- (a) an order restraining a specified person from disposing of any interest in specified shares in the company;
- (b) an order restraining a specified person from acquiring any interest in specified shares in the company;
- (c) an order restraining the exercise of voting or other rights attached to specified shares in the company;
- (d) an order directing the holder of shares in respect of which an order under this section is in force to give written notice of that order to any person whom the holder knows to be entitled to exercise a right to vote attached to any of those shares;
- (e) an order directing the company not to make payment, except in the course of winding up, of a sum due from the company in respect of specified shares;
- (f) an order directing the company not to register the transfer or transmission of specified shares;
- (g) an order directing the company not to issue to a person who holds shares in the company shares that the company proposed to issue to the person:
 - (i) because the person holds shares in the company; or
 - (ii) pursuant to an offer or invitation made or issued to the person because the person holds shares in the company.

“(2) The Commission may, by written order published in the *Gazette*, vary or revoke an order made under subsection (1).

“(3) A copy of an order under subsection (1) and of any order by which it is revoked or varied shall be served on the company and on any person to whom the order is directed.

“(4) Where an order made under subsection (1) is in force, a person aggrieved by the order may apply to the Court for variation or revocation of the order, and the Court may, if it is satisfied that it is reasonable to do so, vary the order or revoke the order and any order by which it has been varied.

“(5) A person shall not contravene an order under subsection (1).

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

“(6) Where a body corporate contravenes subsection (5), each officer of the body who is in default contravenes this subsection.

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

“(7) An order made under subsection (1) ceases to operate at the end of 30 days after it is made or at the end of the day specified in it as the day on which it ceases to operate, whichever is earlier.

“(8) The Commission may only make an order under subsection (1) if it has afforded the person to whom the order is directed an opportunity to appear at a hearing before the Commission and to make submissions and give evidence to the Commission in relation to the matter.

“(9) The Commission is not empowered to make an order under subsection (1) in reliance on a declaration made by the Commission if:

- (a) an application has been made to the Court under section 130G in relation to the declaration; or
- (b) the Court has revoked under subsection (4) of this section an order made in reliance on the declaration.

Court may reverse Commission’s declaration

“130F. (1) Where the Commission makes a declaration under section 130D, the Court may, on an application by the company or on an application made under section 130G in relation to the declaration, declare the transaction or proposed transaction not to be part of an unacceptable self-acquisition scheme.

“(2) On the making of a declaration under subsection (1), the Commission’s declaration ceases to have effect.

Court may act on Commission’s declaration

“130G. (1) This section applies where the Commission makes a declaration under section 130D.

“(2) The Court may make any order it thinks necessary or expedient:

- (a) to protect the rights or interests of a person who is affected by the scheme or by a connected transaction;

- (b) to prevent a person from entering into or carrying out the whole or a part of the scheme or of a connected transaction; or
- (c) to put a person in the same position as if the whole or a particular part of the scheme or of a connected transaction had not been entered into or carried out.

“(3) The Court may make one or more of the following:

- (a) an order directing a person to supply specified information to members or creditors of the company;
- (b) an order restraining the exercise of any voting or other rights attached to shares in the company;
- (c) an order that any exercise of the voting or other rights attached to shares in the company be disregarded;
- (d) an order restraining the disposal of, or of any interest in, shares in the company;
- (e) an order directing the disposal of, or of any interest in, shares in the company;
- (f) an order vesting in the Commission shares, or any interest in shares, in the company;
- (g) an order directing the company not to register the transfer or transmission of shares;
- (h) an order directing the company not to make payment, or to defer making payment, of any sum or sums due from the company in respect of shares in the company;
- (j) an order cancelling, or declaring to be voidable, an arrangement or offer that is a connected transaction in relation to the scheme.

“(4) If the Court is satisfied that a person has suffered, or is likely to suffer, loss or damage as a result of the scheme or of a connected transaction, the Court may make, against the company or a person who was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the company becoming a party to the scheme, or to the scheme or transaction, as the case may be, any order that the Court thinks just and equitable, including, but not limited to, one or more of the following:

- (a) an order directing the refunding of money or the return of property;
- (b) an order directing the payment to a person of damages in respect of loss or damage so suffered;
- (c) an order directing that a person be indemnified against any loss or damage that the person may so suffer.

“(5) The Court may, in order to secure compliance with any other order made under this section, make an order directing a person to do or refrain from doing a specified act.

“(6) The Court may only make an order under this section on the application of the Commission, the company or a member or creditor of the company.

“(7) The power of a court under section 535 to relieve a person to whom that section applies, wholly or partly and on such terms as the court thinks fit, from a liability referred to in that section extends to relieving a person against whom an order may be made under subsection (4) of this section from the liability to have such an order made against the person.

“(8) Section 49 of the *Companies (Acquisition of Shares) Act 1980* applies in relation to an order under this section in the same way as it applies in relation to an order under section 60 of that Act.

“(9) Nothing in this section limits the generality of anything else in it.

Effect of Subdivision

“130H. Nothing in this Subdivision limits the generality, or affects the operation, of a provision of:

- (a) Subdivision C; or
- (b) the *Companies (Acquisition of Shares) Act 1980*.

“Subdivision E—Other”.

16. After section 133 of the Principal Act the following Division is inserted:

“Division 3A—Permitted Buy-backs of Shares

“Subdivision A—How this Division Works

Outline of structure

“133AA. (1) Subdivision C creates exceptions to the section 129 prohibition on a company acquiring its own shares or interests in its own shares.

“(2) These permitted acquisitions of ordinary shares are called ‘buy-backs’, a term defined in Subdivision B along with most of the Division’s other terminology.

“(3) Buy-backs are permitted subject to:

- (a) a condition prescribed by Subdivision D, which applies to all buy-backs of shares; and
- (b) conditions prescribed by Subdivisions E, G, H, J, L, M and N, each condition applying to a specified kind of buy-back.

“(4) Subdivision F prescribes no conditions, but sets out what a buy-back scheme is and contains rules about such schemes. Buy-back schemes are central to many provisions of the Division.

“(5) Each of the Subdivisions prescribing conditions contains:

- (a) at least one condition, usually only at the beginning of the Subdivision, but in the case of Subdivision L also at the end; and
- (b) ancillary provisions about the subject matter of the condition or conditions.

“(6) The ancillary provisions relating to some of the conditions in Subdivision J are in Subdivision K.

“(7) The other Subdivisions contain further ancillary provisions and rules about the consequences of buy-backs and about the effect of certain events on buy-backs.

“Subdivision B—Interpretation

Effect of Subdivision

“133BA. This Subdivision has effect for the purposes of this Division, except so far as the contrary intention appears in this Division.

Interpretation

“133BB. Unless the contrary intention appears:

‘auditor’, in relation to a company, means:

- (a) if Part VI requires the company to have an auditor—the auditor of the company for the purposes of that Part; or
- (b) otherwise—a person who is entitled to act as auditor of the company for those purposes;

‘buy’ includes agree to buy;

‘buy back’ has the meaning given by section 133BC;

‘buy-back’ means an acquisition by a company constituted by the company buying back shares;

‘buy-back authorisation’, in relation to a company, means a provision to the effect that the company may buy ordinary shares in itself, being a provision contained, or proposed to be inserted, as the case requires, in the company’s articles;

‘buy-back offer’ means any of the offers constituting a buy-back scheme;

‘buy-back scheme’ means offers that by virtue of section 133FB constitute a buy-back scheme;

‘class’, in relation to shares, has a meaning affected by sections 133BM and 133FA;

‘completed’ has a meaning affected by section 133BK;

‘compliance certificate’ means a certificate given for the purposes of section 133SA;

‘distributable profits’ means profits that are available for dividends;

‘employee-shares purchase’ means a buy-back of shares where:

- (a) immediately before the buy-back, shares (in this definition called the ‘relevant shares’) being or including the first-mentioned shares were held by, or for the benefit of, particular persons; and
- (b) each of those persons was, on the last occasion when any of the relevant shares began to be held by or for the benefit of the person (whether alone or jointly with any other person

Co-operative Scheme Legislation Amendment No. 92, 1989

or persons), a participating employee in relation to the company;

even if some or all of those persons are no longer such employees;

'entitled' means entitled for the purposes of the *Companies (Acquisition of Shares) Act 1980*;

'externally-administered company' means a company:

- (a) in respect of which a provisional liquidator has been appointed and not since removed;
- (b) that is being wound up; or
- (c) that is under official management;

'listed body' means a body corporate that is included in an official list of a securities exchange;

'marketable parcel', in relation to shares in a listed body, means:

- (a) if the body is included in an official list of the Exchange—a marketable parcel of shares in the body within the meaning of the Exchange's rules; or
- (b) in any other case—the smallest number of shares in the body that constitute a marketable parcel of such shares within the meaning of the rules of a securities exchange (other than the Exchange) in an official list of which the body is included;

'modifications' includes additions, omissions and substitutions;

'national newspaper' means a daily newspaper that circulates generally in each State, the Territory and the Northern Territory;

'non-cash consideration' means consideration other than money;

'notifiable exchange', in relation to a listed body, means:

- (a) if the body is included in an official list of the Exchange—the securities exchange designated to the company, for the purposes of the rules of the Exchange relating to the conduct of bodies so included, as the body's Home Exchange; and
- (b) in any case—each securities exchange (other than the Exchange) in an official list of which the body is included;

'odd lot', in relation to shares in a listed body, means shares in the listed body that are fewer in number than one marketable parcel of such shares;

'odd-lot purchase' means a buy-back by a listed body of an odd lot of shares in the body;

'offer period', in relation to an offer made under a buy-back scheme, means the period during which the offer remains open or, if the offer has been accepted, would have remained open had it not been accepted;

'ordinary resolution' means a resolution other than a special resolution;

'partly-paid share' means a share on which an amount (including an amount of premium) remains unpaid;

'provide', in relation to consideration, includes pay;

Co-operative Scheme Legislation Amendment No. 92, 1989

'purchase' includes an agreement to buy;

'relevant date', in relation to a winding up of a company, means:

- (a) in the case of a company ordered to be wound up by a court that has not previously commenced to be wound up voluntarily—the date of the winding up order; or
- (b) otherwise—the date of the commencement of the winding up;

'resolution' includes a special resolution;

'rights offer or invitation', in relation to a body corporate, means a share offer made, or a share invitation issued, by the body to members of the body and to no other person;

'rule', in relation to a securities exchange, means a provision of:

- (a) the constituent documents of the securities exchange; or
- (b) any other rules, regulations or by-laws:
 - (i) made by the securities exchange; or
 - (ii) made by another person and adopted by the securities exchange;

'securities exchange' means the Exchange or a body corporate (wherever incorporated) that is declared by the regulations to be a securities exchange for the purposes of this Division;

'seller's claim', in relation to a company, means a claim in respect of obligations of the company under an agreement constituting a buy-back by the company;

'share invitation', in relation to a body corporate, means an invitation to apply or offer to subscribe for or buy ordinary shares in the body that is issued by the body or on its behalf;

'share offer', in relation to a body corporate, means an offer of ordinary shares in the body for subscription or purchase that is made by the body or on its behalf;

'shares', in Subdivision F, has a meaning affected by section 133FA;

'solvency declaration' has the meaning given by section 133BH;

'solvency period', in relation to an offer made under a buy-back scheme, means the period beginning at the start of the offer period and ending when the company first provides consideration that it is to provide under an agreement resulting from the acceptance of an offer made under the buy-back scheme;

'solvent', in relation to a company, means able to pay all its debts as and when they become due and payable;

'takeover aspects' has the meaning given by section 133BF;

'terms' includes conditions;

'trading' has the same meaning as in the *Companies (Acquisition of Shares) Act 1980*;

'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;

'transfer' has a meaning affected by section 133BL.

What constitutes buying back shares

"133BC. Where a company buys shares in itself, it shall be taken to buy back the shares.

The 10% in 12 months limit

"133BE. A buy-back of shares exceeds the 10% in 12 months limit if, and only if, the number calculated in accordance with the following formula exceeds 10:

$$\frac{\text{Buy-backs} \times 100}{(\text{Initial shares} + \text{New issues} - \text{Cancelled shares})};$$

where:

Buy-backs is the aggregate nominal value of all ordinary shares that the company bought back during the period of 12 months ending on the day of the first-mentioned buy-back;

Initial shares is the aggregate nominal value of all the issued ordinary shares, as at the start of that period, in the company;

New issues is the aggregate nominal value of all ordinary shares that the company issued during that period;

Cancelled shares is the aggregate nominal value of all ordinary shares in the company that were cancelled during that period otherwise than by force of subsection 133PC (1).

Takeover aspects of proposed resolution

"133BF. (1) A notice that sets out the intention to propose a resolution of a company sets out the takeover aspects of the proposed resolution if, and only if, the notice complies with this section.

"(2) It shall set out whether or not, as at the time when it is prepared, any of the company's directors is aware of:

- (a) a proposal by a person:
 - (i) to acquire, or to increase the extent of, a substantial interest in the company; or
 - (ii) without limiting the generality of subparagraph (i), to make a takeover bid in relation to shares in the company; or
- (b) a takeover bid that has been made by a person in relation to shares in the company and offers under which remain open as at that time.

"(3) If any of the directors is so aware, the notice shall set out:

- (a) whether or not such a proposal or takeover bid has influenced the decision to propose the resolution; and
- (b) if so—particulars of:

Co-operative Scheme Legislation Amendment No. 92, 1989

- (i) each proposal and takeover bid concerned; and
- (ii) the extent to which each has influenced that decision.

When directors presumed to be aware of proposed or actual takeover bid

“133BG. (1) Where a person who proposes to make a takeover bid in relation to shares in a company has:

- (a) made a public announcement to the effect that the person proposes to make the takeover bid; or
- (b) served on the company a Part A statement within the meaning of the *Companies (Acquisition of Shares) Act 1980* relating to the proposed takeover bid;

a director of the company shall, unless the contrary is established, be presumed to be aware of the proposal.

“(2) A director of a company shall, unless the contrary is established, be presumed to be aware of a takeover bid that a person has made in relation to shares in the company.

“(3) Where:

- (a) a person has made a takeover bid in relation to shares in a company; and
 - (b) a director of the company was aware that the person proposed to make, but is not aware that the person has made, the takeover bid;
- subsection 133BF (2) and paragraph 133GA (b) apply in relation to the director, in relation to the takeover bid, as if the person had not made, but still proposed to make, the takeover bid.

Solvency declaration

“133BH. (1) A solvency declaration by a company’s directors is a declaration in writing that:

- (a) is signed in person by everyone who, on the day on which the declaration is first signed by a director of the company, is such a director;
- (b) specifies that day;
- (c) states to the effect that it is the directors’ opinion that the company was solvent on that day;
- (d) specifies each buy-back scheme that related to shares in the company and:
 - (i) offers under which remained open; or
 - (ii) agreements resulting from the acceptance of offers under which remained uncompleted;as at that day;
- (e) specifies each agreement that:
 - (i) constituted a buy-back made by the company otherwise than under a buy-back scheme; and
 - (ii) remained uncompleted as at that day;

- (f) specifies, as at that day:
 - (i) each proposed buy-back scheme (if any) under which the company proposed to make offers during the period of 12 months starting on that day; and
 - (ii) each buy-back that the company proposed to make, otherwise than under a buy-back scheme, during that period; and
- (g) states to the effect that it is the directors' opinion that the company will remain solvent throughout that period even if:
 - (i) each buy-back offer (if any) that related to shares in the company and remained open as at that day is accepted, and the resulting agreement completed, during that period;
 - (ii) each agreement (if any) that resulted from the acceptance of a buy-back offer relating to such shares and remained uncompleted as at that day is completed during that period;
 - (iii) each agreement (if any) of the kind referred to in paragraph (e) is completed during that period;
 - (iv) all offers made under each such proposed buy-back scheme (if any) are accepted, and the resulting contracts completed, during that period; and
 - (v) each such proposed buy-back (if any) is made during that period.

“(2) Each director of a company who signs a solvency declaration by the company's directors shall be taken to have stated in it that he or she had, when signing the declaration, the opinions described in it.

“(3) A solvency declaration by a company's directors shall be taken to have been made on the day specified in it under paragraph (1) (b).

“(4) Unless sooner revoked under section 133MD, a solvency declaration by a company's directors remains in force for 12 months starting on the day on which it is made.

“(5) A solvency declaration by a company's directors relates to a buy-back scheme or buy-back if, and only if, the declaration specifies the buy-back scheme or buy-back under paragraph (1) (d) or (e).

“(6) In subsection (5):

‘buy-back’ includes a proposed buy-back;

‘buy-back scheme’ includes a proposed buy-back scheme.

Auditor's report on solvency declaration

“133BJ. An auditor's report on a solvency declaration by a company's directors is a report in writing that:

- (a) the company's auditor prepares, signs and dates, and sends to the company, on or after the day when the declaration is made;
- (b) sets out a statement to the effect that the auditor has inquired into the company's state of affairs and is aware of nothing to indicate

that it is unreasonable in all the circumstances to form the opinions described in the declaration; and

(c) sets out:

(i) such explanations (if any), and such information (if any), relevant to the statement referred to in paragraph (b); and

(ii) such other information (if any);

as the auditor thinks necessary, other than an explanation, or information, that contradicts, qualifies or is otherwise inconsistent with that statement.

When buy-back agreement is completed

“133BK. An agreement constituting a buy-back by a company is completed when the company has provided all the consideration that it is to provide under the agreement.

When shares are transferred

“133BL. Shares in a body corporate are transferred pursuant to an agreement when the transfer of the shares pursuant to the agreement is registered by the body.

Classes of shares

“133BM. The shares in a company, if not divided into 2 or more classes, constitute a class.

“Subdivision C—Power to Buy Back Shares

Power to buy back shares

“133CA. (1) A company may buy back ordinary shares if, and only if, the conditions prescribed by this Division are satisfied.

“(2) The power conferred by subsection (1) may only be exercised by the directors.

“(3) The order in which this Division prescribes conditions does not indicate that the conditions must be satisfied in a particular order.

Completion of buy-back

“133CB. Subject to this Division (other than section 133CA), where a company buys back shares as permitted by section 133CA, the shares may be transferred to the company pursuant to the buy-back.

Effect of Division

“133CC. (1) This Division has effect despite:

(a) Subdivisions C and D of Division 3;

(b) section 11 of the *Companies (Acquisition of Shares) Act 1980*;

(c) the constituent documents, or a resolution, of a company;

(d) the rules of a securities exchange; or

(e) any agreement.

“(2) Without limiting the generality of subsection (1), a buy-back or transfer permitted by section 133CA or 133CB does not contravene any of the provisions referred to in paragraphs (1) (a) and (b) of this section.

“(3) Nothing in this Division affects section 82.

“(4) Shares bought back as permitted by section 133CA shall, so long as the rights attached to them are suspended because of section 133PA, be disregarded in ascertaining, for the purposes of the *Companies (Acquisition of Shares) Act 1980*, the shares, or the voting shares, as the case requires, in which the company has a relevant interest or relevant interests.

“(5) Sections 133PA and 133PB shall be disregarded in determining, for the purposes of Division 4, whether or not a person has a relevant interest in particular shares.

Other obligations and liabilities not affected

“133CD. (1) Except as expressly provided in this Division, nothing in this Division affects an obligation, or a liability (whether civil or criminal), arising otherwise than under this Division.

“(2) Without limiting the generality of subsection (1), nothing in this Division relieves a director of any duty to the company, whether arising under section 229 or otherwise and whether of a fiduciary nature or not.

“Subdivision D—Buy-back Authorisation in Articles

Articles to contain buy-back authorisation

“133DA. (1) The first condition is that the company’s articles contain a buy-back authorisation at the relevant time.

“(2) For the purposes of subsection (1), the relevant time is:

- (a) if the buy-back is made under a buy-back scheme but section 133GA does not apply—when the first offer is made under the buy-back scheme;
- (b) if section 133GA, 133HA, 133JA or 133JB applies—when the resolution for which that section provides is passed; or
- (c) in any other case—the time of the buy-back.

Inclusion, effect and renewal of buy-back authorisation

“133DB. (1) In this section:

- ‘renew’, in relation to a buy-back authorisation, means renew under subsection (4);
- ‘requirement’, in relation to a company, includes a requirement of a law or of the company’s constituent documents.

“(2) A company’s buy-back authorisation, unless sooner omitted from the company’s articles, ceases to have effect at the end of:

- (a) if the articles provide that the buy-back authorisation has effect for a specified period of less than 3 years and the buy-back authorisation has not been renewed—the specified period;
 - (b) if the buy-back authorisation has been renewed on at least one occasion and the resolution, or the later or last of the resolutions, as the case requires, renewing it states that it is renewed for a specified period of less than 3 years—the specified period; or
 - (c) otherwise—3 years;
- beginning:
- (d) if the buy-back authorisation was contained in the articles at the time when the company was incorporated and has not been renewed—at that time;
 - (e) if the buy-back authorisation was inserted in the articles and has not been renewed—at the time when it was so inserted; or
 - (f) if the buy-back authorisation has been renewed on at least one occasion—at the time when the buy-back authorisation was last renewed.

“(3) Where a company’s buy-back authorisation ceases to have effect, the company’s articles are, by force of this subsection, altered by omitting the buy-back authorisation.

“(4) A company may renew its buy-back authorisation in any manner in which it may alter its articles by inserting a buy-back authorisation and shall, in relation to a renewal of its buy-back authorisation, comply with the requirements that apply in relation to such an alteration of its articles, being an alteration in the manner in which the renewal is effected.

“(5) A company shall, with every notice that:

- (a) sets out the intention to propose:
 - (i) a resolution for the alteration of the company’s articles by inserting a buy-back authorisation; or
 - (ii) a resolution to renew its buy-back authorisation; and
- (b) is sent to a person who is entitled to vote on the proposed resolution; send a statement that:
 - (c) states to the effect that the consequence of the proposed alteration or renewal is to empower the company, during the period during which the buy-back authorisation is in effect, to buy ordinary shares in itself as provided in this Division;
 - (d) explains the reasons for proposing the resolution and sets out the factual matters and principles underlying those reasons;
 - (e) if subparagraph (a) (ii) applies—reviews the buy-backs (if any) of shares by the company since the buy-back authorisation took effect, or was last renewed, as the case requires, and the effects of those buy-backs (if any) on the company and on the directors, and the members, of the company, respectively;

- (f) discusses both the potential advantages, and the potential disadvantages, of the proposed buy-back authorisation, or of the buy-back authorisation proposed to be renewed, as the case may be, for the company and for the directors, and the members, of the company, respectively.

“(6) Where a company contravenes subsection (4), the company and any officer of the company who is in default are each guilty of an offence.

Penalty: \$5,000 or imprisonment for 12 months, or both.

“Subdivision E—Buy-backs by Public Companies

Only certain buy-backs permitted

“133EA. If the company is a public company, the next condition is that the buy-back:

- (a) does not exceed the 10% in 12 months limit; or
(b) is an employee-shares purchase or an odd-lot purchase.

“Subdivision F—Buy-back Schemes

Shares and classes of shares

“133FA. (1) Except so far as the contrary intention appears, a reference in this Subdivision to shares is a reference to ordinary shares.

“(2) Where the shares in a company are divided into 2 or more classes, the provisions of this Subdivision (other than this subsection and subsection 133FB (10)) apply in relation to each of those classes:

- (a) as if the shares in that class were the only shares in the company; and
(b) without prejudice to their application by force of this subsection in relation to any other class of shares.

Buy-back scheme

“133FB. (1) A buy-back is made under a buy-back scheme if, and only if, it results from the acceptance of an offer made under the buy-back scheme.

“(2) An offer is made under a buy-back scheme if, and only if, it is one of the offers constituting the buy-back scheme.

“(3) Offers by a company to buy back shares constitute a buy-back scheme if, and only if, the following requirements of this section are complied with.

“(4) Each offer must be in writing.

“(5) Each offer must have the same date, being a date that is not earlier than 3 days before the day on which the offer is sent and not later than that day.

Co-operative Scheme Legislation Amendment No. 92, 1989

“(6) Each offer must state that it will, unless withdrawn, remain open during a period ending on a specified day that is not earlier than one month, nor later than 6 months, after the date of the offer.

“(7) Each offer must specify the consideration that under the offer is to be provided for the buy-back of each share to which the offer relates.

“(8) Each offer must set out how and when the company’s obligations are to be satisfied.

“(9) The offers must relate only to shares in the company.

“(10) Each offer must specify, in relation to each class of shares (including shares other than ordinary shares) in the company:

- (a) the total number of shares in the class as at the time immediately before the first of the offers is sent; and
- (b) in the case of a class of ordinary shares—the number of shares (if any) in the class that, as at that time, have been bought back but not yet cancelled (which may be expressed as a number of shares or as a percentage of the number referred to in paragraph (a)).

“(11) Each offer must relate to a proportion of the shares in the company that the offeree holds and that proportion must be the same in respect of each offer.

“(12) The offers must be the same disregarding:

- (a) the fact that the number of shares that may be acquired under each offer is limited by the number of shares held by the offeree; and
- (b) any differences in the consideration specified for each share in the offers that are attributable only to one or both of the following:
 - (i) the fact that the offers relate to shares having different accrued dividend entitlements;
 - (ii) the fact that the offers relate to shares on which different amounts (whether by way of capital or premium) are paid up.

“(13) The offeror must send an offer in an approved manner to each person who holds shares in the company when the first of the offers is sent.

“(14) Section 8A of the *Companies (Acquisition of Shares) Act 1980* has effect for the purposes of subsection (13) of this section as if that subsection were a provision of that Act.

Withdrawal or variation of buy-back offers

“133FC. A buy-back offer is not capable of being withdrawn or varied without the Commission’s written consent, which may be given subject to such conditions (if any) as are specified in it.

Avoiding odd lots

“133FD. Where, at a particular time:

- (a) an offer has been made under a buy-back scheme;
- (b) the company is a listed body;
- (c) the offer is accepted; and
- (d) a proportion of the shares, being the proportion to which the offer does not relate, consists of an odd lot of shares or consists of a marketable parcel or marketable parcels of shares and an odd lot of shares;

the offer shall, except for the purposes of subsection 133FB (11) and this section, be taken always to have related to, to relate to, and to have been accepted in relation to, a number of shares in the company equal to the sum of:

- (e) the number of shares of which the proportion to which the offer relates consists; and
- (f) the number of shares in that odd lot.

Odd lots to be disregarded for purposes of 10% in 12 months limit

“133FE. (1) This section applies where, because of section 133FD, an offer made by a listed body under a buy-back scheme is taken to have been accepted in relation to a number of shares in the body equal to the sum of a particular number of such shares and the number of shares in an odd lot of such shares.

“(2) In determining whether or not a buy-back made under the buy-back scheme exceeds the 10% in 12 months limit, the odd lot shall be taken not to have been bought back.

“Subdivision G—Approval of Buy-back Schemes by Ordinary Resolution

When approval required

“133GA. If the buy-back is made under a buy-back scheme and:

- (a) if the company is a proprietary company—the buy-back exceeds the 10% in 12 months limit; or
- (b) in any case—at the time when the first offer was made under the buy-back scheme, at least one of the company’s directors was aware of:
 - (i) a proposal by a person to make a takeover bid in relation to shares in the company; or
 - (ii) a takeover bid that had been made by a person in relation to shares in the company and offers under which remained open at that time;

the next condition is that the buy-back offers were made under an ordinary resolution of the company.

Buy-back offers made under a resolution

“133GB. Buy-back offers are made under a particular resolution if, and only if:

- (a) the resolution:
 - (i) approves the buy-back scheme constituted by the offers;
 - (ii) complies with section 133GC; and
 - (iii) was passed at a meeting held before the first offer was made under the buy-back scheme;
- (b) the offers are in accordance with the resolution; and
- (c) such of the terms of the offers as are not specified in the resolution are not materially different from the terms particulars of which were specified under subsection 133GD (2) in notices relating to the resolution that were sent for the purposes of the meeting.

Resolution to approve proposed buy-back scheme

“133GC. (1) A resolution of a company that is passed at a meeting and approves a proposed buy-back scheme complies with this section if, and only if:

- (a) every notice of the meeting sent to a person entitled to vote on the resolution set out, or was accompanied by a notice setting out:
 - (i) the intention to propose the resolution; and
 - (ii) the matters required by section 133GD; and
- (b) the resolution complies with subsection (2) of this section.

“(2) The resolution shall specify:

- (a) the latest date that the proposed buy-back offers may have for the purposes of subsection 133FB (5), being a date at most 12 months after the day on which the resolution is passed;
- (b) the minimum period, being at least one month and at most 6 months, during which the offers are to remain open unless they are withdrawn;
- (c) the consideration, or each alternative consideration included in the consideration, as the case requires, that under each of the offers is to be provided for the buy-back of each share to which the offer relates; and
- (d) the proportion to be specified in the offers for the purposes of subsection 133FB (11).

“(3) A resolution may specify a consideration under paragraph (2) (c) as a consideration to be determined by the directors, being:

- (a) not less than a minimum consideration specified in the resolution; and
- (b) not more than a maximum consideration so specified.

“(4) A resolution may specify a consideration under paragraph (2) (c) or (3) (a) or (b) as a consideration to be determined by the directors in a manner specified in the resolution.

“(5) A resolution of a company to approve a proposed buy-back scheme may require specified terms to be included in the proposed buy-back offers.

Notice of resolution to approve proposed buy-back scheme

“133GD. (1) A notice that:

- (a) sets out the intention to propose a resolution to approve a proposed buy-back scheme; and
- (b) is sent to a person entitled to vote on the resolution;

shall comply with this section.

“(2) It shall set out the text of the proposed resolution and full particulars of such of the terms of the proposed buy-back offers as are not specified in the resolution.

“(3) It shall set out the reasons why the buy-back scheme is being proposed and the facts and principles underlying those reasons.

“(4) It shall set out the takeover aspects of the proposed resolution.

“(5) It shall set out what the directors consider will be the likely effect on the company’s state of affairs if the offers are made and all are accepted.

“(6) It shall set out a copy of a solvency declaration by the directors that relates to the proposed buy-back scheme and was made within 7 days before the day on which the notice is prepared.

“(7) It shall state whether or not there are, at the time when it is prepared, partly-paid shares in the company that are in the same class as the shares to which the proposed buy-back offers relate and, if there are, the notice shall set out:

- (a) how many such partly-paid shares there are at that time; and
- (b) the total of all amounts (including amounts of premium) that at that time remain unpaid on such partly-paid shares.

“(8) It shall set out, in relation to each person who, at the time when the notice is prepared, is a director of the company or is associated with such a director:

- (a) whether or not the person intends at that time, if:
 - (i) the resolution is passed in a form not substantially different from that set out in the notice;
 - (ii) buy-back offers are made under the resolution; and
 - (iii) the person holds shares in the company when the offers are made;

to accept the offer made to the person under the buy-back scheme;
or

- (b) if the person has not decided whether or not the person so intends—that the person has not so decided.

“(9) It shall set out all other information that is known to any of the directors and may reasonably be expected to influence a person in deciding whether or not to vote in favour of the resolution.

“(10) The notice shall be the same as each of the other notices of the kind referred to in subsection (1) that relate to the resolution, disregarding the fact that the first-mentioned notice is sent to a different person.

“Subdivision H—Employee-shares Purchases

Approval by ordinary resolution

“133HA. If the buy-back is an employee-shares purchase and exceeds the 10% in 12 months limit, the next conditions are:

- (a) that:
- (i) if the company has an approving holding company or approving holding companies—the company, and that holding company or those holding companies, have each; or
 - (ii) otherwise—the company has;
- approved the buy-back by an ordinary resolution passed at a meeting of the company or holding company held before the agreement constituting the buy-back is entered into;
- (b) that each of the resolutions, or the resolution, as the case may be, complies with section 133HB;
- (c) that the agreement is in accordance with each of the resolutions, or the resolution, as the case may be; and
- (d) that such of the terms of the agreement as:
- (i) are specified in none, or in at least one but not all, of the resolutions; or
 - (ii) are not specified in the resolution;
- as the case may be, are not materially different from the terms particulars of which were specified under subsection 133HC (2) in notices relating to the resolutions or resolution that were sent for the purposes of the meetings or meeting.

Resolution to approve proposed employee-shares purchase

“133HB. (1) A resolution of a corporation that is passed at a meeting and approves a proposed employee-shares purchase complies with this section if, and only if:

- (a) every notice of the meeting sent to a person entitled to vote on the resolution set out, or was accompanied by a notice setting out:
- (i) the intention to propose the resolution; and
 - (ii) the matters required by section 133HC;
- (b) the resolution specifies the consideration, or each alternative consideration included in the consideration, as the case requires,

Co-operative Scheme Legislation Amendment No. 92, 1989

that under the agreement constituting the proposed purchase is to be provided for the purchase; and

- (c) no votes are cast, in relation to the resolution, in respect of any shares held by:
 - (i) a party to the agreement (other than the company that proposes to make the purchase or a holding company of that company); or
 - (ii) a person associated with such a party.

“(2) A resolution may specify a consideration under paragraph (1) (b) as a consideration to be determined by the directors, being:

- (a) not less than a minimum consideration specified in the resolution; and
- (b) not more than a maximum consideration so specified.

“(3) A resolution may specify a consideration under paragraph (1) (b) or (2) (a) or (b) as a consideration to be determined by the directors in a manner specified in the resolution.

“(4) A resolution of a corporation to approve a proposed employee-shares purchase may require specified terms to be included in the agreement constituting the purchase.

Notice of resolution to approve proposed employee-shares purchase

“133HC. (1) A notice that:

- (a) sets out the intention to propose a resolution of a corporation to approve a proposed employee-shares purchase; and
- (b) is sent to a person entitled to vote on the resolution;

shall comply with this section.

“(2) It shall set out the text of the proposed resolution and full particulars of such of the terms of the agreement constituting the proposed purchase as are not specified in the resolution.

“(3) It shall set out the reasons why the purchase is being proposed and the facts and principles underlying those reasons.

“(4) It shall set out, in relation to each person by whom, or for whose benefit, shares to which the proposed purchase relates are held:

- (a) the person’s name; and
- (b) particulars of the employment by virtue of which the person is a participating employee in relation to the corporation, or was such an employee immediately before the person last ceased to be such an employee, as the case requires.

“(5) It shall set out:

- (a) how many of the shares to which the proposed purchase relates are partly-paid shares at the time when the notice is prepared; and

- (b) the total of all amounts (including amounts of premium) that at that time remain unpaid on the first-mentioned shares.

“(6) If the proposed purchase relates to shares in the corporation, the notice shall set out:

- (a) the takeover aspects of the proposed resolution;
- (b) what the directors consider will be the likely effect on the corporation’s state of affairs if the purchase is made; and
- (c) a copy of a solvency declaration by the directors that relates to the proposed purchase and was made within 7 days before the day on which the notice is prepared.

“(7) If the proposed purchase relates to shares in a subsidiary of the corporation, the notice shall set out:

- (a) what the subsidiary’s directors consider will be the likely effect on the subsidiary’s state of affairs if the purchase is made;
- (b) a copy of a solvency declaration by the subsidiary’s directors that relates to the proposed purchase and was made within 7 days before the day on which the notice is prepared; and
- (c) what the corporation’s directors consider will be the likely effect on the corporation’s state of affairs if the purchase is made.

“(8) The notice shall set out all other information that is known to any of the directors referred to in subsection (6) or (7), as the case may be, and may reasonably be expected to influence a person in deciding whether or not to vote in favour of the resolution.

“(9) The notice shall be the same as each of the other notices of the kind referred to in subsection (1) that relate to the resolution, disregarding the fact that the first-mentioned notice is sent to a different person.

“Subdivision J—Selective Buy-backs

Approval, by special resolution passed by special majority, of selective buy-back by public company

“133JA. If:

- (a) the company is a public company; and
- (b) the buy-back is not made under a buy-back scheme and is neither an employee-shares purchase nor an odd-lot purchase;

the next conditions are:

- (c) that, before it is entered into, the agreement constituting the buy-back is approved by a special resolution of the company passed, at a meeting, by a majority consisting of:
 - (i) at least 75% in number of; and
 - (ii) members who together hold at least 75% in nominal value of the shares that entitle their holders to attend and vote at the meeting and are held by;

Co-operative Scheme Legislation Amendment No. 92, 1989

- such members of the company as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at the meeting;
- (d) that no votes were cast in relation to the resolution in respect of any shares held by:
 - (i) a party (other than the company) to the agreement; or
 - (ii) a person associated with such a party;
 - (e) that every notice of the meeting that was sent to a person entitled to vote on the resolution set out, or was accompanied by a notice setting out:
 - (i) the intention to propose the resolution; and
 - (ii) the matters required by Subdivision K;
 - (f) that, as at the time when the first such notice was so sent, each expert (if any) who had signed under paragraph 133KD (2) (a) or subsection 133KE (1) a report of which a copy was set out in such a notice had given, and had not withdrawn, his or her written consent to the sending of each such notice with the report set out in the form and context in which it was in fact set out in each such notice;
 - (g) that a copy of the agreement as proposed when the first such notice was so sent was available in accordance with the statement set out in each such notice as required by section 133KC;
 - (h) that, apart from the modifications (if any) specified in the resolution, the terms of the agreement as entered into are not materially different from the terms of the agreement as so proposed; and
 - (j) that those modifications (if any) have been made.

Approval by special resolution where selective buy-back by proprietary company exceeds 10% in 12 months limit

“133JB. If:

- (a) the company is a proprietary company; and
 - (b) the buy-back is not made under a buy-back scheme, is not an employee-shares purchase and exceeds the 10% in 12 months limit;
- the next conditions are:
- (c) that, before it is entered into, the agreement constituting the buy-back is approved by a special resolution of the company in relation to which no votes were cast in respect of any shares held by:
 - (i) a party (other than the company) to the agreement; or
 - (ii) a person associated with such a party;
 - (d) that every notice of the meeting at which the resolution was passed that was sent to a person entitled to vote on the resolution set out, or was accompanied by a notice setting out:
 - (i) the intention to propose the resolution; and
 - (ii) the matters required by Subdivision K;

Co-operative Scheme Legislation Amendment No. 92, 1989

- (e) that a copy of the agreement as proposed when the first such notice was so sent was available in accordance with the statement set out in each such notice as required by section 133KC;
- (f) that, apart from the modifications (if any) specified in the resolution, the terms of the agreement as entered into are not materially different from the terms of the agreement as so proposed; and
- (g) that those modifications (if any) have been made.

“Subdivision K—Notice of Resolution to Approve Proposed Selective Buy-back

Notice must comply with Subdivision

“133KA. A notice that:

- (a) sets out the intention to propose at a meeting a resolution of a company to approve a proposed agreement constituting a proposed buy-back; and
- (b) is sent to a person entitled to vote on the resolution;

shall comply with this Subdivision.

Contents of resolution and proposed agreement

“133KB. (1) It shall set out the text of the proposed resolution.

“(2) It shall set out a summary of all material terms of the proposed agreement.

Availability of agreement for inspection

“133KC. It shall set out a statement to the effect that a copy of the proposed agreement will be available:

- (a) at the company’s registered office at any time when the office is required to be open and accessible to the public during the period starting on a specified day at least 14 days before the day of the meeting and ending on the day of the meeting; and
- (b) at the meeting;

for inspection without charge by any person entitled to vote on the proposed resolution.

Valuation of non-cash consideration

“133KD. (1) This section applies if the consideration that under the proposed agreement is to be provided for the buy-back consists, or includes at least one alternative consideration that consists, wholly or partly of non-cash consideration.

“(2) The notice shall set out, in relation to the first-mentioned consideration or each such alternative consideration, as the case may be, particulars of the non-cash consideration and:

- (a) if the company is a public company—a copy of a report that:

- (i) an expert (other than a person associated with the company or with any other proposed party to the proposed agreement) signed within 7 days before the notice was prepared;
 - (ii) sets out what, in his or her opinion, was the money value of the non-cash consideration when he or she signed the report; and
 - (iii) complies with section 133KF; or
- (b) otherwise—a copy of a statement that each of the company's directors signed within 7 days before the notice was prepared and that sets out:
- (i) what, in their opinion, was the money value of the non-cash consideration when the statement was first signed by one of them; and
 - (ii) what, in their opinion, will be the money value of the non-cash consideration if and when the agreement is entered into and completed and, in the case of an alternative consideration, the seller chooses that alternative.

“(3) If the company is a public company and the opinion of each of 2 or more experts has been sought about the value of non-cash consideration to which a particular report of which a copy is set out under subsection (2) relates, the notice shall set out, in relation to each of those experts (other than the one who signed the report):

- (a) his or her name; and
- (b) particulars of the opinions (if any) he or she has expressed about the value of such non-cash consideration.

Expert's opinion about whether consideration fair and reasonable

“133KE. (1) If the company is a public company, the notice shall set out a copy of a report that:

- (a) an expert (other than a person associated with the company or with any other proposed party to the proposed agreement) signed within 7 days before the notice was prepared;
- (b) in relation to:
 - (i) the consideration that under the proposed agreement is to be provided for the buy-back; or
 - (ii) each alternative consideration included in that consideration; as the case requires:
 - (iii) states whether or not, in his or her opinion, the consideration was fair and reasonable as at the time when he or she signed the report; and
 - (iv) sets out the expert's reasons for forming that opinion;
- (c) in relation to each report (if any) that was signed under paragraph 133KD (2) (a) and a copy of which is set out in the notice—states:

Co-operative Scheme Legislation Amendment No. 92, 1989

- (i) to what extent he or she has relied on the report in forming an opinion for the purposes of paragraph (b) of this subsection; and
 - (ii) if he or she has not so relied at all—why not; and
- (d) complies with section 133KF.

“(2) If the company is a public company and the opinion of 2 or more experts has been sought about the consideration referred to in subparagraph (1) (b) (i) or an alternative consideration included in it, the notice shall set out, in relation to each of those experts (other than the one who signed the report):

- (a) his or her name; and
- (b) particulars of the opinions (if any) he or she has expressed about the first-mentioned consideration or such an alternative consideration.

“(3) Nothing in this section limits the generality of anything else in it.

Matters affecting expert’s objectivity

“133KF. For the purposes of subparagraph 133KD (2) (a) (iii) or paragraph 133KE (1) (d), a report signed by an expert complies with this section if, and only if, it sets out:

- (a) particulars of any relationship of the expert with a person (in this section called an ‘interested person’), being:
 - (i) the company;
 - (ii) any other proposed party to the proposed agreement; or
 - (iii) a person associated with the company or with any other such proposed party;

including, but not limited to, particulars of circumstances in which the expert furnishes advice to, or acts on behalf of, an interested person in the proper performance of the functions attaching to the expert’s professional capacity or to the expert’s business relationship with that interested person;

- (b) particulars of any pecuniary or other interest of the expert that could reasonably be regarded as being capable of affecting the expert’s ability to give an unbiased opinion on the matters to which the report relates; and
- (c) particulars of:
 - (i) any fee; and
 - (ii) any pecuniary or other benefit, whether direct or indirect; that the expert has received or will or may receive for or in connection with the making of the report.

Expert’s consent

“133KG. If the company is a public company, the notice shall set out, in relation to each report that was signed under paragraph 133KD (2) (a) or subsection 133KE (1) and of which a copy is set out in the notice, a

statement to the effect that the expert who signed the report has given, and has not withdrawn, his or her consent to the sending of the notice with the report set out in the form and context in which it is set out.

Reasons for buy-back

“133KH. (1) The notice shall set out the reasons why the buy-back is being proposed and the facts and principles underlying those reasons.

“(2) The notice shall set out the takeover aspects of the proposed resolution.

Solvency aspects

“133KJ. (1) The notice shall set out what the directors consider will be the likely effect on the company’s state of affairs if the proposed buy-back is made.

“(2) The notice shall set out a copy of a solvency declaration by the directors that relates to the proposed buy-back and was made within 7 days before the day on which the notice is prepared.

“(3) The notice shall set out:

- (a) how many of the shares to which the proposed buy-back relates are partly-paid shares at the time when the notice is prepared; and
- (b) the total of all amounts (including amounts of premium) that at that time remain unpaid on the first-mentioned shares.

Directors’ interests

“133KK. (1) The notice shall set out, in relation to each of the directors, in relation to each person who, at the time when the notice is prepared, is associated with that director in relation to the proposed buy-back:

- (a) the name of that person; and
- (b) particulars of the circumstances by virtue of which that person is so associated with that director at that time.

“(2) The notice shall set out each declaration (if any) that, before the notice was prepared, a director of the company has made under section 228 in relation to the proposed agreement.

Effect on control of company

“133KL. (1) The notice shall set out what the directors consider will be the likely effect on the control of the company if the proposed buy-back is made.

“(2) The notice shall set out, in relation to each of the directors:

- (a) whether or not the directors consider it likely that, if the proposed buy-back were made and the shares to which it relates were cancelled immediately afterwards, that director would, immediately after the cancellation, be entitled to more than 20% of the shares in the company; and

- (b) if so—the respective percentages to which the directors consider it likely that that director would be entitled immediately before, and immediately after, the cancellation.

Other relevant information

“133KM. The notice shall set out all other information that is known to any of the directors and may reasonably be expected to influence a person in deciding whether or not to vote in favour of the resolution.

Notices to be the same

“133KN. The notice shall be the same as each of the other notices of the kind referred to in section 133KA that relate to the meeting and the resolution, disregarding the fact that the first-mentioned notice is sent to a different person.

“Subdivision L—Creditors may Object to Proposed Buy-backs

Advertising proposed buy-backs

“133LA. (1) This section applies if:

- (a) the buy-back is made under a buy-back scheme;
- (b) the company is a proprietary company and the buy-back is not made under a buy-back scheme and is not an employee-shares purchase; or
- (c) the company is a public company and the buy-back is not made under a buy-back scheme and is neither an employee-shares purchase nor an odd-lot purchase.

“(2) The next condition is that a notice:

- (a) setting out the intention to make the offers constituting the buy-back scheme, or to enter into the agreement constituting the buy-back, as the case may be;
- (b) specifying the documents referred to in paragraphs (3) (a) and (b) and, if applicable, paragraph (3) (c);
- (c) stating to the effect that those documents would be available as mentioned in paragraph (3) (a) during the period referred to in subsection (3); and
- (d) setting out the matters required by section 133LB;

was published in accordance with section 133LC on a day that, or on days each of which:

- (e) was not earlier than 42 days, and not later than 28 days, before the day (in this section called the ‘critical day’) on which the first of the offers was made, or the agreement is entered into, as the case may be; and
- (f) if section 133GA, 133JA or 133JB applies—was later than the day on which the resolution for which that section provides was passed.

“(3) The next condition is that, throughout the period starting on the day, or on the first of the days, when the notice was so published and ending at least 21 days after that day or the last of those days:

- (a) a copy of one of the offers, or of the agreement, as proposed on that day, or on the first of those days, was available for inspection without charge by any creditor of the company at the company’s registered office at any time during that period when the office was required to be open and accessible to the public;
- (b) a solvency declaration by the company’s directors that related to the buy-back scheme or buy-back and was made not more than 2 months before the critical day was in force and so available;
- (c) unless the company is a proprietary company and the buy-back does not exceed the 10% in 12 months limit—an auditor’s report on the declaration was so available; and
- (d) if section 133GA, 133JA or 133JB applies:
 - (i) a copy of the resolution for which that section provides; and
 - (ii) each report or statement (if any) that was signed under subsection 133KD (2) or 133KE (1) and of which a copy was set out in a notice that set out the intention to propose the resolution and was sent to a person entitled to vote on it;was or were, as the case requires, so available.

“(4) The next condition is that the terms of the offers, or of the agreement, as so proposed were not materially different from the terms of the offers as made, or of the agreement as entered into, as the case may be.

Content of advertisement

“133LB. (1) A notice that sets out the intention to:

- (a) make offers constituting a buy-back scheme; or
- (b) enter into an agreement constituting a buy-back;

and is published in accordance with section 133LC shall comply with this section.

“(2) The notice shall set out:

- (a) in relation to the consideration; or
- (b) in relation to each alternative consideration included in the consideration;

as the case requires, that under each of the proposed offers, or under the proposed agreement, as the case may be, is to be provided for the buy-back of the shares to which the offer or agreement relates:

- (c) the amount of money (if any), and the non-cash consideration (if any), that under each of the proposed offers, or under the proposed agreement, as the case may be, is or are to be provided:
 - (i) as the consideration for each share to which that offer or the proposed agreement relates; or

- (ii) as the consideration for each such share if the offeree or seller chooses that alternative;
as the case may be; and
- (d) an amount that it is reasonable to expect will be, if:
 - (i) all the proposed offers are made and accepted, all resulting agreements are completed and, if paragraph (b) applies, all offerees choose that alternative; or
 - (ii) the proposed agreement is entered into and completed and, if paragraph (b) applies, the seller chooses that alternative;
as the case may be, the greatest total of:
 - (iii) the amounts (if any) that the company will have paid for the buy-backs made under the buy-back scheme, or for the buy-back constituted by the agreement, as the case may be; and
 - (iv) the money value, as at the time when the last of those buy-backs, or that buy-back, as the case may be, is completed, of the non-cash consideration (if any) that the company will have provided for the buy-backs or buy-back.

“(3) If paragraph (1) (a) applies, the notice shall state whether or not there are, at the time when it is prepared, partly-paid shares in the company that are in the same class as the shares to which the proposed offers relate and, if there are, the notice shall set out:

- (a) how many such partly-paid shares there are at that time; and
- (b) the total of all amounts (including amounts of premium) that at that time remain unpaid on such partly-paid shares.

“(4) If paragraph (1) (b) applies, the notice shall set out:

- (a) how many of the shares to which the proposed agreement relates are partly-paid shares at the time when the notice is prepared; and
- (b) the total of all amounts (including amounts of premium) that at that time remain unpaid on the first-mentioned shares.

“(5) The notice shall set out the effect of section 133LD as it applies in relation to the proposed buy-back scheme or proposed buy-back, as the case may be.

Newspapers in which advertisement to be published

“133LC. A notice relating to a proposed buy-back scheme or buy-back is published in accordance with this section if, and only if, a copy of the notice is published:

- (a) in a national newspaper;
- (b) if a daily newspaper (other than a national newspaper) circulates generally in the Territory—in such a newspaper that so circulates; and
- (c) in each State and Territory (other than the Territory) in which the company carries on business and in which a daily newspaper (other

than a national newspaper) circulates generally, in such a newspaper that circulates generally in that State or Territory;
whether on the same day or on different days.

Creditor may apply to Court

“133LD. Where a copy of a notice relating to a proposed buy-back scheme or buy-back is published in a newspaper, a creditor of the company:

- (a) may apply to the Court at any time within the period of 21 days after the day, or the last of the days, on which a copy of the notice is published in a newspaper; and
- (b) may, with the leave of the Court, apply to the Court at any time after that period and before the first of the proposed offers is made, or the agreement constituting the proposed buy-back is entered into, as the case may be;

for an order prohibiting the making of the offers or the entering into of the agreement.

How application to be dealt with

“133LE. (1) On an application made in accordance with section 133LD, the Court shall, if satisfied that:

- (a) the company is insolvent;
- (b) the declaration specified in the notice referred to in that section is no longer in force; or
- (c) it is unlikely that the company will remain solvent as specified in that declaration;

by order prohibit the company, except on such conditions (if any) as the order specifies, from making the offers or entering into the agreement, as the case may be, but otherwise shall refuse the application.

“(2) On application by the company or a creditor of the company, the Court may by order vary or revoke an order in force under this section.

“(3) An order under this section does not take effect until a copy of it is served on the company.

Buy-backs not to proceed while application pending

“133LF. (1) This section applies if section 133LA applies and notice of an application made in accordance with section 133LD in relation to the buy-back offers or the agreement constituting the buy-back, as the case may be, was served on the company before the time when the first of the offers was made or when the agreement is entered into.

“(2) The next condition is that:

- (a) each such application of which notice was so served; and
- (b) each appeal (if any) arising out of such an application of which notice was so served;

was determined or otherwise disposed of before the time referred to in subsection (1).

“(3) The period beginning on the day when the first notice of such an application was so served and ending on the day when the last such application or appeal was determined or otherwise disposed of shall be disregarded in determining, for the purposes of subsection 133LA (2) and paragraph 133LA (3) (b), how long before a particular day:

- (a) a notice relating to the offers or agreement was published in accordance with section 133LC; and
- (b) a solvency declaration by the company’s directors that relates to the offers or agreement was made.

Company to comply with order of Court

“133LG. (1) The next condition is that:

- (a) if the buy-back results from the acceptance of an offer made under a buy-back scheme—the making of the offer; or
- (b) otherwise—the entering into of the agreement constituting the buy-back;

did not contravene an order in force under section 133LE.

“(2) Nothing in this section affects the powers of the Court in relation to punishment of contempts of the Court.

“Subdivision M—Solvency Requirements

Solvency requirements for buy-back scheme

“133MA. If the buy-back is made under a buy-back scheme, the next condition is that, when the first offer was made under the buy-back scheme:

- (a) there was in force a solvency declaration by the company’s directors that relates to the buy-back scheme and was made within 2 months before the day on which that first offer was made; and
- (b) unless the company is a proprietary company and the buy-back does not exceed the 10% in 12 months limit—the company’s auditor had sent to the company an auditor’s report on that declaration.

Solvency requirements for other buy-backs

“133MB. If the buy-back is not made under a buy-back scheme, the next condition is that, as at the time of the buy-back:

- (a) there is in force a solvency declaration by the company’s directors that relates to, and was made within 2 months before the day of, the buy-back;
- (b) unless the company is a proprietary company and the buy-back does not exceed the 10% in 12 months limit—the company’s auditor has sent to the company an auditor’s report on that declaration; and
- (c) the company is not an externally-administered company.

Copy of solvency declaration and auditor's report to be lodged with Commission

"133MC. (1) Where a solvency declaration by a company's directors is made, the company shall lodge a copy of the declaration with the Commission:

- (a) if, within 6 days after the day on which the declaration is made, a notice setting out a copy of the declaration is sent to a person entitled to vote on a resolution to approve a proposed buy-back scheme or buy-back to which the declaration relates—on or before the day after the first day on which such a notice is so sent; or
- (b) otherwise—within 7 days after the day on which the declaration is made.

"(2) Within 7 days after a company's auditor sends to the company an auditor's report on a solvency declaration by the company's directors, the company shall lodge with the Commission a copy of the report.

Revocation of solvency declaration

"133MD. (1) Where:

- (a) a solvency declaration by a company's directors is in force; and
- (b) a director of the company (whether he or she signed the declaration or not) becomes of the opinion that it is likely that the company will not remain solvent as mentioned in the declaration;

he or she shall, as soon as practicable:

- (c) sign a notice stating that he or she is of that opinion;
- (d) give the notice to the company; and
- (e) lodge a copy of the notice with the Commission.

"(2) A notice given to a company under subsection (1) in relation to a solvency declaration by the company's directors revokes the declaration.

"(3) Where a solvency declaration by a company's directors that relates to a buy-back scheme or buy-back is revoked under subsection (2) at a particular time, the other solvency declarations (if any) by the company's directors that relate to the buy-back scheme or buy-back are also revoked at that time.

"(4) In subsection (3):

'buy-back' includes a proposed buy-back;

'buy-back scheme' includes a proposed buy-back scheme.

Solvency requirements for completion of buy-back under buy-back scheme

"133ME. A company shall not provide any of the consideration that it is to provide under an agreement constituting a buy-back made by it under a buy-back scheme unless, when it first provides consideration that it is to provide under an agreement constituting a buy-back made under the buy-back scheme:

- (a) the offer period of the offers made under the scheme has ended;

- (b) a solvency declaration by the company's directors that relates to the buy-back scheme is in force; and
- (c) unless the company is a proprietary company and the first-mentioned buy-back does not exceed the 10% in 12 months limit—the company's auditor has sent to the company an auditor's report on the declaration.

Company not to register certain transfers during solvency period

"133MF. Where an offer made by a company under a buy-back scheme is accepted, the company shall not, during the solvency period of the offer, register a transfer to the company of shares, being a transfer pursuant to an agreement resulting from the acceptance.

"Subdivision N—Share Buy-backs and other Securities Issues

Buy-back consideration not to consist of other securities of the company

"133NA. The next condition is that the consideration that has been or is to be provided for the buy-back does not consist, or include an alternative consideration that consists, wholly or partly of securities of the company.

No buy-backs during rights issue or placement

"133NB. The next condition is that:

- (a) if the buy-back is made under a buy-back scheme—the first offer made under the scheme was not made; or
- (b) otherwise—the agreement constituting the buy-back is not entered into;

during, or within 3 months after the last day of:

- (c) a period during which a rights offer or invitation by the company remains open;
- (d) without limiting the generality of paragraph (e), a period during which there remains open:
 - (i) a share offer by the company that will, if accepted, result in a placement of shares in the company; or
 - (ii) a share invitation by the company that is issued to a person and will, if the person subscribes for or buys shares in the company as a result of an application or offer made by the person in response to the invitation, result in a placement of such shares; or
- (e) a period:
 - (i) beginning on a day when the company, or a person acting on its behalf, starts to negotiate with a view to placing shares in the company; and
 - (ii) ending on the day when the shares are placed or the negotiations stop for some other reason.

No rights issue or placement during offer period or within 3 months after buy-back

“133NC. (1) A company shall not:

- (a) during, or within 3 months after the last day of, the offer period of a buy-back offer made by the company; or
- (b) within 3 months after a day on which the company buys back shares;

make or issue a rights offer or invitation, place shares in the company or cause such shares to be placed.

“(2) A contravention of subsection (1) does not affect the validity or enforceability of an act, transaction, agreement, instrument, matter or thing.

“Subdivision P—Effect of Buy-back on Shares

Rights attaching to bought back shares

“133PA. Where a company buys back shares, all rights attached to the shares are suspended:

- (a) so long as the agreement constituting the buy-back is in effect; and
- (b) if the agreement is discharged by performance—until the shares are transferred to the company pursuant to the agreement.

Company not to dispose of bought back shares

“133PB. (1) A company shall not sell or otherwise dispose of, or agree to sell or otherwise dispose of, shares that it has bought back or units of such shares.

“(2) An agreement entered into in contravention of subsection (1) is void.

Cancellation of shares after transfer to company

“133PC. (1) Immediately after a transfer to a company of shares in the company is registered by the company:

- (a) the shares are cancelled; and
- (b) all rights attached to the shares are extinguished;

by force of this subsection.

“(2) Where shares are cancelled by force of subsection (1), the company’s issued share capital is reduced by the nominal value of the shares, but the company’s nominal share capital is not affected.

Accounting for money spent on buy-back where amount exceeds nominal value of shares

“133PD. (1) This section applies where a company buys back shares.

“(2) The company shall apply:

- (a) if it has a share premium account—the amounts (if any) standing to the credit of that account; and

(b) its distributable profits (if any);
in writing off the buy-back premium (if any) and, if paragraph (a) applies, shall not so apply any of those profits while an amount is standing to the credit of that account.

“(3) Until the buy-back premium (if any) has been written off in full, the company shall not pay, apply or otherwise deal with:

- (a) if paragraph (2) (a) applies—an amount standing to the credit of that account; or
- (b) in any case—any of its distributable profits.

“(4) In this section:

‘buy-back premium’ means the amount (if any) by which the total of:

- (a) the amounts (if any) that the company has paid for the buy-back; and
- (b) the greater of the following:
 - (i) the total of the amounts that the company has spent on acquiring the non-cash consideration (if any) provided by it for the buy-back;
 - (ii) the money value of the non-cash consideration (if any) so provided, as at the time when the last of it was so provided;

exceeds the nominal value of the shares.

“Subdivision Q—Effect of Insolvency

Buy-back offer by externally-administered company void

“133QA. Where an externally-administered company makes an offer under a buy-back scheme, the offer is void.

Effect of supervening insolvency on buy-back scheme

“133QB. (1) This section applies where, at the end of the offer period of an offer made under a buy-back scheme:

- (a) no solvency declaration by the company’s directors that relates to the buy-back scheme is in force; or
- (b) unless the company is a proprietary company and no buy-back made under the buy-back scheme exceeds the 10% in 12 months limit—such a declaration is in force but no auditor’s report on the declaration has been sent to the company by its auditor.

“(2) This section also applies where, after the end of the offer period, but before the end of the solvency period, of an offer made under a buy-back scheme, a solvency declaration by the company’s directors that relates to the buy-back scheme is revoked.

“(3) This section also applies where, during the solvency period of an offer made under a buy-back scheme:

- (a) a provisional liquidator of the company is appointed;

- (b) a court makes an order for the winding up of the company;
- (c) the company resolves that it be wound up; or
- (d) the company is placed under official management.

“(4) If the offer has been accepted and a binding agreement has resulted from the acceptance, the agreement is void.

“(5) Otherwise, the offer shall, despite section 133FC, be taken to have been withdrawn.

“(6) If the offer has been accepted by a person, the company shall, as soon as practicable, return to the person any documents that the person sent to the company with the acceptance.

Directors to indemnify insolvent company where consideration provided, or partly-paid shares acquired, under buy-back agreements

“133QC. (1) This section applies where:

- (a) a company is placed under official management or commences to be wound up;
- (b) during or after the 12 months ending on:
 - (i) in any case—the day of the commencement of the official management or winding up; or
 - (ii) if the company was insolvent throughout a period ending at that commencement—the day when the company last ceased, before that commencement, to be solvent;one or both of the following happened:
 - (iii) the company provided consideration under an agreement;
 - (iv) partly-paid shares were transferred to the company pursuant to an agreement; and
- (c) the agreement was entered into before, during or after that 12 months and:
 - (i) resulted from the acceptance of an offer made under a buy-back scheme in relation to shares in the company; or
 - (ii) constituted a buy-back by the company otherwise than under a buy-back scheme.

“(2) If subparagraph (1) (b) (iii) applies, then, to the extent (if any) that the consideration consisted of an amount of money, the indemnifying directors are jointly and severally liable to pay to the company an amount equal to that amount.

“(3) If subparagraph (1) (b) (iii) applies, then, to the extent (if any) that the consideration consisted of non-cash consideration, the indemnifying directors are jointly and severally liable to pay to the company an amount equal to:

- (a) if the company acquired the non-cash consideration in order to provide it under the agreement—the total of the amounts spent by the company on acquiring it; or

- (b) otherwise—the money value of the non-cash consideration when the last of it was so provided.

“(4) If subparagraph (1) (b) (iv) applies, the indemnifying directors are jointly and severally liable to pay to the company an amount equal to the total of the amounts (including amounts of premium) that remained unpaid on the partly-paid shares.

“(5) For the purposes of this section, an indemnifying director is a person who:

- (a) if subparagraph (1) (c) (i) applies—signed, as a director of the company, a solvency declaration by the company’s directors that related to the buy-back scheme and was in force at the end of the solvency period of the offer; or
- (b) if subparagraph (1) (c) (ii) applies:
 - (i) signed, as a director of the company, a solvency declaration by the company’s directors that related to the buy-back and was in force at the time when the agreement was entered into; or
 - (ii) if no such declaration was so in force—was a director of the company at that time and was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the entering into of the agreement by the company;

even if the person is no longer such a director.

“(6) A person who is an indemnifying director because of paragraph (5) (a) or subparagraph (5) (b) (i) is not liable under subsection (2) or (3) in relation to the consideration, or under subsection (4) in relation to the amounts referred to in that subsection, if it is established that:

- (a) at the time when he or she signed the declaration, the person had:
 - (i) the opinions described in it; and
 - (ii) reasonable grounds for those opinions; and
- (b) at all times when he or she was a director of the company after that time and before the end of the period referred to in paragraph (5) (a) or the time referred to in subparagraph (5) (b) (i), as the case may be, the person:
 - (i) was of the opinion that the company would remain solvent as mentioned in the declaration; and
 - (ii) had reasonable grounds for that opinion.

Relief from liability under section 133QC

“133QD. (1) Where, in a proceeding against a person in respect of an alleged liability of the person under section 133QC to pay an amount, it appears to the court that the person is or may be liable under that section to pay the amount but that he or she:

- (a) has acted honestly at all relevant times; and

- (b) having regard to all the circumstances of the case, ought fairly to be excused in relation to the liability;

the court may relieve him or her from the liability on such terms (if any) as the court thinks fit.

“(2) A person who believes on reasonable grounds that a proceeding will be begun against the person in relation to an alleged liability of the person under section 133QC may apply to the Court for relief.

“(3) On an application under subsection (2), the Court has the same power to relieve the person under subsection (1) as it would have if a proceeding against the person in respect of the alleged liability were pending in the Court.

“Subdivision R—Rights of Unpaid Sellers

Specific performance of buy-back agreements

“133RA. Subject to section 133RB, an agreement constituting a buy-back may be enforced by an order for specific performance made by a court of competent jurisdiction.

Buy-back agreement unenforceable while company insolvent

“133RB. (1) Subject to section 133RC, an agreement constituting a buy-back by a company is unenforceable while:

- (a) the company is being wound up;
- (b) there is a provisional liquidator of the company;
- (c) the company is under official management;
- (d) a receiver, or a receiver and manager, of property of the company, whether or not appointed by a court, is acting;
- (e) a compromise or arrangement between the company and its creditors or any class of them is being administered; or
- (f) subsection (2) applies to the company.

“(2) This subsection applies to a company on a particular day unless the company is solvent on that day and may reasonably be expected to remain solvent, throughout the period of 12 months starting on that day, even if:

- (a) each buy-back offer (if any) that relates to shares in the company and remains open as at that day is accepted, and the resulting agreement is completed, during that period; and
- (b) each agreement (if any) that constitutes a buy-back by the company and remains uncompleted as at that day is completed during that period.

“(3) The onus of establishing that an agreement is unenforceable because of this section lies on the company.

Unpaid seller may prove in winding up of company

“133RC. (1) This section applies where, immediately before the relevant date in relation to a winding up of a company, obligations of the company under an agreement constituting a buy-back by the company have not been fully performed.

“(2) Subject to this Division, another party to the agreement may claim in the winding up in respect of the company’s obligations under the agreement to that other party, in so far as they remain unperformed.

“(3) Subsection (2) does not limit the generality, or affect the operation, of section 438 or 439.

“(4) Section 454 does not apply in relation to the agreement.

“(5) A person is not entitled to a distribution of money or property in the winding up in connection with a claim in respect of obligations of the company under the agreement unless the seller’s obligations under the agreement, so far as they relate to the supply of documents in connection with the buy-back, have been discharged.

“(6) Subsection (5) does not affect a person’s entitlement to claim in the winding up.

Ranking of seller’s claim in winding up

“133RD. (1) This section applies where a company is wound up.

“(2) A seller’s claim against the company shall be postponed until all other claims in the winding up have been satisfied, other than:

- (a) any other seller’s claim against the company;
- (b) a sum due to a member of the company in that capacity, whether by way of dividends, profits or otherwise; or
- (c) a claim in connection with the adjustment of the rights of the contributories among themselves.

“(3) A seller’s claim against the company shall be taken not to be, and shall be paid in priority to, a sum of the kind referred to in paragraph (2) (b).

“(4) A person is not entitled to a distribution of money or property in connection with the adjustment of the rights of the contributories among themselves unless and until all seller’s claims against the company have been satisfied.

“(5) All seller’s claims against the company rank equally between themselves and, subject to subsection (2), shall be paid:

- (a) if the company’s property is sufficient to pay them all—in full; or
- (b) otherwise—proportionately.

“Subdivision S—Certificates and Declarations of Compliance

Certificate of compliance

“133SA. (1) This section applies where an offer made by a company under a buy-back scheme is accompanied by a copy of a certificate stating that this Division has been complied with in relation to each buy-back to be made under the buy-back scheme.

“(2) This section also applies where a certificate stating that this Division has been complied with in relation to a specified buy-back that a company proposes to make otherwise than under a buy-back scheme is given to a person.

“(3) A person to whom an offer is made under the buy-back scheme, or the person to whom the certificate is given, as the case may be, is not liable to have an order made against the person under subsection 130 (4) because of an agreement made or performed, or a transaction engaged in, by the person in reliance on the certificate.

“(4) No such agreement or transaction is invalid, or voidable under subsection 130 (2), because it:

- (a) is made or performed, or engaged in, as the case may be; or
- (b) is, for the purposes of section 130, related to an agreement made or performed, or to a transaction engaged in;

in contravention of section 129.

“(5) Subsections (3) and (4) do not apply if, on application by the company or a person who has suffered, or is likely to suffer, loss or damage as a result of the making or performance of an agreement, or the engaging in of a transaction, as mentioned in subsection (3), the Court declares by order that it is satisfied that the person referred to in subsection (1) or (2) became aware, before making the agreement or engaging in the transaction, that a condition prescribed by this Division had not been satisfied in relation to:

- (a) the buy-back that would result from the acceptance of the offer referred to in subsection (3); or
 - (b) the proposed buy-back specified in the certificate;
- as the case may be.

Presumptions about certain matters

“133SB. (1) In a proceeding, a document purporting to be a compliance certificate shall, unless the contrary is established, be presumed to be a certificate duly given for the purposes of section 133SA.

“(2) In a proceeding, a document purporting to be a copy of a compliance certificate shall, unless the contrary is established, be presumed to be a true copy of a certificate duly given for the purposes of section 133SA.

“(3) Where a person to whom an offer was made under a buy-back scheme has possession of a copy of a compliance certificate relating to the

buy-back scheme, it shall be presumed, unless the contrary is established, that the copy accompanied the offer.

“(4) A person who has possession of a compliance certificate shall, unless the contrary is established, be presumed to be the person to whom the certificate was given.

“(5) For the purposes of subsection 133SA (5), a person shall, unless the contrary is established, be presumed to have been aware at a particular time of any matter of which an employee or agent of the person having duties, or acting on the person’s behalf, in relation to the proposed buy-back concerned was aware at that time.

Who must sign compliance certificate

“133SC. A compliance certificate shall be signed by at least 2 directors, or by a director and a secretary, of the company.

Offences relating to compliance certificates: buy-back schemes

“133SD. (1) Where some but not all of the offers made by a company under a buy-back scheme are accompanied by a compliance certificate relating to the buy-back scheme, the company contravenes this subsection.

“(2) Where an offer made by a company to a person under a buy-back scheme was accompanied by a copy of a compliance certificate relating to the buy-back scheme and a buy-back made under the buy-back scheme contravenes section 129, the company shall be taken to have contravened this subsection by sending the copy to the person.

“(3) A company that contravenes subsection (1) or (2) is not guilty of an offence by virtue of this section or section 570, but each officer of the company who is in default contravenes that subsection.

“(4) It is a defence to a prosecution for a contravention of subsection (2) if it is established that when the copy of the certificate was sent to the person the defendant believed on reasonable grounds that no buy-back made under the buy-back scheme would contravene section 129.

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

Offences relating to compliance certificates: other buy-backs

“133SE. (1) Where:

- (a) a person signs, or gives to another person, a compliance certificate relating to a buy-back that a company proposes to make, at a particular time or within a particular period, otherwise than under a buy-back scheme; and
- (b) the buy-back is made before, at, or within a reasonable period after, that time or the end of the first-mentioned period and contravenes section 129;

the person shall be taken to have contravened this subsection by signing the certificate, or giving it to the other person, as the case may be.

“(2) It is a defence to a prosecution for a contravention of subsection (1) if it is established that the defendant, when signing the certificate or giving it to the other person, as the case requires, believed on reasonable grounds that the proposed buy-back would not, if made as mentioned in paragraph (1) (b), contravene section 129.

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

Declaration by Court of substantial compliance

“133SF. Where, on application to the Court by a party to an agreement or proposed agreement constituting a buy-back, the Court is satisfied that a particular condition prescribed by this Division has been substantially satisfied in relation to the buy-back or proposed buy-back, the Court may by order declare that that condition has been satisfied in relation to the buy-back or proposed buy-back.

“Subdivision T—Notifying Commission and Securities Exchanges about Buy-backs

Company to notify Commission of buy-backs

“133TA. (1) Within the notification period in relation to the last day of the offer period of an offer made by it under a buy-back scheme, a company shall lodge with the Commission a written notice that specifies the buy-back scheme and sets out:

- (a) the total number of shares in relation to which offers made under the buy-back scheme have been accepted; and
- (b) particulars of the total consideration that, under the agreements resulting from the acceptance of such offers, has been or is to be provided for the purchase of those shares.

“(2) Within the notification period in relation to a day on which a buy-back is made otherwise than under a buy-back scheme, the company shall lodge with the Commission a written notice that specifies the buy-back and sets out:

- (a) the number of shares bought back; and
- (b) particulars of the consideration that has been or is to be provided for the buy-back.

“(3) Within the notification period in relation to a day on which an agreement constituting a buy-back is rescinded, or is discharged otherwise than by performance, the company shall lodge with the Commission a written notice that specifies the agreement and sets out:

- (a) when the agreement was rescinded or discharged; and
- (b) the number of shares to which the agreement related.

“(4) For the purposes of this section, a company lodges a notice within the notification period in relation to a particular day if, and only if, it lodges the notice:

- (a) in the case of a listed body—before 9.30 a.m. on the first day that is later than that day and is a trading day of a notifiable exchange or a business day; or
- (b) otherwise—within 7 days after that day.

Listed company to notify securities exchanges of buy-backs

“133TB. A listed body that section 133TA requires to lodge a notice with the Commission shall give to each notifiable exchange, before 9.30 a.m. on the next trading day of that notifiable exchange after the day referred to in subsection 133TA (1), (2) or (3), as the case requires, a copy of the notice.

“Subdivision U—Listed Company to Notify Members about Share Cancellations

Notifying member whose shares were cancelled

“133UA. A company that is a listed body shall, within 2 business days after shares included in a class of voting shares in the company and held by a person are cancelled by force of subsection 133PC (1), send to the person a written notice that:

- (a) states that the shares have been cancelled;
- (b) specifies the day of the cancellation; and
- (c) specifies the number of issued shares in that class as at the time immediately after the cancellation.

Notifying members generally

“133UB. (1) Subsection (3) applies where, as at the end of a day on which shares in a class of voting shares in a company that is a listed body are transferred to the company pursuant to an agreement constituting a buy-back made under a buy-back scheme, each agreement constituting a buy-back made under the buy-back scheme has been discharged, whether by performance or otherwise, or rescinded.

“(2) Subsection (3) also applies where, as at the end of a day on which shares in a class of voting shares in a company that is a listed body were transferred to the company, the number calculated in accordance with the following formula exceeds 5:

$$\frac{(A - B) \times 100}{A};$$

where:

A is the number of issued shares in that class as at:

- (a) if the company has previously become required to give under this section notices relating to shares in that class—the time when the company last became so required; or
- (b) otherwise—the start of the first day on which shares in that class were transferred to the company after the commencement of this Part;

B is the number of issued shares in that class as at the end of the first-mentioned day.

“(3) Within 2 business days after the day first referred to in subsection (1) or (2), as the case may be, the company shall send to each of its members a written notice specifying:

- (a) the day on which the notice is sent; and
- (b) the number of issued shares in that class as at the beginning of the last-mentioned day.

“(4) For the purposes of subsection (2), a company that this section requires to send notices because of a transfer of shares shall be taken to have become, at the end of the day of the transfer, required to give the notices.

“Subdivision V—Register of Buy-backs

Company to keep register

“133VA. A company:

- (a) whose articles contain a buy-back authorisation; or
- (b) that has at any time bought back shares;

shall establish a register for the purposes of this Division and keep it in accordance with this Subdivision.

Particulars of buy-back schemes

“133VB. (1) As soon as practicable after making offers under a buy-back scheme, the company shall include in the register a copy of one of the offers.

“(2) As soon as practicable after an offer made by the company under a buy-back scheme is accepted, the company shall make in the register an entry that refers to the buy-back scheme and sets out:

- (a) the name of the offeree; and
- (b) the date of the acceptance.

Particulars of other buy-backs

“133VC. As soon as practicable after a buy-back is made by the company otherwise than under a buy-back scheme, the company shall:

- (a) include in the register a copy of the agreement constituting the buy-back; and
- (b) make in the register an entry that refers to the buy-back and sets out:
 - (i) the name of each party to the agreement (other than the company);
 - (ii) the date on which the agreement was made;
 - (iii) the number of shares bought back; and

- (iv) particulars of the consideration that has been or is to be provided for the buy-back.

Alteration of register where buy-back does not proceed

“133VD. (1) As soon as practicable after an agreement resulting from the acceptance of an offer made by the company under a buy-back scheme becomes void, or such an offer is withdrawn, by virtue of section 133QB, the company shall remove from the register:

- (a) the copy of an offer made under the buy-back scheme included under subsection 133VB (1); and
- (b) each entry made under subsection 133VB (2) because of the acceptance of an offer made under the buy-back scheme.

“(2) As soon as practicable after an agreement constituting a buy-back by the company is rescinded, or is discharged otherwise than by performance, the company shall remove from the register the entry made under subsection 133VB (2) because of the acceptance that resulted in the agreement, or made under section 133VC because of the agreement, as the case requires, and the copy (if any) of the agreement included under section 133VC.

“(3) A reference in this section to removing an entry or copy from the register is a reference to:

- (a) including the copy or entry in a part of the register separate from the part in which copies are included, and entries are made, under sections 133VB and 133VC; and
- (b) removing the copy or entry from the last-mentioned part.

Entries in register after cancellation of shares

“133VE. (1) As soon as practicable after shares in the company are transferred to the company pursuant to an agreement, the company shall include in the register, in relation to the entry:

- (a) made under subsection 133VB (2) because of the acceptance that resulted in the agreement; or
- (b) made under section 133VC because of the agreement;

as the case requires, a notation indicating that the shares have been cancelled and specifying the day of the cancellation.

“(2) As soon as practicable after a day on which shares in a class of shares in the company are cancelled by force of subsection 133PC (1), the company shall include in the register an entry specifying:

- (a) the number of shares in that class that were cancelled on that day; and
- (b) the number of issued shares in that class as at the end of that day.

Inspection and copies of register

“133VF. (1) The register shall be kept at the company’s registered office and shall be open for inspection:

- (a) by any member or creditor of the company—without charge; and

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

“(2) A person may request the company to give the person a copy of the register or any part of it and, where such a request is made, the company shall comply with the request:

- (a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves; or
- (b) otherwise—within 21 days after the request is made or within such longer period as the Commission approves.”.

Proofs of debts

17. Section 438 of the Principal Act is amended by inserting in subsection (2) “133RD,” before “204”.

PART 4—AMENDMENTS OF COMPANIES ACT 1981: ON-MARKET SHARE BUY-BACKS

Interpretation

18. Section 133BB of the Principal Act is amended by inserting the following definition:

“ ‘on-market purchase’ has the meaning given by section 133BD;”.

19. After section 133BC of the Principal Act the following section is inserted:

On-market purchase

“133BD. (1) An on-market purchase is a buy-back by a listed body, at an official meeting of a securities exchange, in the ordinary course of trading on a stock market of that securities exchange.

“(2) For the purposes of subsection (1), an acquisition is not made in the ordinary course of trading on a stock market of a securities exchange if, when reported to the securities exchange, the transaction under which the acquisition is made is, under the securities exchange’s rules, described as ‘special’.”.

Approval, by special resolution passed by special majority, of off-market selective buy-back by public company

20. Section 133JA of the Principal Act is amended by inserting in paragraph (b) “on-market purchase, an” after “an” (first occurring).

Advertising proposed buy-backs

21. Section 133LA of the Principal Act is amended by inserting in paragraph (1) (c) “on-market purchase, an” after “an” (first occurring).

**PART 5—AMENDMENTS OF COMPANIES ACT 1981:
BUY-BACKS OF PRESCRIBED INTERESTS**

Interpretation

22. Section 164 of the Principal Act is amended:

(a) by inserting in subsection (1) the following definitions:

“‘buy-back arrangements’, in relation to a deed relating to prescribed interests, means arrangements made to ensure that the management company can comply with a buy-back covenant contained in the deed;

‘buy-back covenant’, in relation to a deed relating to prescribed interests, means a covenant binding the management company that it will, if asked by the holder of a prescribed interest to which the deed relates, buy the prescribed interest, or cause it to be bought, from the holder at a price calculated in accordance with the deed;”;

(b) by omitting from subsection (3) “, (ii) and (iii),” and substituting “and (ii), paragraphs 168 (1) (ba) and (bb) and subparagraphs 168 (1) (c) (ia) and (ca) (ii),”;

(c) by adding at the end the following subsection:

“(4) Where, as at the commencement of section 22 of the *Co-operative Scheme Legislation Amendment Act 1989*:

(a) approval had been granted to a deed under this Division;
and

(b) the deed contains a covenant to the effect of the covenant required to be contained in a deed under paragraph 168 (1) (ba);

the deed shall, if it does not contain the covenants concerned, be deemed to contain covenants to the effect of the covenants required to be contained in a deed under paragraph 168 (1) (bb) and subparagraphs 168 (1) (c) (ia) and (ca) (ii).”.

Covenants to be included in deeds

23. Section 168 of the Principal Act is amended:

(a) by omitting from subparagraph (1) (b) (ii) “deed;” and substituting “deed; and”;

(b) by omitting subparagraph (1) (b) (iii);

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

“(ba) a buy-back covenant;

Co-operative Scheme Legislation Amendment No. 92, 1989

- (bb) a covenant binding the management company to make, and to maintain at all times, adequate buy-back arrangements;
- (c) a covenant binding the trustee or representative:
 - (i) to exercise all due diligence and vigilance in carrying out his, her or its functions and duties and in protecting the rights and interests of the holders of the prescribed interests to which the deed relates;
 - (ia) to supervise the making and maintaining of adequate buy-back arrangements and to monitor the maintaining of such arrangements and the extent of compliance with the buy-back covenant;
 - (ii) to keep, or cause to be kept, proper books of accounts in relation to those prescribed interests; and
 - (iii) to cause a registered company auditor to audit those accounts at the end of each financial year;
- (ca) a covenant binding the trustee or representative to send, or cause to be sent, within 2 months after the end of each financial year, to each of the holders of those prescribed interests:
 - (i) a statement of the accounts for that financial year in relation to those prescribed interests;
 - (ii) a statement that describes the buy-back arrangements in effect when it is sent and states whether or not, in the opinion of the trustee or representative, those arrangements are adequate; and
 - (iii) a copy of the auditor's report on those accounts;";
- (d) by inserting after subsection (1) the following subsection:

“(1A) Nothing in subsection (1) limits the generality of anything else in it.”.

24. After section 174 of the Principal Act the following section is inserted:

Buy-back covenant and buy-back arrangements

“174A. (1) Where a deed ceases after the commencement of section 24 of the *Co-operative Scheme Legislation Amendment Act 1989* to be an approved deed, the management company may nevertheless comply with the terms of a buy-back covenant contained, or taken to be contained, in the deed.

“(2) As soon as practicable after the trustee or representative in relation to a deed that is or has at any time been an approved deed becomes of the opinion that the buy-back arrangements are inadequate, he, she or it shall

notify the management company in writing that he, she or it is of that opinion.

“(3) Where, at the end of the period of 21 days starting on the day on which a notice is given under subsection (2), the trustee or representative is still of that opinion, he, she or it shall, as soon as practicable after the end of that period, notify the Commission in writing that he, she or it is of that opinion.

“(4) Where, at the end of the period of 21 days starting on the day on which a notice is given under subsection (2), the buy-back arrangements are inadequate, the management company contravenes this subsection.

“(5) Where:

- (a) the management company in relation to a deed that is or has at any time been an approved deed contravenes a buy-back covenant contained in the deed; and
- (b) as at the end of 14 days after the contravention, neither the management company nor the trustee or representative has notified the Commission in writing of the contravention;

the management company and the trustee or representative each contravene this subsection.

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

PART 6—AMENDMENTS OF COMPANIES ACT 1981: ANNUAL RETURNS

Annual return

25. Section 263 of the Principal Act is amended:

- (a) by omitting from subsection (1B) “may” and substituting “shall”;
- (b) by inserting after subsection (1B) the following subsections:

“(1C) A company that is required to comply with subsection (1B) in relation to a partly completed annual return shall be taken not to comply with subsection (1) in relation to the financial year concerned unless and until it complies with subsection (1B) in relation to that return.

“(1D) A company need not comply with subsection (1B) in relation to a partly completed annual return if it instead completes and lodges, in accordance with this Division (other than that subsection), an annual return in a form in relation to which an approval is in force under subsection (1E) in relation to the case.

“(1E) The Commission may, for the purposes of subsection (1D), approve in writing, for use in specified cases, forms of annual return that are not inconsistent with the form or forms prescribed for the purposes of subsection (1).”;

- (c) by inserting after subsection (4) the following subsection:

“(4A) The amendment of subsection (1B) of this section made by section 25 of the *Co-operative Scheme Legislation Amendment Act 1989* applies, and subsections (1C), (1D) and (1E) of this section apply, in relation to a company in relation to a financial year of the company that ends at or after the commencement of that section.”.

PART 7—PILOT SCHEME FOR THE FLEXIBLE ACCELERATED SECURITY TRANSFER SYSTEM

Division 1—Amendments of Companies Act 1981

Interpretation

26. Section 189 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“‘associate’, in relation to a broker, means:

- (a) if the broker is a member of a firm of brokers and is not a broker’s agent—any other member of the firm; or
- (b) if the broker is another broker’s agent or employee—the other broker or, if the other broker is a member of a firm of brokers, any member of that firm;

‘duly completed’, in relation to an instrument, has a meaning affected by subsection 191 (3);

‘duly completed Part 1’ means an instrument that has been duly completed in accordance with Part 1 of Form 1, 2, 3, 5, 6 or 7;

‘in accordance with’ includes to the effect of;

‘issue’, in relation to a marketable security, includes make available;

‘issuing body’, in relation to a marketable security or a right to a marketable security, means the body (whether incorporated or not) that, or other person who, issued, or proposes to issue, the security or right;”.

What is a sufficient instrument of transfer

27. Section 191 of the Principal Act is amended by omitting from subsection (3) “section,” and substituting “Division,”.

28. Section 194 of the Principal Act is repealed and the following sections are substituted:

Effect where instrument purports to bear transferor’s broker’s stamp

“194. (1) This section applies where an instrument relating to marketable securities or rights to marketable securities:

- (a) is a duly completed Part 1; and
- (b) bears a stamp that purports to be that of the transferor’s broker.

“(2) Each associate (if any) of the broker (in this section called the ‘designated broker’) of whom the stamp referred to in paragraph (1) (b)

Co-operative Scheme Legislation Amendment No. 92, 1989

purports to be the stamp and, unless the designated broker is a broker's agent, the designated broker shall be taken to have warranted:

- (a) that the statements in the instrument that purport to be certified by the transferor's broker are accurate; and
- (b) that the transferor is:

- (i) the registered holder of, or entitled to be registered as the holder of, the securities; or
- (ii) is entitled to the rights;

as the case may be, and is legally entitled or authorised to sell or dispose of the securities or rights.

“(3) If the instrument has been duly completed in accordance with Part 1 of Form 1 or 5, then:

- (a) if, when the instrument was stamped with the stamp referred to in paragraph (1) (b), the designated broker had authority to sell the securities or rights, on the transferor's behalf, to:
 - (i) the transferee;
 - (ii) particular persons who include, or particular classes of persons at least one of which includes, the transferee; or
 - (iii) any person at all;

the designated broker shall be taken to have been authorised to execute, and to have executed, the instrument on the transferor's behalf; and

- (b) each associate (if any) of the designated broker and, unless the designated broker is a broker's agent, the designated broker is or are, as the case requires, liable to indemnify:
 - (i) the issuing body in relation to the securities or rights;
 - (ii) the transferor;
 - (iii) the transferee; and
 - (iv) the transferee's broker;

against any loss or damage arising if:

- (v) the stamp referred to in paragraph (1) (b) is not in fact the designated broker's stamp; or
- (vi) apart from the effect of paragraph (a) of this subsection, the designated broker was not authorised to execute the instrument on the transferor's behalf.

Warranties by securities exchange where instrument purports to bear its stamp

“194A. (1) This section applies where an instrument relating to marketable securities or rights to marketable securities:

- (a) has been duly completed in accordance with Part 1 of Form 3 or 7; and
- (b) bears a stamp that purports to be that of a securities exchange.

“(2) The securities exchange shall be taken to have warranted that:

- (a) the statements in the instrument that purport to be certified by a securities exchange are accurate; and
- (b) the transferor is:
 - (i) the registered holder of, or entitled to be registered as the holder of, the securities; or
 - (ii) entitled to the rights;as the case may be, and is legally entitled or authorised to sell or dispose of the securities or rights.

Indemnities by securities exchange and broker where instruments purport to bear their stamps

“194B. (1) This section applies where:

- (a) an instrument (in this section called the ‘first instrument’) relating to marketable securities or rights to marketable securities:
 - (i) has been duly completed in accordance with Part 1 of Form 1 or 5; and
 - (ii) bears a stamp that purports to be that of the transferor’s broker; and
- (b) another instrument:
 - (i) relates to any or all of the securities or rights;
 - (ii) has been duly completed in accordance with Part 1 of Form 3 or 7; and
 - (iii) bears a stamp that purports to be that of a particular securities exchange.

“(2) The securities exchange is liable to indemnify:

- (a) the issuing body in relation to the securities or rights;
- (b) the transferor in relation to the other instrument;
- (c) the transferee in relation to the other instrument; and
- (d) the broker of the transferee in relation to the other instrument;

against any loss or damage arising if:

- (e) the stamp referred to in subparagraph (1) (a) (ii) is not in fact the stamp of the broker (in this section called the ‘designated broker’) of whom it purports to be the stamp; or
- (f) apart from the effect of paragraph 194 (3) (a), the designated broker was not authorised to execute the first instrument on behalf of the transferor in relation to the first instrument.

“(3) Each associate (if any) of the designated broker and, unless the designated broker is a broker’s agent, the designated broker is or are, as the case requires, liable to indemnify the securities exchange against any loss or damage arising as mentioned in subsection (2).

“(4) Nothing in this section limits the operation of anything in section 194 or 194A or of anything else in this section.

Joint and several warranties and liabilities

“194C. (1) If 2 or more persons are taken to have warranted as mentioned in paragraph 194 (2) (a) or (b), they shall be taken to have so warranted jointly and severally.

“(2) If 2 or more persons are liable as mentioned in paragraph 194 (3) (b) or subsection 194B (3), they are so liable jointly and severally.

Additional operation of sections 194 to 194C

“194D. (1) Sections 194 to 194C, inclusive, apply in relation to:

- (a) marketable securities within the meaning of a corresponding law; or
- (b) rights to marketable securities within the meaning of a corresponding law;

and, for the purposes of those sections as so applying:

- (c) subject to paragraph (d) of this subsection, an expression has the same meaning in those sections as in that corresponding law; and
- (d) a reference in those sections to an instrument bearing a stamp of a particular kind shall be taken to be a reference to the instrument bearing a stamp of that kind that purports to have been stamped in the Territory.

“(2) The effect that a provision has by virtue of subsection (1) is additional to, and does not prejudice, the effect the provision otherwise has.”.

Offences

29. Section 198 of the Principal Act is amended:

- (a) by inserting after subsection (1) the following subsection:

“(1A) A person shall not, in the Territory, stamp with a stamp that purports to be that of the transferor’s broker an instrument that may be used as a sufficient instrument of transfer under this Division or a corresponding law unless:

- (a) the stamp is in fact that of the transferor’s broker;
 - (b) apart from the effect of paragraph 194 (3) (a), or of the provision of that law that corresponds with that paragraph, as the case may be, the transferor’s broker is authorised to execute the instrument on the transferor’s behalf; and
 - (c) the person is the transferor’s broker or is authorised so to stamp the instrument on the transferor’s broker’s behalf.”;
- (b) by omitting from paragraph (2) (b) “instrument of transfer” and substituting “Part 1, or a duly completed Part 1 within the meaning of that corresponding law, as the case may be.”;
 - (c) by omitting from subsection (2) all the words after “with” (second occurring) and substituting “the issuing body in relation to the securities or rights a duly completed Part 1, or a duly completed

Part 1 within the meaning of that corresponding law, as the case may be, relating to the securities or rights.”;

- (d) by inserting in subsection (5) “, (1A)” after “(1)”;
- (e) by omitting subsection (7).

Powers of Commission: Divisions 1, 2, 5 and 6 and section 552

30. Section 215C of the Principal Act is amended by omitting subsections (4), (5) and (8).

31. After section 215C of the Principal Act the following sections are inserted:

Powers of Commission: Divisions 7 and 8 and Schedule 4

“215DA. (1) This section applies to Divisions 7 and 8.

“(2) The Commission’s power to grant an exemption or make a declaration under this section may be exercised in relation to securities or a class of securities only where the Commission is satisfied that:

- (a) if the exemption were granted or the declaration were made, the interests of the holders of those securities or of securities in that class would continue to have adequate protection; and
- (b) the granting of the exemption or the making of the declaration would make transfer of those securities, or of securities in that class, more efficient.

“(3) The Commission may, by writing, exempt particular securities, or a particular class of securities, either generally or as otherwise provided in the exemption, and either unconditionally or subject to such conditions as are specified in the exemption, from the operation of all or any of the provisions of:

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

“(4) The Commission may, by writing, declare that a Division to which this section applies, and regulations made for the purposes of the provisions of that Division or any of them, shall have effect in their application in relation to particular securities, or a particular class of securities, either generally or as otherwise provided in the declaration, as if a specified provision or provisions of that Division or of those regulations were omitted, modified or varied in a manner specified in the declaration.

“(5) The Commission may, by writing, declare that, for the purposes of Division 8 in its application in relation to particular securities, or a particular class of securities, either generally or as otherwise provided in the declaration, Schedule 4 shall have effect as if:

- (a) a specified form or forms in that Schedule were omitted, modified or varied as specified in the declaration; or

Co-operative Scheme Legislation Amendment No. 92, 1989

- (b) a form set out, or otherwise specified, in the declaration, or each of 2 or more such forms, were inserted in, or added to, that Schedule, as the case requires.

“(6) A declaration made in accordance with subsection (4) or (5) has effect accordingly.

“(7) In this section:

‘securities’ means:

- (a) securities of a corporation; or
- (b) marketable securities, or rights to marketable securities, within the meaning of Division 8 or of provisions of a law of a participating State or participating Territory that correspond with that Division.

Exemptions and declarations under sections 215C and 215DA

“215DB. (1) The Commission shall cause a copy of an exemption or declaration under section 215C or 215DA to be published in the *Gazette*, but failure to do so does not affect the validity of the exemption or declaration.

“(2) A person shall not contravene a condition to which an exemption under subsection 215C (2) or 215DA (3) is subject.

“(3) Where a person has contravened a condition to which an exemption under subsection 215C (2) or 215DA (3) is subject, the Court may, on the application of the Commission, order the person to comply with the condition.”.

Schedule 4

32. Schedule 4 to the Principal Act is amended:

- (a) by omitting from Part 1 of Form 1 all the material in the right-hand column from and including “Transferor’s broker” to and including “(place and date of affixing stamp)”;
- (b) by omitting from Part 1 of Form 1 all the material from and including “I (*or* We) hereby transfer” to and including “Date(s) signed:” and substituting the following:

“The transferor(s) hereby transfer(s) the above securities to the transferee(s) named in Part 2 hereof or to the several transferees named in Part 2 of the Broker’s Transfer Form(s) or Split Transfer Form(s) relating to the above securities.

This transfer is executed on the transferor’s behalf by the transferor’s broker, who certifies:

- (a) as to the validity of documents; and
- (b) that stamp duty, if payable, has been or will be paid.

[Transferor's broker's stamp]

Affixed at
on
(place and date of affixing stamp)";

- (c) by omitting from Part 1 of Form 5 all the material in the right-hand column from and including "Transferor's Broker" to and including "(place and date of affixing stamp)";
- (d) by omitting from Part 1 of Form 5 all the material from and including "I (or We) hereby renounce" to and including "Date(s) signed:" and substituting the following:

"The transferor(s) hereby renounce(s) and transfer(s) the above rights in favour of the transferee(s) named in Part 2 hereof or to the several transferees named in Part 2 of the Broker's Renunciation and Transfer Form(s) or Renunciation and Split Transfer Form(s) relating to the above rights.

This transfer and renunciation is executed on the transferor's behalf by the transferor's broker, who certifies:

- (a) as to the validity of documents; and
- (b) that stamp duty, if payable, has been or will be paid.

[Transferor's broker's stamp]

Affixed at
on
(place and date of affixing stamp)".

Division 2—Amendments of Securities Industry Act 1980²

Interpretation

33. Section 122AA of the Principal Act is amended:

- (a) by inserting ", 6A" after "6" in the definition of "claim" in subsection (1);
- (b) by inserting in subsection (2) "122PC (b) or" before "122T";
- (c) by inserting in subsection (2) "(1A)," after "122ZA (1),";
- (d) by omitting from subsection (2) "this Act" (first occurring) and substituting "a relevant Act";
- (e) by omitting from subsection (2) "this Act" (second occurring) and substituting "that relevant Act".

Payments out of Fund

34. Section 122CD of the Principal Act is amended:

- (a) by inserting in subsection (2) ", 6A" after "6";
- (b) by inserting in paragraph (3) (a) "or 6A" after "6".

35. After section 122P of the Principal Act the following Division is inserted:

“Division 6A—Unauthorised transfer

Interpretation

- “122PA. In this Division, unless the contrary intention appears:
- ‘claim’ means a claim under this Division against the Corporation;
 - ‘dealer’ means a member of a participating exchange;
 - ‘securities’ means marketable securities, or rights to marketable securities, within the meaning of:
 - (a) Division 8 of Part IV of the *Companies Act 1981*; or
 - (b) provisions of a law of a participating State or participating Territory that correspond with that Division.

Execution of transfer on a person’s behalf as transferor

“122PB. For the purposes of this Division, a dealer shall be taken to have executed a document of transfer in relation to securities on behalf of a person as transferor of the securities if the document states that the person is the transferor of the securities and purports to have been stamped with the dealer’s stamp as the transferor’s broker.

Unauthorised execution of transfer

- “122PC. Sections 122PD to 122PK, inclusive, apply where:
- (a) a dealer executes a document of transfer of securities (in this Division called the ‘transferred securities’) on behalf of a person (in this Division called the ‘transferor’) as transferor of the securities; and
 - (b) apart from the effect of paragraph 194 (3) (a) of the *Companies Act 1981*, the transferor did not authorise the execution (in this Division called the ‘unauthorised execution’) of the document.

Claim by transferor

“122PD. If, as a result of the unauthorised execution, the transferor suffers loss in respect of any of the transferred securities, the transferor may make a claim in respect of the loss.

Claim by transferee or sub-transferee

- “122PE. (1) If, as a result of the unauthorised execution, a person, being:
- (a) in any case—the transferee in relation to the document; or
 - (b) if the transferee in relation to the document has disposed of any of the transferred securities—a successor in title of that transferee to any of the transferred securities;

suffers loss in respect of any of the transferred securities, the person may make a claim in respect of that loss.

“(2) A person is not entitled to make a claim under this section if the person:

- (a) had actual knowledge that the transferor did not in fact authorise the execution; or
- (b) is an excluded person in relation to the dealer.

How and when claim may be made

“122PF. (1) A claim shall be in writing and shall be served on the Corporation within 6 months after the day on which the claimant first became aware that the claimant had suffered loss as a result of the unauthorised execution.

“(2) A claim that is not made within the period referred to in subsection (1) is barred unless the Board otherwise determines.

How claim is to be satisfied

“122PG. (1) Where the Board is satisfied that a claimant under section 122PD or 122PE is entitled to make the claim, the Corporation shall allow the claim.

“(2) If the Corporation allows the claim and the claimant has, as a result of the unauthorised execution, ceased to hold some or all of the transferred securities, the Corporation shall:

- (a) subject to paragraph (b), supply to the claimant securities of the same kind and number as those of the transferred securities that the claimant has so ceased to hold; or
- (b) if the Board is satisfied that it is not practicable for the Corporation to obtain such securities, or to obtain such securities within a reasonable time—pay to the claimant the amount that, as at the time when the Board decides that it is so satisfied, is the actual pecuniary loss suffered by the claimant, in respect of the transferred securities, as a result of the unauthorised execution (other than loss suffered as mentioned in subsection (3)).

“(3) If the Corporation allows the claim, it shall pay to the claimant the amount that, as at the time when the claim is allowed, or the Board decides as mentioned in paragraph (2) (b), as the case requires, is the actual pecuniary loss suffered by the claimant, as a result of the unauthorised execution, in respect of payments or other benefits:

- (a) in any case—to which the claimant would have become entitled, as the holder of such of the transferred securities as the claimant has, as a result of the unauthorised execution, ceased to hold, if the claimant had continued to hold the securities concerned until that time; or
- (b) if the claim was made under section 122PE—that the claimant has received as holder of any of the transferred securities.

“(4) For the purposes of this section, where securities are purportedly transferred from a person to another person, the first-mentioned person shall be taken to cease to hold, and the other person shall be taken to hold, the

securities even if the other person did not by virtue of the transfer get a good title to the securities.

Discretionary further compensation to transferor

“122PH. (1) If the Corporation allows a claim made under section 122PD and the Board is satisfied that the supply of securities, or the payment of money, or both, as the case requires, to the claimant in accordance with section 122PG will not adequately compensate the claimant in respect of a pecuniary or other gain that the claimant might, if the claimant had continued to hold the transferred securities, have made but did not in fact make, the Board may determine in writing that there be paid to the claimant in respect of that gain a specified amount that the Board considers to be fair and reasonable in all the circumstances.

“(2) If a determination is made under subsection (1), the Corporation shall pay to the claimant the amount specified in it.

Nexus between dealer and Territory

“122PJ. Neither of sections 122PD and 122PE entitles a person to make a claim unless the dealer was on the day of the unauthorised execution a member of a participating exchange and:

- (a) if on that day the dealer was carrying on (whether on his, her or its own account or in partnership) a business of dealing in securities—that business was carried on in the Territory; or
- (b) otherwise—the last business of dealing in securities that the dealer carried on (whether on his, her or its own account or in partnership) before that day was carried on in the Territory.

Preventing double recovery

“122PK. If:

- (a) a provision of a law of a participating State or participating Territory that corresponds with section 122PD or 122PE entitles a person to make a claim in respect of loss; and
- (b) the Corporation allows the claim;

the Corporation shall not allow a claim that that section entitles the person to make in respect of that loss.”.

No claim in certain other cases

36. Section 122V of the Principal Act is amended by omitting from paragraph (2) (b) “if”.

Substitution of heading

37. The heading to Division 8 of Part IXA of the Principal Act is repealed and the following heading is substituted:

“Division 8—Claims generally”.

38. Section 122YD of the Principal Act is repealed and the following section is substituted:

Application of Fund in respect of certain claims

“122YD. (1) The Corporation:

- (a) may buy securities in order to comply with subsection 122K (2) or 122M (2), paragraph 122PG (2) (a) or subsection 122R (3); and
- (b) may pay money out of the Fund for the purpose of so buying securities or for any other purpose connected with complying with that subsection or paragraph.

“(2) Securities bought by the Corporation as mentioned in subsection (1) form part of the Fund until they are supplied in accordance with this Part to a claimant or are sold in accordance with subsection (3).

“(3) Where:

(a) the Board:

- (i) makes in relation to a claim in respect of a purchase of securities a determination under section 122N;
- (ii) decides that it is not practicable for the Corporation to obtain, or to obtain within a reasonable time, securities in order to comply with paragraph 122PG (2) (a) in relation to a claim; or
- (iii) makes in relation to a claim a determination under subsection 122S (1); and

(b) the Corporation has, before the making of the determination or decision, bought securities in order to:

- (i) supply to the claimant settlement documents in relation to the purchase;
- (ii) comply with paragraph 122PG (2) (a) in relation to the claim; or
- (iii) supply under subsection 122R (3), in respect of the claim, securities or documents of title to securities;

as the case may be;

the Corporation shall, as soon as practicable after the making of the determination or decision, sell the securities so bought and pay the proceeds of sale into the Fund.

“(4) In this section:

‘claim’ means a claim under Division 6, 6A or 7.”.

Arbitration of amount of cash settlement of certain claims

39. Section 122YH of the Principal Act is amended by omitting paragraph (1) (a) and substituting the following paragraph:

“(a) section 122N or 122PG or subsection 122S (1) or (2) requires the Corporation to pay to a person the amount that was at a particular

time the amount of the actual pecuniary loss suffered by the person in respect of a particular matter; and”.

Subrogation of Corporation to claimant’s rights etc.

40. Section 122ZA of the Principal Act is amended:

- (a) by omitting from subsections (1) and (2) “shall be deemed to be” and substituting “is”;
- (b) by inserting after subsection (1) the following subsection:

“(1A) Where the Corporation allows a claim made under Division 6A in respect of loss suffered, in respect of securities, because of an unauthorised execution of a document, the Corporation is subrogated to all the rights and remedies that the claimant has in relation to the securities because of the unauthorised execution.”;

- (c) by omitting from subsection (2) “Board” and substituting “Corporation”;
- (d) by omitting from subsection (3) “to be deemed to be”;
- (e) by omitting from paragraph (3) (a) “subject-matter” and substituting “subject matter”;
- (f) by inserting in subsection (4) “, 6A” after “6”.

Instalment payments

41. Section 122ZD of the Principal Act is amended by inserting in subsection (2) “, 6A” after “6”.

PART 8—PARTICIPANTS IN THE SECURITIES AND FUTURES INDUSTRIES

Division 1—Amendments of Securities Industry Act 1980²

42. After section 3 of the Principal Act the following heading and section are inserted:

“PART 1A—INTERPRETATION

Effect of this Part

“3A. The provisions of this Part have effect for the purposes of this Act, except so far as the contrary intention appears in this Act.”.

Interpretation

43. Section 4 of the Principal Act is amended:

- (a) by omitting “subsection (3)” from the definitions of “recognised dealer” and “recognised investment adviser” in subsection (1) and substituting “section 6G”;
- (b) by omitting from subsection (1) the definitions of “dealer”, “exempt dealer”, “investment adviser”, “licence” and “recognised licensee” and substituting the following definitions:

Co-operative Scheme Legislation Amendment No. 92, 1989

“ ‘dealer’ means:

- (a) a person who carries on a securities business; or
- (b) 2 or more persons who together carry on a securities business;

‘exempt dealer’ has the meaning given by section 6C;

‘investment adviser’ means a person who carries on, or 2 or more persons who together carry on, an investment advice business;

‘licence’ means a dealers licence or an investment advisers licence;

‘recognised licensee’ means a recognised dealer or a recognised investment adviser and, in relation to a recognised licence, means the person who holds the recognised licence;”;

(c) by omitting from subsection (1) the definitions of “dealer’s representative”, “dealer’s representatives licence”, “investment representative”, “investment representatives licence”, “recognised dealer’s representative”, “recognised investment representative” and “representatives licence”;

(d) by inserting in subsection (1) the following definitions:

“ ‘Australian company law’ means the *Companies Act 1981* or the provisions of:

- (a) a previous law of the Territory; or
- (b) a law, or a previous law, of a State or of another Territory;

that correspond with that Act;

‘banning order’ means an order made under section 62G and in force under Division 5 of Part IV;

‘condition’, in relation to a licence, means a condition or restriction to which the licence is subject, or will be subject, as the case requires;

‘eligible money market dealer’ means a body corporate in respect of which a declaration is in force under paragraph 97 (7) (b) of the *Companies Act 1981*;

‘event’ includes any happening, circumstance or state of affairs;

‘exempt investment adviser’ has the meaning given by section 6C;

‘exempt public authority’ means a body corporate that is incorporated within Australia and is a public authority or an instrumentality or agency of the Crown in right of the Commonwealth or of a State or Territory;

‘externally-administered body corporate’ means a body corporate:

- (a) that is being wound up under an Australian company law;
- (b) in respect of property of which a receiver, or a receiver and manager, has been appointed under an Australian company law (whether or not by a court) and is acting;

Co-operative Scheme Legislation Amendment No. 92, 1989

(c) that is under official management under an Australian company law; or

(d) that has, whether in the Territory or elsewhere, entered into a compromise or arrangement with its creditors that is still in operation;

'have', in relation to information, includes be in possession of the information;

'hold', in relation to a person, in relation to a document that is, or purports to be, a copy of a licence, means have in the person's possession;

'included', in relation to an official list, has the meaning given by section 6D;

'information service' means:

(a) a broadcasting service;

(b) an interactive or broadcast videotext or teletext service or a similar service;

(c) an online database service or a similar service; or

(d) any other prescribed service;

'invalid authority' has the meaning given by subsection 6F (2);

'investment advice business' has the meaning given by section 6E;

'licensee' means a person who holds a licence and, in relation to a licence, means the person who holds the last-mentioned licence;

'liquidator' includes a provisional liquidator;

'lodge' means lodge with the Commission;

'non-dealer' means a person who is neither a dealer nor one of 2 or more persons who together constitute a dealer;

'proper authority' has the meaning given by section 6F;

'publish' includes issue;

'recognised banning order' means a banning order within the meaning of a corresponding law of a participating State or participating Territory;

'recognised licence' means, subject to section 6G, a licence within the meaning of a corresponding law of a participating State or participating Territory;

'relevant agreement' means an agreement, arrangement or understanding:

(a) whether formal or informal or partly formal and partly informal;

(b) whether written or oral or partly written and partly oral; and

(c) whether or not having legal or equitable force and whether or not based on legal or equitable rights;

Co-operative Scheme Legislation Amendment No. 92, 1989

'responsible officer', in relation to a body corporate that applies for a licence, means an officer of the body who would perform duties in connection with the holding of the licence;

'securities adviser' means a dealer, an investment adviser or a representative of a dealer or of an investment adviser;

'securities business' has the meaning given by section 6J;

'securities law' means a provision of, or a provision of a law of a participating State or participating Territory that corresponds with a provision of:

- (a) this Act;
- (b) the *Companies (Acquisition of Shares) Act 1980*;
- (c) Part IV of the *Companies Act 1981*; or
- (d) section 552 of the *Companies Act 1981*;

'securities recommendation' means a recommendation with respect to securities or a class of securities, whether made expressly or by implication;

'securities report' means an analysis or report about securities;

'serious fraud' means an offence involving fraud or dishonesty, being an offence:

- (a) against a law of the Commonwealth, of a State or of a Territory, or against any other law; and
- (b) punishable by imprisonment for life or for a period, or maximum period, of at least 3 months;

'suspend' has a meaning affected by subsections 62D (7) and (8);

'transmission' means a transmission, by means of electric or electromagnetic energy, of:

- (a) sounds, including speech and music;
- (b) visual images;
- (c) signals for the communication, whether as between persons and persons, persons and things or things and things, of any matter otherwise than in the form of sounds or visual images; or
- (d) signals for the actuation or control of machinery or apparatus;"

(e) by omitting subsections (3), (4), (5) and (5A).

44. After section 6 of the Principal Act the following sections are inserted:

Businesses of a particular kind

"6A. A reference to a business of a particular kind includes a reference to a business of that kind that is part of, or is carried on in conjunction with, any other business.

Carrying on a business: alone or together with others

“6B. A reference to a person carrying on a business, or a business of a particular kind, is a reference to the person carrying on a business, or a business of that kind, whether alone or together with any other person or persons.

Exempt dealers and exempt investment advisers

“6C. (1) A person is both an exempt dealer and an exempt investment adviser if the person is:

- (a) an eligible money market dealer; or
- (b) an exempt public authority.

“(2) Subject to this section, a person is an exempt dealer or an exempt investment adviser if the person is a dealer or investment adviser, as the case may be, but does not carry on a securities business or an investment advice business, as the case may be, except:

- (a) as an official receiver or trustee within the meaning of the *Bankruptcy Act 1966*;
- (b) as a receiver, receiver and manager, or liquidator, appointed by a court;
- (c) as a person appointed by a court to carry on the business concerned;
- (d) by virtue of the person’s powers, as Public Trustee, under the *Public Trustee Ordinance 1985* or a prescribed law of a State or another Territory;
- (e) as a receiver, receiver and manager, or liquidator, appointed otherwise than by a court;
- (f) as an official manager or deputy official manager of a body corporate;
- (g) as a trustee or other person administering a compromise or arrangement between a body corporate and any other person or persons;
- (h) as a personal representative of a dead dealer or investment adviser, as the case may be; or
- (j) in such other capacity, or in such other circumstances, as are prescribed.

“(3) A body corporate that carries on, or holds itself out as carrying on, a business of dealing in shares in, or debentures of, that body is an exempt dealer if it neither carries on, nor holds itself out as carrying on, a business of dealing in any other securities.

“(4) A person who carries on a securities business or investment advice business in a capacity referred to in any of paragraphs (2) (e) to (h), inclusive, shall be deemed for the purposes of subsection (2) to carry on the business otherwise than in that capacity unless there is in force under subsection (5) an approval of the person carrying on the business in that capacity.

“(5) The Commission may, on application by a person and after having regard to:

- (a) the prescribed matters (if any); and
- (b) such matters as it thinks appropriate;

by writing approve of the person carrying on a specified securities business or investment advice business in a specified capacity, being a capacity referred to in any of paragraphs (2) (e) to (h), inclusive.

“(6) A person who carries on a securities business or investment advice business as a personal representative of a dead dealer or investment adviser, as the case may be, shall be deemed for the purposes of subsection (2) to stop carrying on that business as such a personal representative:

- (a) at the end of 6 months after the death of the dealer or investment adviser;
- (b) on being discharged or removed as a personal representative of the dealer or investment adviser; or
- (c) on the final distribution of the estate of the dealer or investment adviser;

whichever happens first.

“(7) A person is not an exempt dealer or an exempt investment adviser except as provided by this section.

Inclusion in official list

“6D. A reference to a body corporate or other person included in an official list of a body corporate is a reference to:

- (a) a body corporate or other person whose name is included in that official list; or
- (b) a body corporate or other person whose name has been changed but whose previous name was included in that official list immediately before the change and is still so included.

Investment advice business

“6E. (1) A reference to an investment advice business, in relation to a person, is a reference to:

- (a) a business of advising other persons about securities; or
- (b) a business in the course of which the person publishes securities reports.

“(2) The remaining provisions of this section apply for the purposes of determining:

- (a) whether or not a person carries on an investment advice business;
- (b) what constitutes an investment advice business carried on by a person; and
- (c) whether or not a person holds himself, herself or itself out to be an investment adviser.

Co-operative Scheme Legislation Amendment No. 92, 1989

“(3) If the person is a body corporate authorised by a law of a State or Territory to take in its own name a grant of probate of the will, or a grant of letters of administration of the estate, of a dead person, an act done by the first-mentioned person shall be disregarded.

“(4) If the person is a solicitor or accountant in public practice as such, an act that the person does shall be disregarded if it is merely incidental to the practice of his or her profession.

“(5) The fact that the person advises other persons about securities, or publishes securities reports, in some or all of the following circumstances shall be disregarded:

- (a) in a newspaper or periodical:
 - (i) of which the person is the proprietor or publisher; and
 - (ii) that is generally available to the public otherwise than only on subscription;
- (b) in the course of, or by means of, transmissions that:
 - (i) the person makes by means of an information service; or
 - (ii) are made by means of an information service that the person owns, operates or makes available;and are generally available to the public;
- (c) in sound recordings, video recordings, or data recordings, that the person makes generally available to the public in either or both of the following ways:
 - (i) by supplying copies of them to the public;
 - (ii) by causing the sound recordings to be heard by, the video recordings to be seen and heard by, or the contents of the data recordings to be displayed or reproduced for, the public, as the case may be.

“(6) Subsection (5) does not apply in relation to a newspaper or periodical, or transmissions, sound recordings, video recordings or data recordings, as the case may be, whose sole or principal purpose is to advise other persons about securities or to publish securities reports.

“(7) The fact that the person holds himself, herself or itself out as advising other persons, or publishing securities reports, as mentioned in subsection (5) shall be disregarded.

“(8) An act that the person does:

- (a) while employed by, or acting for or by arrangement with, another person;
- (b) as employee or agent of, or otherwise on behalf of, on account of, or for the benefit of, the other person; and
- (c) in connection with an investment advice business carried on by the other person;

shall be disregarded.

Proper authority; invalid authority

“6F. (1) A reference, in relation to a person (in this subsection called the ‘representative’), to a proper authority from a person (in this subsection called the ‘principal’) who holds a licence is a reference to a copy of the licence on which are endorsed:

- (a) a statement:
 - (i) certifying the copy to be a true copy of the licence;
 - (ii) stating that the representative is employed by, or acts for or by arrangement with, the principal; and
 - (iii) signed by the principal; and
- (b) in relation to each licensee (if any), other than the principal, of whom the representative is a representative, a statement that:
 - (i) sets out the name of the licensee;
 - (ii) states that the representative is employed by, or acts for or by arrangement with, the licensee;
 - (iii) states that the licensee consents to the representative being employed by, or acting for or by arrangement with, the principal; and
 - (iv) is signed by the licensee.

“(2) A reference, in relation to a person (in this subsection called the ‘representative’), to an invalid authority from a person (in this subsection called the ‘principal’) is a reference to a document:

- (a) on which is endorsed a statement:
 - (i) stating that the representative is employed by, or acts for or by arrangement with, the principal; and
 - (ii) signed by the principal; and
- (b) that purports to be a copy of a licence and to be a proper authority of the representative from the principal, but is not in fact such a proper authority;

whether or not:

- (c) the principal is, or has ever been, a licensee; or
- (d) the document is in fact a copy of a licence that exists or has ever existed.

“(3) For the purposes of this section, a statement is signed by a person if, and only if, it is signed:

- (a) if the person is a natural person—by the person; or
- (b) if the person is a body corporate:
 - (i) by a director or secretary; or
 - (ii) by an executive officer who is authorised to sign the statement.

“(4) In this section:

‘licence’ includes a recognised licence;

‘licensee’ includes a recognised licensee.

Recognised licensee must be connected with State or Territory concerned

“6G. Where a person holds a dealers licence or investment advisers licence under the provisions of a law of a participating State or participating Territory that correspond with Part IV, the person is not a recognised dealer or recognised investment adviser, as the case may be, and the licence is not a recognised licence, unless:

- (a) if the person is a natural person who is not a partner in a firm—the person is ordinarily resident in that State or Territory;
- (b) if the person is a natural person who is a partner in a firm—the firm’s principal place of business is in that State or Territory; or
- (c) if the person is a body corporate—the body:
 - (i) is incorporated in that State or Territory; or
 - (ii) is incorporated outside Australia and the external Territories and is registered under the provisions of a law of that State or Territory that correspond with Division 5 of Part XIII of the *Companies Act 1981*.

Representatives

“6H. (1) Subject to subsection (2), a person is a representative of another person if, and only if, the first-mentioned person is employed by, or acts for or by arrangement with, the other person in connection with a securities business or investment advice business carried on by the other person.

“(2) Except for the purposes of paragraph 6F (1) (b):

- (a) a person who holds a proper authority from a licensee or recognised licensee is a representative of the licensee or recognised licensee; and
- (b) a person who holds an invalid authority from another person is a representative of the other person.

“(3) Subject to subsection (4), a person does an act, or engages in conduct, as a representative of another person if, and only if, the first-mentioned person does the act, or engages in the conduct:

- (a) in connection with a securities business or investment advice business carried on by the other person;
- (b) while the first-mentioned person is a representative of the other person;
- (c) as employee or agent of, or otherwise on behalf of, on account of, or for the benefit of, the other person; and
- (d) otherwise than in the course of work of a kind ordinarily done by accountants, clerks or cashiers.

“(4) Except for the purposes of Division 4 of Part IV, a person who holds himself, herself or itself out to be a representative of another person does an act as a representative of the other person.

Securities business

“6J. (1) A securities business is a business of dealing in securities.

“(2) Subsections (4), (5) and (6) apply for the purposes of determining:

- (a) whether or not a person carries on, or holds himself, herself or itself out as carrying on, a securities business; and
- (b) what constitutes such a business carried on by a person.

“(3) Subsection (6) also applies for the purposes of determining whether or not a person deals in securities.

“(4) An act done on behalf of the person by the holder of a dealers licence, an exempt dealer, or a recognised dealer shall be disregarded.

“(5) An act that the person does:

- (a) while employed by, or acting for or by arrangement with, a dealer;
- (b) as employee or agent of, or otherwise on behalf of, on account of, or for the benefit of, the dealer; and
- (c) in connection with a securities business carried on by the dealer;

shall be disregarded.

“(6) An act or acts done by the person that constitutes or together constitute, for the purposes of:

- (a) the *Futures Industry Act 1986*; or
- (b) 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.”.

Heading to Part IV

45. The heading to Part IV of the Principal Act is omitted and the following heading is substituted:

“PART IV—PARTICIPANTS IN THE SECURITIES INDUSTRY”.

46. Sections 43 to 50, inclusive, of the Principal Act are repealed and the following heading and sections are substituted:

“Division 1—Dealers and investment advisers

Dealers

“43. A person shall not carry on, or hold himself, herself or itself out as carrying on, a securities business unless the person holds a dealers licence or is a recognised dealer or an exempt dealer.

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

Investment advisers

“45. A person shall not:

- (a) carry on an investment advice business; or
- (b) hold himself, herself or itself out to be an investment adviser;

unless the person is a licensee, a recognised licensee or an exempt investment adviser.

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

Application for a licence

“47. (1) A person may apply to the Commission, in the prescribed form and manner, for a dealers licence or an investment advisers licence.

“(2) The Commission may require an applicant for a licence to give the Commission such further information in relation to the application as the Commission thinks necessary.

“(3) Subsections (1) and (2) of this section, and sections 48 to 48B (inclusive), as in force at and after the commencement of section 46 of the *Co-operative Scheme Legislation Amendment Act 1989* apply in relation to an application for a dealers licence or for an investment advisers licence that:

- (a) is made at or after that commencement; or
- (b) was made before that commencement but, as at that commencement, had been neither granted nor refused.

Grant of licence to natural person

“48. (1) This section applies where a natural person applies for a licence.

“(2) The Commission shall grant the licence if:

- (a) the application was made in accordance with section 47;
- (b) the person is not an insolvent under administration;
- (c) it is satisfied that the person’s educational qualifications and experience are adequate having regard to the nature of the duties of a holder of a licence of the kind applied for;
- (d) it has no reason to believe that the person is not of good fame and character; and
- (e) it has no reason to believe that the person will not perform those duties efficiently, honestly and fairly.

“(3) Otherwise, the Commission shall refuse the application.

“(4) In determining whether or not it has reason to believe as mentioned in paragraph (2) (d) or (e), the Commission shall have regard to any conviction of the person, during the 10 years ending on the day of the application, of serious fraud.

Grant of licence to body corporate

“48A. (1) This section applies where a body corporate applies for a licence.

“(2) The Commission shall grant the licence if:

- (a) the application was made in accordance with section 47;

- (b) the applicant is not an externally-administered body corporate;
- (c) the Commission is satisfied that the educational qualifications and experience of each responsible officer of the applicant are adequate having regard to the duties that the officer would perform in connection with the holding of the licence; and
- (d) the Commission has no reason to believe that the applicant will not perform efficiently, honestly and fairly the duties of a holder of a licence of the kind applied for.

“(3) Otherwise, the Commission shall refuse the application.

“(4) In determining whether or not it has reason to believe as mentioned in paragraph (2) (d), the Commission shall have regard, in relation to each responsible officer of the applicant, to:

- (a) whether or not the officer is an insolvent under administration;
- (b) any conviction of the officer, during the 10 years ending on the day of the application, of serious fraud;
- (c) any reason the Commission has to believe that the officer is not of good fame and character; and
- (d) any reason the Commission has to believe that the officer will not perform efficiently, honestly and fairly the duties that the officer would perform in connection with the holding of the licence.

Effect of certain provisions

“48B. (1) Sections 48 and 48A apply subject to sections 62N, 62P and 62R and the regulations.

“(2) Nothing in subsection 48 (4) or 48A (4) limits the matters to which the Commission may have regard:

- (a) in deciding on an application for a licence; or
- (b) in connection with performing or exercising any other function or power under this Part.”.

Conditions of licence

47. Section 51 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (b) and subsection (7) “62” and substituting “62P”;
- (b) by omitting from paragraph (2) (c) “and” (last occurring);
- (c) by adding at the end of subsection (2) the following paragraphs:
 - “(e) may include conditions about what the holder of a licence is to do, by way of supervision and otherwise, in order to prevent the holder’s representatives from contravening:
 - (i) a securities law; or
 - (ii) another condition of the licence; and
- (f) may include conditions about what the holder of a licence is to do to ensure that each representative of the holder has adequate qualifications and experience having regard

to what the representative will do on the holder's behalf in connection with a securities business or investment advice business carried on by the holder.”.

Licensee to notify breach of licence condition

48. Section 52 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsection:

“(1) Within one day after the happening of an event constituting a contravention of a condition of a licence, the licensee shall give to the Commission a written notice setting out particulars of the event.

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

Register of Licence Holders

49. Section 54 of the Principal Act is amended by omitting subsections (2) and (3) and substituting the following subsections:

“(1A) The Commission shall include in the Register of Licence Holders, in relation to each licence, a copy of:

- (a) the licence; and
- (b) each instrument that imposes conditions on the licence, or revokes or varies conditions of the licence, after the licence is granted.

“(2) The Commission shall enter in the Register of Licence Holders, in relation to each licence:

- (a) the name of the licensee;
- (b) if the licensee is a body corporate—the name of each director, and of each secretary, of the body;
- (c) the day on which the licence was granted;
- (d) in relation to each business to which the licence relates:
 - (i) the address of the principal place of business at which the business is carried on;
 - (ii) the addresses of the other places (if any) at which the business is carried on; and
 - (iii) if the business is carried on under a name or style other than the name of the holder of the licence—that name or style;
- (e) particulars of any suspension of the licence; and
- (f) such other matters (if any) as are prescribed.

“(3) Where a person no longer holds a particular licence, the Commission shall remove from the Register of Licence Holders the documents included in it, and the particulars entered in it, in relation to that licence.”.

50. Sections 55 and 56 of the Principal Act are repealed and the following sections are substituted:

Notifying change in particulars

“55. Within 21 days after:

- (a) the holder of a dealers licence ceases to carry on the business to which the licence relates;
- (b) the holder of an investment advisers licence ceases to act as, or to hold himself, herself or itself out to be, an investment adviser; or
- (c) there is a change in a matter particulars of which are required by virtue of paragraph 54 (2) (a), (b), (d) or (f) to be entered, in relation to a licence, in the Register of Licence Holders;

the holder of the licence shall lodge written particulars, in the prescribed form, of that fact, or of that change, as the case may be.

Annual statement of licensee

“56. (1) A person who is or has been a licensee shall lodge, in respect of each year or part of a year during which the licence is or was in force, a statement in the prescribed form that complies with this section.

“(2) The statement shall set out the number of persons:

- (a) who, when the statement is lodged, hold; or
- (b) who, when the person last ceased to be a licensee, held;

as the case may be, proper authorities from the person.

“(3) The statement shall also contain such information as is prescribed.”.

When annual statement to be lodged

51. Section 57 of the Principal Act is amended:

- (a) by omitting from paragraph (b) “granted; and” and substituting “granted.”;
- (b) by omitting paragraph (c).

52. Sections 59, 60, 61 and 62 of the Principal Act are repealed and the following Divisions are substituted:

“Division 2—Agreements with unlicensed persons

Certain persons not clients

“59A. A reference in this Division to a client does not include a reference to a person who is:

- (a) a dealer;
- (b) an investment adviser; or
- (c) one of 2 or more persons who together constitute a dealer or investment adviser.

Agreements with unlicensed persons

“59B. Where, during a period when a person (in this Division called the ‘non-licensee’):

- (a) in contravention of section 43, carries on, or holds himself, herself or itself out as carrying on, a securities business; or
- (b) in contravention of section 45, carries on an investment advice business or holds himself, herself or itself out to be an investment adviser;

the non-licensee and a client of the non-licensee enter into an agreement that:

- (c) constitutes, or relates to, a dealing or proposed dealing in securities; or
- (d) relates to advising the client about securities, or giving the client securities reports;

sections 59C to 59L, inclusive, apply, whether or not anyone else is a party to the agreement.

Client may give notice of rescission

“59C. (1) Subject to this section, the client may, whether before or after completion of the agreement, give to the non-licensee a written notice stating that the client wishes to rescind the agreement.

“(2) The client may only give a notice under this section within a reasonable period after becoming aware of the facts entitling the client to give the notice.

“(3) The client is not entitled to give a notice under this section if the client engages in conduct by engaging in which the client would, if the entitlement so to give a notice were a right to rescind the agreement for misrepresentation by the non-licensee, be taken to have affirmed the agreement.

“(4) The client is not entitled to give a notice under this section if, within a reasonable period before the agreement was entered into, the non-licensee informed the client (whether or not in writing) that:

- (a) the non-licensee did not hold a dealers licence; or
- (b) the non-licensee did not hold a dealers licence and did not hold an investment advisers licence;

as the case requires.

“(5) If, at a time when a dealers licence or investment advisers licence held by the non-licensee was suspended, the non-licensee informed the client that the licence was suspended, the non-licensee is to be taken for the purposes of subsection (4) to have informed the client at that time that the non-licensee did not hold a dealers licence or investment advisers licence, as the case may be.

“(6) A reference in subsection (4) or (5) to a dealers licence or investment advisers licence is a reference to a dealers licence or investment

advisers licence, as the case may be, granted under this Part or under the provisions of a law of a participating State or participating Territory that correspond with this Part.

“(7) None of subsections (2), (3) and (4) limits the generality of either of the others.

“(8) Subject to this section, the client may give a notice under this section whether or not:

- (a) the notice will result under section 59D in rescission of the agreement; or
- (b) the Court will, if the notice so results, be empowered to make a particular order, or any order at all, under section 59F.

Effect of notice under section 59C

“59D. A notice given under section 59C rescinds the agreement unless rescission of the agreement would prejudice a right, or an estate in property, acquired by a person (other than the non-licensee) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

Client may apply to Court for partial rescission

“59E. (1) If the client gives a notice under section 59C but the notice does not rescind the agreement because rescission of it would prejudice a right or estate of the kind referred to in section 59D, the client may, within a reasonable period after giving the notice, apply to the Court for an order under subsection (4) of this section.

“(2) The Court may extend the period for making an application under subsection (1).

“(3) If an application is made under subsection (1), the Court may make such orders expressed to have effect until the determination of the application as it would have power to make if the notice had rescinded the agreement under section 59D and the application were for orders under section 59F.

“(4) On an application under subsection (1), the Court may make an order:

- (a) varying the agreement in such a way as to put the client in the same position, as nearly as can be done without prejudicing such a right or estate acquired before the order is made, as if the agreement had not been entered into; and
- (b) declaring the agreement to have had effect as so varied at and after the time when it was originally made.

“(5) If the Court makes an order under subsection (4), the agreement shall be taken for the purposes of section 59F to have been rescinded under section 59D.

“(6) An order under subsection (4) does not affect the application of section 59H or 59K in relation to the agreement as originally made or as varied by the order.

Court may make consequential orders

“59F. (1) Subject to subsection (2), on rescission of the agreement under section 59D, the Court, on the application of the client or the non-licensee, may make such orders as it would have power to make if the client had duly rescinded the agreement for misrepresentation by the non-licensee.

“(2) The Court is not empowered to make a particular order under subsection (1) if the order would prejudice a right, or an estate in property, acquired by a person (other than the non-licensee) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

Agreement unenforceable against client

“59G. (1) This section:

(a) applies while both of the following are the case:

(i) the client is entitled to give a notice under section 59C;

(ii) a notice so given will result under section 59D in rescission of the agreement; and

(b) applies after the agreement is rescinded under section 59D;

but does not otherwise apply.

“(2) The non-licensee is not entitled, as against the client:

(a) to enforce the agreement, whether directly or indirectly; or

(b) to rely on the agreement, whether directly or indirectly and whether by way of defence or otherwise.

Non-licensee not entitled to recover commission

“59H. (1) Without limiting the generality of section 59G, this section:

(a) applies while the client is entitled to give a notice under section 59C; and

(b) applies after the client so gives a notice, even if the notice does not result under section 59D in rescission of the agreement;

but does not otherwise apply.

“(2) The non-licensee is not entitled to recover by any means (including, for example, set-off or a claim on a *quantum meruit*) any brokerage, commission or other fee for which the client would, but for this section, have been liable to the non-licensee under or in connection with the agreement.

Onus of establishing non-application of section 59G or 59H

“59J. For the purposes of determining in a proceeding whether or not the non-licensee is, or was at a particular time, entitled as mentioned in subsection 59G (2) or 59H (2), it shall be presumed, unless the contrary is

proved, that section 59G or 59H, as the case may be, applies, or applied at that time, as the case may be.

Client may recover commission paid to non-licensee

“59K. (1) Without limiting the generality of section 59F, if the client gives a notice under section 59C, the client may, even if the notice does not result under section 59D in rescission of the agreement, recover from the non-licensee as a debt the amount of any brokerage, commission or other fee that the client has paid to the non-licensee under or in connection with the agreement.

“(2) The Commission may, if it considers that it is in the public interest to do so, bring an action under subsection (1) in the name of, and for the benefit of, the client.

Remedies under this Division additional to other remedies

“59L. The client’s rights and remedies under this Division are additional to, and do not prejudice, any other right or remedy of the client.

“Division 3—Representatives

Representatives of dealers

“60A. A natural person shall not do an act as a representative of a dealer (other than an exempt dealer) unless:

- (a) the dealer holds a dealers licence or is a recognised dealer; and
- (b) the person holds a proper authority from the dealer.

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

Representatives of investment advisers

“60B. A natural person shall not do an act as a representative of an investment adviser (other than an exempt investment adviser) unless:

- (a) the investment adviser:
 - (i) is also a dealer and either holds a dealers licence or is a recognised dealer; or
 - (ii) holds an investment advisers licence or is a recognised investment adviser; and
- (b) the person holds a proper authority from the investment adviser.

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

Defence

“60C. It is a defence to a prosecution for a contravention of section 60A or 60B constituted by an act done by a person as a representative of another person if it is proved that:

- (a) but for the revocation of, or the making under section 62D or a provision of a law of a participating State or participating Territory that corresponds with that section of an order relating to, a licence

or recognised licence held by the other person, the act would not have been such a contravention;

- (b) when he or she did the act, the first-mentioned person:
 - (i) believed in good faith that the other person held the licence or recognised licence; and
 - (ii) was unaware of the revocation or order; and
- (c) in all the circumstances it was reasonable for the first-mentioned person so to believe and to be unaware of the revocation or order.

Body corporate not to act as representative

“60D. A body corporate shall not do an act as a representative of a dealer or of an investment adviser.

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

Licensee to keep register of holders of proper authorities

“60E. (1) A licensee shall establish a register of the persons who hold proper authorities from the licensee and shall keep it in accordance with this section.

“(2) The register shall be in writing or in such other form as the Commission approves.

“(3) The register shall contain, in relation to each person (if any) who holds a proper authority from the licensee:

- (a) a copy of the proper authority;
- (b) the person’s name;
- (c) the person’s current residential address;
- (d) unless the person’s current business address is the same as the licensee’s—the person’s current business address; and
- (e) any other prescribed information.

“(4) A copy of a proper authority of a person from the licensee that subsection (3) provides for the register to contain shall be included in the register within 2 business days after the person begins to hold that proper authority.

“(5) Information that subsection (3) provides for the register to contain in relation to a person shall be entered in the register within 2 business days after:

- (a) the person begins to hold a proper authority from the licensee; or
- (b) the licensee receives the information;

whichever happens later.

“(6) Within 2 business days after a person ceases to hold a proper authority from the licensee, the licensee shall:

- (a) in any case:

- (i) include, in a part of the register separate from the part in which copies of proper authorities are included under subsection (4); and
- (ii) remove from the last-mentioned part;
the copy of the proper authority that was included in the last-mentioned part; and
- (b) unless, at the end of those 2 business days, the person again holds a proper authority from the licensee:
 - (i) enter, in a part of the register separate from the part in which information is entered under subsection (5); and
 - (ii) remove from the last-mentioned part;
the information that has been entered in the last-mentioned part in relation to the person.

“(7) Information that has been entered under paragraph (6) (b) in a separate part of the register shall be deemed for the purposes of subsections (3) and (5) not to be contained or entered in the register.

Licensee to notify Commission of location and contents of register

“60F. (1) In this section:

‘register’, in relation to a licensee, means a register that the licensee keeps for the purposes of section 60E.

“(2) Within 14 days after establishing a register, a licensee shall lodge written notice of where the register is kept.

“(3) A licensee shall, as soon as practicable after changing the place where a register is kept, lodge written notice of the new place where the register is kept.

“(4) Within 2 business days after the day on which a person begins to hold a particular proper authority from a licensee, the licensee shall, whether or not the person has previously held a proper authority from the licensee, lodge:

- (a) a copy of the first-mentioned proper authority; and
- (b) a written notice stating that the person began to hold that proper authority on that day.

“(5) Within the period within which subsection 60E (5) requires a licensee to enter in a register information that the register must contain because of paragraph 60E (3) (b), (c), (d) or (e), the licensee shall lodge a written notice setting out the information and stating that the information has been, or is to be, entered in the register.

“(6) Within 2 business days after a person ceases to hold a proper authority from a licensee, the licensee shall, unless at the end of those 2 business days the person again holds a proper authority from the licensee, lodge a written notice stating that the person has ceased to hold such a proper authority.

Inspection and copying of register

“60G. (1) In this section:

‘register’, in relation to a licensee, means a register that the licensee keeps for the purposes of section 60E.

“(2) A licensee shall ensure that a register is open for inspection without charge.

“(3) Where a person requests a licensee in writing to give the person a copy of the whole, or of a specified part, of a register, the licensee shall comply with the request within 2 business days after:

- (a) if the licensee requires the person to pay for the copy an amount of not more than the prescribed amount—receiving the amount from the person; or
- (b) in any other case—receiving the request.

Disclosure to client by representative

“60H. A person (in this section called the ‘representative’) shall not do as a representative of another person (in this section called the ‘principal’) an act by virtue of which the principal deals in securities with a non-dealer on the principal’s own account unless the representative has informed the non-dealer that the principal is acting in the transaction as principal and not as agent.

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

Commission may require production of authority

“60J. (1) Where the Commission has reason to believe that a person:

- (a) holds a proper authority from a licensee or recognised licensee; or
- (b) has done an act as a representative of another person;

then, whether or not the Commission knows who the licensee, recognised licensee or other person is, it may require the first-mentioned person to produce:

- (c) any proper authority from a licensee or recognised licensee; or
- (d) any invalid authority from a person;

that the first-mentioned person holds.

“(2) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

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

Commission may give licensee information about representative

“60K. (1) Where the Commission believes on reasonable grounds that:

- (a) a person (in this section called the ‘holder’) holds, or will hold, a proper authority from a licensee;
- (b) having regard to that fact, the Commission should give to the licensee particular information that the Commission has about the person; and

(c) the information is true;
the Commission may give the information to the licensee.

“(2) Where the Commission gives information under subsection (1), the licensee or an officer of the licensee may, for a purpose connected with:

- (a) the licensee making a decision about what action (if any) to take in relation to the holder, having regard to, or to matters including, the information; or
- (b) the licensee taking action pursuant to such a decision;

or for 2 or more such purposes, and for no other purpose, give to another person, make use of, or make a record of, some or all of the information.

“(3) A person to whom information has been given, in accordance with subsection (2) or this subsection, for a purpose or purposes may, for that purpose or one or more of those purposes, and for no other purpose, give to another person, make use of, or make a record of, that information.

“(4) Subject to subsections (2) and (3), a person shall not give to another person, make use of, or make a record of, information given by the Commission under subsection (1).

“(5) A person has qualified privilege in respect of an act done by the person as permitted by subsection (2) or (3).

“(6) A person to whom information is given in accordance with this section shall not:

- (a) give any of the information to a court; or
- (b) produce in a court a document that sets out some or all of the information;

except:

- (c) for a purpose connected with:
 - (i) the licensee making a decision about what action (if any) to take in relation to the holder, having regard to, or to matters including, some or all of the information;
 - (ii) the licensee taking action pursuant to such a decision; or
 - (iii) proving in a proceeding in that court that particular action taken by the licensee in relation to the holder was so taken pursuant to such a decision;

or for 2 or more such purposes, and for no other purpose;

- (d) in a proceeding in that court, in so far as the proceeding relates to an alleged contravention of this section;
- (e) in a proceeding in respect of an ancillary offence relating to an offence against this section; or
- (f) in a proceeding in respect of the giving to a court of false information being or including some or all of the first-mentioned information.

“(7) A reference in this section to a person taking action in relation to another person is a reference to the first-mentioned person:

- (a) taking action by way of making, terminating, or varying the terms and conditions of; or
- (b) otherwise taking action in relation to;

a relevant agreement, in so far as the relevant agreement relates to the other person being employed by, or acting for or by arrangement with, the first-mentioned person in connection with a securities business or investment advice business carried on by the first-mentioned person.

“(8) In this section:

‘licensee’ includes a recognised licensee.

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

Holder of authority may be required to return it

“60L. (1) Where a person holds a proper authority from a licensee but is neither employed by, nor authorised to act for or by arrangement with, the licensee, the licensee may, by writing given to the person, require the person to give the proper authority to the licensee within a specified period of not less than 2 business days.

“(2) Where a person holds an invalid authority from another person, the other person may, by writing given to the first-mentioned person, require the first-mentioned person to give the invalid authority to the other person within a specified period of not less than 2 business days.

“(3) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement made of the person in accordance with subsection (1) or (2).

“(4) In this section:

‘licensee’ includes a recognised licensee.

“Division 4—Liability of principals for representatives’ conduct

Conduct engaged in as a representative

“61A. Where a person engages in conduct as a representative of another person (in this section called the ‘principal’), then, as between the principal and a third person (other than the Commission), the principal is liable in respect of that conduct in the same manner, and to the same extent, as if the principal had engaged in it.

Liability where identity of principal unknown

“61B. (1) This section applies for the purposes of a proceeding in a court where:

- (a) a person (in this section called the ‘representative’) engages in particular conduct while the person is a representative of 2 or more persons (in this section called the ‘indemnifying principals’); and
- (b) it is proved for the purposes of the proceeding that the representative engaged in the conduct as a representative of some person (in this

section called the 'unknown principal') but it is not proved for those purposes who the unknown principal is.

"(2) If only one of the indemnifying principals is a party to the proceeding, he, she or it is liable in respect of that conduct as if he, she or it were the unknown principal.

"(3) If 2 or more of the indemnifying principals are parties to the proceeding, each of those 2 or more is liable in respect of that conduct as if he, she or it were the unknown principal.

Liability of principals where act done in reliance on representative's conduct

"61C. (1) This section applies where:

- (a) at a time when a person (in this section called the 'representative') is a representative of only one person (in this section called the 'indemnifying principal') or of 2 or more persons (in this section called the 'indemnifying principals'), the representative:
 - (i) engages in particular conduct; or
 - (ii) proposes, or represents that the representative proposes, to engage in particular conduct;
- (b) another person (in this section called the 'client') does, or omits to do, a particular act because the client believes at a particular time in good faith that the representative engaged in, or proposes to engage in, as the case may be, that conduct:
 - (i) on behalf of some person (in this section called the 'assumed principal') whether or not identified, or identifiable, at that time by the client; and
 - (ii) in connection with a securities business or investment advice business carried on by the assumed principal; and
- (c) it is reasonable to expect that a person in the client's circumstances would so believe and would do, or omit to do, as the case may be, that act because of that belief;

whether or not that conduct is or would be within the scope of the representative's employment by, or authority from, any person.

"(2) If:

- (a) subparagraph (1) (a) (i) applies; or
- (b) subparagraph (1) (a) (ii) applies and the representative engages in that conduct;

then:

- (c) as between the indemnifying principal and the client or a person claiming through the client, the indemnifying principal is liable; or
- (d) as between any of the indemnifying principals and the client or a person claiming through the client, each of the indemnifying principals is liable;

as the case may be, in respect of that conduct in the same manner, and to the same extent, as if he, she or it had engaged in it.

“(3) Without limiting the generality of subsection (2), the indemnifying principal, or each of the indemnifying principals, as the case may be, is liable to pay damages to the client in respect of any loss or damage that the client suffers as a result of doing, or omitting to do, as the case may be, the act referred to in paragraph (1) (b).

“(4) If:

- (a) there are 2 or more indemnifying principals;
- (b) 2 or more of them are parties (in this subsection called the ‘indemnifying parties’) to a proceeding in a court;
- (c) it is proved for the purposes of the proceeding:
 - (i) that the representative engaged in that conduct as a representative of some person; and
 - (ii) who that person is; and
- (d) that person is among the indemnifying parties;

subsections (2) and (3) do not apply, for the purposes of the proceeding, in relation to the indemnifying parties other than that person.

Presumptions about certain matters

“61D. (1) Where it is proved, for the purposes of a proceeding in a court, that a person (in this subsection called the ‘representative’) engaged in particular conduct while the person was a representative of:

- (a) only one person (in this subsection called the ‘indemnifying principal’); or
- (b) 2 or more persons (in this subsection called the ‘indemnifying principals’);

then, unless the contrary is proved for the purposes of the proceeding, it shall be presumed for those purposes that the representative engaged in the conduct as a representative of:

- (c) the indemnifying principal; or
- (d) as a representative of some person among the indemnifying principals;

as the case may be.

“(2) Where, for the purposes of establishing in a proceeding in a court that section 61C applies, it is proved that a person did, or omitted to do, a particular act because the person believed at a particular time in good faith that certain matters were the case, then, unless the contrary is proved for those purposes, it shall be presumed for those purposes that it is reasonable to expect that a person in the first-mentioned person’s circumstances would so believe and would do, or omit to do, as the case may be, that act because of that belief.

No contracting out of liability for representative's conduct

“61E. (1) For the purposes of this section, a liability of a person:

- (a) in respect of conduct engaged in by another person as a representative of the first-mentioned person; or
- (b) arising under section 61C because another person has engaged in, proposed to engage in, or represented that the other person proposed to engage in, particular conduct;

is a liability of the first-mentioned person in respect of the other person.

“(2) Subject to this section, an agreement is void in so far as it purports to exclude, restrict or otherwise affect a liability of a person in respect of another person, or to provide for a person to be indemnified in respect of a liability of the person in respect of another person.

“(3) Subsection (2) does not apply in relation to an agreement in so far as it:

- (a) is a contract of insurance;
- (b) provides for a representative of a person to indemnify the person in respect of a liability of the person in respect of the representative; or
- (c) provides for a licensee from whom a person holds a proper authority to indemnify another such licensee in respect of a liability of the other licensee in respect of the person.

“(4) In paragraph (3) (c):

‘licensee’ includes a recognised licensee.

“(5) A person shall not make, offer to make, or invite another person to offer to make, in relation to a liability of the first-mentioned person in respect of a person, an agreement that is or would be void, in whole or in part, by virtue of subsection (2).

Effect of Division

“61F. (1) Where 2 or more persons are liable under this Division in respect of the same conduct or the same loss or damage, they are so liable jointly and severally.

“(2) Nothing in section 61A, 61B or 61C:

- (a) affects a liability arising otherwise than by virtue of this Division;
- (b) despite paragraph (a) of this subsection, entitles a person to be compensated more than once in respect of the same loss or damage; or
- (c) makes a person guilty of an offence.

“Division 5—Excluding persons from the securities industry

Power to revoke, without a hearing, licence held by natural person

“62A. The Commission may, by written order, revoke a licence held by a natural person if the person:

Co-operative Scheme Legislation Amendment No. 92, 1989

- (a) becomes an insolvent under administration;
- (b) is convicted of serious fraud;
- (c) becomes incapable, through mental or physical incapacity, of managing his or her affairs; or
- (d) asks the Commission to revoke the licence.

Power to revoke, without a hearing, licence held by body corporate

“62B. The Commission may, by written order, revoke a licence held by a body corporate if:

- (a) the body ceases to carry on business;
- (b) the body becomes an externally-administered body corporate;
- (c) the body asks the Commission to revoke the licence; or
- (d) a director, secretary or executive officer of the body contravenes this Act because:
 - (i) he or she does not hold a licence; or
 - (ii) a licence he or she holds is suspended.

Power to revoke licence after a hearing

“62C. (1) Subject to section 62P, the Commission may, by written order, revoke a licence if:

- (a) the application for the licence contained matter that was false in a material particular or materially misleading;
- (b) there was an omission of material matter from the application for the licence;
- (c) the licensee contravenes a securities law;
- (d) the licensee contravenes a condition of the licence;
- (e) the licensee is a natural person and the Commission has reason to believe that he or she is not of good fame and character;
- (f) the licensee is a body corporate and the Commission is satisfied that the educational qualifications or experience of a person who:
 - (i) is an officer of the body; and
 - (ii) was not an officer of the body when the licence was granted;are or is inadequate having regard to the duties that the officer performs, or will perform, in connection with the holding of the licence;
- (g) the licensee is a body corporate and the Commission is satisfied that:
 - (i) an officer of the body performs, or will perform, in connection with the holding of the licence, duties that are or include duties (in this paragraph called the ‘different duties’) other than those having regard to which the Commission was satisfied, before granting the licence, that the officer’s educational qualifications and experience were adequate; and

- (ii) the officer's educational qualifications or experience are or is inadequate having regard to the different duties;
- (h) the licensee is a body corporate and:
 - (i) a licence or recognised licence held by a director, secretary or executive officer of the body is suspended or revoked; or
 - (ii) an order is made against such a director, secretary or executive officer under section 62G or a provision of a law of a participating State or participating Territory that corresponds with that section;
- (j) the Commission has reason to believe that the licensee has not performed efficiently, honestly and fairly the duties of a holder of a dealers licence or an investment advisers licence, as the case requires; or
- (k) the Commission has reason to believe that the licensee will not perform those duties efficiently, honestly and fairly.

“(2) In determining whether or not it has reason to believe as mentioned in paragraph (1) (e) or (k) in relation to a licensee, the Commission is not precluded from having regard to a matter that arose before the time when the licence was granted unless the Commission was aware of the matter at that time.

Power to suspend licence instead of revoking it

“62D. (1) Subject to section 62P, where:

- (a) section 62A or 62B empowers the Commission to revoke a licence otherwise than because the licensee has asked for the revocation; or
- (b) the Commission is empowered by virtue of paragraph 62C (1) (c), (d), (f), (g), (h), (j) or (k) to revoke a licence;

the Commission may, if it considers it desirable to do so, instead:

- (c) by written order, suspend the licence for a specified period; or
- (d) by written order, prohibit the licensee, either permanently or for a specified period, from doing specified acts, being acts that section 43 or 45 would prohibit the licensee from doing if he, she or it did not hold the licence.

“(2) The Commission may at any time, by written order, vary or revoke an order in force under this section.

“(3) For the purposes of sections 43, 45, 60A and 60B, a licensee or recognised licensee shall be taken not to hold the licence or recognised licence at any time during a period for which the licence or recognised licence is suspended.

“(4) Where an order in force under this section prohibits a licensee as mentioned in paragraph (1) (d):

- (a) the licensee shall not contravene the order; and
- (b) in relation to the doing by a person, as a representative of the licensee, of an act specified in the order, sections 60A and 60B

apply, or apply during the period specified in the order, as the case requires, as if the licensee did not hold the licence.

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

“(5) Subsection (4) applies in relation to a person who holds a licence within the meaning of a corresponding law of a participating State or participating Territory and so applies as if:

- (a) a reference in that subsection to a licensee were a reference to the person; and
- (b) a reference in that subsection to this section or to paragraph (1) (d) were a reference to a provision of a law of that State or Territory that corresponds with this section or that paragraph, as the case may be.

“(6) The effect that subsection (4) has by virtue of subsection (5) is additional to, and does not prejudice, the effect subsection (4) otherwise has.

“(7) A reference in this Act (other than this section) to the Commission suspending a licence includes a reference to the Commission making under paragraph (1) (d) an order relating to the licence.

“(8) A reference in this Act to the Commission suspending a recognised licence includes a reference to the Commission making under a provision of a law of a participating State or participating Territory that corresponds with paragraph (1) (d) an order relating to the recognised licence.

Power to make banning order where licence revoked or suspended

“62E. Subject to section 62P, where the Commission:

- (a) revokes under section 62A;
- (b) revokes by virtue of paragraph 62C (1) (a), (b), (c), (d), (j) or (k);
- (c) revokes by virtue of paragraph 62C (1) (e);
- (d) suspends by virtue of paragraph 62D (1) (a); or
- (e) suspends by virtue of paragraph 62D (1) (b);

a licence held by a natural person, it may also make a banning order against the person.

Power to make banning order against unlicensed person

“62F. Subject to section 62P, the Commission may make a banning order against a natural person (other than a licensee or a recognised licensee) if:

- (a) he or she becomes an insolvent under administration;
- (b) he or she is convicted of serious fraud;
- (c) he or she becomes incapable, through mental or physical incapacity, of managing his or her affairs;
- (d) he or she contravenes a securities law;
- (e) the Commission has reason to believe that he or she is not of good fame and character;

- (f) the Commission has reason to believe that he or she has not performed efficiently, honestly and fairly the duties of:
 - (i) a representative of a dealer; or
 - (ii) a representative of an investment adviser; or
- (g) the Commission has reason to believe that he or she will not perform efficiently, honestly and fairly the duties of:
 - (i) a representative of a dealer; or
 - (ii) a representative of an investment adviser.

Nature of banning order

“62G. (1) Where this Division empowers the Commission to make a banning order against a person, the Commission may, by written order, prohibit the person:

- (a) in any case—permanently; or
- (b) except where the Commission is empowered by virtue of paragraph 62E (c) or 62F (e) to make the order—for a specified period;

from doing an act as:

- (c) a representative of a dealer;
- (d) a representative of an investment adviser; or
- (e) a representative of a dealer or of an investment adviser;

whichever the order specifies.

“(2) The Commission shall not vary or revoke a banning order except under section 62H, 62J or 62K.

Exceptions to banning order

“62H. (1) An order made against a person under subsection 62G (1) may include a provision that permits the person, subject to such conditions (if any) as are specified, to do, or to do in specified circumstances, specified acts that the order would otherwise prohibit the person from doing.

“(2) Subject to section 62P, the Commission may, at any time, by written order, vary a banning order against a person:

- (a) by adding a provision that permits the person as mentioned in subsection (1);
- (b) by varying such a provision in relation to conditions, circumstances or acts specified in the provision;
- (c) by omitting such a provision and substituting another such provision;
or
- (d) by omitting such a provision.

Variation or revocation of banning order on application

“62J. (1) Subject to sections 62K and 62P, this section has effect where a person applies to the Commission to vary or revoke a banning order relating to the person.

“(2) If:

- (a) the person is not an insolvent under administration;
- (b) the Commission has no reason to believe that the person is not of good fame and character; and
- (c) the Commission has no reason to believe that the person will not perform efficiently, honestly and fairly the duties of:
 - (i) a representative of a dealer; or
 - (ii) a representative of an investment adviser;

the Commission shall, by written order:

- (d) if only one of subparagraphs (c) (i) and (ii) applies—vary the banning order so that it no longer prohibits the person from doing an act as a representative of a dealer, or of an investment adviser, as the case may be; or
- (e) otherwise—revoke the banning order.

“(3) Otherwise, the Commission shall refuse the application.

“(4) In determining whether or not it has reason to believe as mentioned in paragraph (2) (b) or (c), the Commission shall have regard to any conviction of the person, during the 10 years ending on the day of the application, of serious fraud.

“(5) Nothing in subsection (4) limits the matters to which the Commission may have regard:

- (a) in deciding on the application; or
- (b) in connection with performing or exercising any other function or power under this Part.

Revocation of banning order in certain cases

“62K. Where:

- (a) section 62J requires the Commission to vary a banning order so that it no longer has a particular operation; and
- (b) the order has no other operation;

the Commission shall, by written order, instead revoke the banning order.

Effect and publication of orders under this Division

“62L. (1) An order by the Commission under this Division takes effect when served on the person to whom the order relates.

“(2) As soon as practicable on or after the day on which an order by the Commission under this Division takes effect, the Commission shall publish in the *Gazette* a notice that sets out a copy of:

- (a) if the order is made under section 62A, 62B, 62C, 62D or 62G or revokes a banning order—the first-mentioned order; or
- (b) if the order varies a banning order—the banning order as in force immediately after the first-mentioned order takes effect;

and states that the first-mentioned order, or the banning order as so in force, as the case may be, took effect on that day.

“(3) Where:

- (a) but for this subsection, subsection (2) would require publication of a notice setting out a copy of a banning order as in force at a particular time;
- (b) the banning order as so in force includes a provision that permits a person as mentioned in subsection 62H (1); and
- (c) in the Commission’s opinion, the notice would be unreasonably long if it set out a copy of the whole of that provision;

the notice may, instead of setting out a copy of that provision, set out a summary of the provision’s effect.

Contravention of banning order

“62M. A person shall not contravene a banning order or recognised banning order relating to the person.

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

Banned person ineligible for licence

“62N. The Commission shall not grant a dealers licence or an investment advisers licence to a person if a banning order or recognised banning order prohibits the person (except as permitted by the order) from doing an act as a representative of a dealer, or of an investment adviser, as the case may be.

Opportunity for hearing

“62P. (1) The Commission shall not:

- (a) refuse, otherwise than by virtue of section 62N or subsection 62R (1), an application for a licence;
- (b) impose conditions on a licence;
- (c) vary the conditions of a licence;
- (d) revoke or suspend a licence otherwise than by virtue of section 62A or 62B or paragraph 62D (1) (a);
- (e) make, otherwise than by virtue of paragraph 62E (a) or (d) or 62F (a), (b) or (c), an order under section 62G against a person;
- (f) make under subsection 62H (2) an order varying a banning order against a person; or
- (g) refuse an application by a person under section 62J;

unless the Commission complies with subsection (2) of this section.

“(2) The Commission shall give the applicant, licensee or person, as the case may be, an opportunity:

- (a) to appear at a hearing before the Commission that takes place in private; and
- (b) to make submissions and give evidence to the Commission in relation to the matter.

Disqualification by the Court

“62Q. (1) Where the Commission:

- (a) revokes under section 62A or 62B or subsection 62C (1) a licence held by a person; or
- (b) makes under section 62G against a person an order that is to operate otherwise than only for a specified period;

the Commission may apply to the Court for an order or orders under this section in relation to the person.

“(2) On an application under subsection (1), the Court may make one or more of the following:

- (a) an order disqualifying the person, permanently or for a specified period, from holding:
 - (i) a dealers licence;
 - (ii) an investment advisers licence; or
 - (iii) a dealers licence or an investment advisers licence;whichever the order specifies;

- (b) an order prohibiting the person, permanently or for a specified period, from doing an act as:
 - (i) a representative of a dealer;
 - (ii) a representative of an investment adviser; or
 - (iii) a representative of a dealer or of an investment adviser;whichever the order specifies;

(c) such other order as it thinks fit;
or may refuse the application.

“(3) The Court may revoke or vary an order in force under this section.

Effect of order under section 62Q or corresponding law

“62R. (1) The Commission shall not grant a dealers licence or an investment advisers licence to a person whom an order disqualifies from holding a dealers licence or an investment advisers licence, as the case may be, under this Part or the provisions of a law of a participating State or participating Territory that correspond with this Part.

“(2) A person shall not contravene an order that prohibits the person from doing an act as:

- (a) a representative of a dealer;
- (b) a representative of an investment adviser; or
- (c) a representative of a dealer or of an investment adviser;

whichever the order specifies.

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

“(3) In this section:

‘order’ means:

Co-operative Scheme Legislation Amendment No. 92, 1989

- (a) an order in force under section 62Q or a provision of a law of a participating State or participating Territory that corresponds with that section; or
- (b) an order as it has effect because of subsection 62S (2) or a provision of a law of a participating State or participating Territory that corresponds with that subsection.

Effect of order under previous Territory law corresponding with section 62Q

“62S. (1) This section applies where, immediately before the commencement of section 52 of the *Co-operative Scheme Legislation Amendment Act 1989*, a person was disqualified, either permanently or for a period, from holding a licence because of an order that was made under subsection 60 (4) of this Act as in force before that commencement.

“(2) As from that commencement, the order has effect for the purposes of this Act as if it were:

- (a) in force under section 62Q;
- (b) an order disqualifying the person, permanently or for that period, as the case may be, from holding a dealers licence or an investment advisers licence; and
- (c) an order prohibiting the person, permanently or for that period, as the case may be, from doing an act as a representative of a dealer or of an investment adviser.”.

Insertion of Division heading

53. Before section 63 of the Principal Act the following heading is inserted in Part V:

“Division 1—General”.

Issue of contract notes

54. Section 64 of the Principal Act is amended:

- (a) by inserting before subsection (1) the following subsection:

“(1A) This section applies:

- (a) in relation to a dealer (other than an exempt dealer) in relation to a transaction of sale or purchase of securities; or
- (b) in relation to an exempt dealer, in relation to a transaction of sale or purchase of securities that is entered into in the course of a securities business that the exempt dealer carries on in a capacity of personal representative of a dead dealer.”;

- (b) by omitting from subsection (1) “(not being an exempt dealer)”.

Repeal of sections 65 and 65A

55. Sections 65 and 65A of the Principal Act are repealed.

Insertion of Division heading

56. Before section 68 of the Principal Act the following heading is inserted:

“Division 2—Short selling of securities”.

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

“Division 3—Recommendations about securities

Recommendation made by partner or officer

“68B. For the purposes of this Division (other than section 68E):

- (a) a recommendation made by a partner shall be deemed to have been made by each partner in the partnership; and
- (b) a recommendation made by a director, executive officer or secretary of a body corporate shall be deemed to have also been made by the body corporate.

Client to be told if adviser’s interests may influence recommendation

“68C. (1) This section applies where a securities adviser makes a securities recommendation to a person (in this section called the ‘client’) who may reasonably be expected to rely on it.

“(2) The securities adviser shall:

- (a) if the recommendation is made orally—when making the recommendation, disclose to the client orally; or
- (b) if the recommendation is made in writing—set out in that writing, in such a way as to be no less legible than the other material in that writing;

particulars of:

- (c) any commission or fee, or any other benefit or advantage, whether pecuniary or not and whether direct or indirect, that the securities adviser or an associate has received, or will or may receive, in connection with the making of the recommendation or a dealing by the client in securities as a result of the recommendation; and
- (d) any other pecuniary or other interest, whether direct or indirect, of the securities adviser or an associate, that may reasonably be expected to be capable of influencing the securities adviser in making the recommendation.

“(3) Subsection (2) does not apply in relation to a commission or fee that the securities adviser has received, or will or may receive, from the client.

“(4) A reference in subsection (2) to an associate is a reference to a person associated with the securities adviser and, for the purposes of section 6, the making of securities recommendations is the matter to which the reference relates.

“(5) If by making the recommendation the securities adviser does an act as a representative of another person, then:

- (a) without limiting the generality of section 6, the other person is an associate for the purposes of subsection (2) of this section; and
- (b) subsection (2) of this section does not apply in relation to a commission or fee that the other person has received, or will or may receive, from the client.

“(6) Despite section 6 and subsection (4) of this section, a person (in this subsection called the ‘alleged associate’) is not an associate for the purposes of subsection (2) of this section merely because of being:

- (a) a partner of the securities adviser otherwise than because of carrying on a securities business in partnership with the securities adviser; or
- (b) a director of a body corporate of which the securities adviser is also a director, whether or not the body carries on a securities business;

unless the securities adviser and the alleged associate act jointly, or otherwise act together, or under an arrangement between them, in relation to making securities recommendations.

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

Defences to alleged breach of subsection 68C (2)

“68D. (1) Where:

- (a) a person:
 - (i) when making a recommendation orally, fails to disclose; or
 - (ii) when making a recommendation in writing, fails to set out in that writing;

as required by subsection 68C (2), particulars of a matter; and

- (b) it is proved that the person was not, and could not reasonably be expected to have been, aware of that matter when making the recommendation;

the failure is not a contravention of that subsection.

“(2) Where:

- (a) a dealer or investment adviser, or a representative of a dealer or investment adviser:
 - (i) when making a recommendation orally, fails to disclose; or
 - (ii) when making a recommendation in writing, fails to set out in that writing;

as required by subsection 68C (2), particulars of a matter;

- (b) in the case of a representative of a dealer or investment adviser—by making the recommendation, the representative does an act as a representative of the dealer or investment adviser;

- (c) it is proved that the dealer or investment adviser had in operation, throughout a period beginning before the decision to make the recommendation was made and ending after the recommendation was made, arrangements to ensure that:

- (i) the natural person who made the decision knew nothing about that matter before the end of that period; and
 - (ii) no advice with respect to the making of the recommendation was given to the person by anyone who knew anything about that matter; and
- (d) it is also proved that:
- (i) the person in fact knew nothing about that matter before the end of that period; and
 - (ii) no such advice was so given;
- the failure is not a contravention of that subsection.

“(3) Neither of subsections (1) and (2) limits the generality of the other.

Adviser must have reasonable basis for recommendation

“68E. (1) A securities adviser who:

- (a) makes a securities recommendation to a person who may reasonably be expected to rely on it; and
- (b) does not have a reasonable basis for making the recommendation to the person;

contravenes this section.

“(2) For the purposes of subsection (1), a securities adviser does not have a reasonable basis for making a securities recommendation to a person unless:

- (a) in order to ascertain that the recommendation is appropriate having regard to the information the securities adviser has about the person’s investment objectives, financial situation and particular needs, the securities adviser has 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) A person who contravenes subsection (1) is not guilty of an offence by virtue of this section or section 141.

Adviser who breaches this Division liable to compensate client

“68F. (1) This section applies where:

- (a) a securities adviser contravenes section 68C or 68E in relation to a securities recommendation to a person (in this section called the ‘client’);
- (b) the client, in reliance on the recommendation, does, or omits to do, a particular act;
- (c) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the client to do, or omit to do, as the case may be, that act in reliance on the recommendation; and
- (d) the client suffers loss or damage as a result of that act or omission.

Co-operative Scheme Legislation Amendment No. 92, 1989

“(2) Subject to subsections (3) and (4), the securities adviser is liable to pay damages to the client in respect of that loss or damage.

“(3) In the case of a contravention of section 68C, the securities adviser is not so liable if it is proved that a reasonable person in the client’s circumstances could be expected to have done, or omitted to do, as the case may be, that act in reliance on the recommendation even if the securities adviser had complied with that section in relation to the recommendation.

“(4) In the case of a contravention of section 68E, the securities adviser is not so liable if it is proved that the recommendation was, in all the circumstances, appropriate having regard to the information that, when making the recommendation, the securities adviser had about the client’s investment objectives, financial situation and particular needs.

Qualified privilege for adviser when complying with this Division

“68G. A securities adviser who:

- (a) makes a securities recommendation to a person who may reasonably be expected to rely on it; and
- (b) in so making the recommendation, contravenes neither of subsections 68C (2) and 68E (1);

has qualified privilege in respect of a statement the securities adviser makes to the person, whether orally or in writing, in the course of, or in connection with, so making the recommendation.”.

Interpretation

58. Section 87 of the Principal Act is amended by omitting subsections (1), (2) and (3) and substituting the following subsection:

“(1) In this Part:

‘financial journalist’ means a person who is not a licensee and who, in the course of the person’s business or employment, contributes advice, or prepares analyses or reports, about securities for publication:

- (a) in a newspaper or periodical;
- (b) in the course of, or by means of, transmissions made by means of an information service; or
- (c) in sound recordings, video recordings or data recordings;

‘Register’, in relation to a person to whom this Part applies, means the Register required to be maintained by the person under subsection 89 (1);

‘securities’ means securities of:

- (a) a body corporate that is a public company under the law in force in a State or Territory; or
- (b) a body corporate or other person included in the official list of a securities exchange.”.

59. Section 88 of the Principal Act is repealed and the following section is substituted:

Application of Part

“88. (1) This Part applies to a person who:

- (a) holds a licence;
- (b) holds a proper authority from a person who holds a licence; or
- (c) is a financial journalist.

“(2) A person to whom this Part applies but who does not hold a licence need not maintain a Register under this Part if the person maintains a register under the provisions of a law of a participating State or participating Territory that correspond with this Part.”.

60. Sections 90 and 91 of the Principal Act are repealed and the following sections are substituted:

Commission to be notified of certain matters on establishment of Register

“90. (1) An applicant for a licence shall include in the application written notice of where the applicant intends to keep the Register under subsection 89 (1).

“(2) Within 14 days after beginning to maintain the Register, a person who holds a proper authority from a licensee or recognised licensee shall lodge written notice of:

- (a) where the Register is kept; and
- (b) the name and business address of each licensee, and each recognised licensee, from whom the first-mentioned person holds a proper authority.

“(3) Within 14 days after beginning to maintain the Register, a financial journalist shall lodge written notice of:

- (a) where the Register is kept;
- (b) the name and business address of the financial journalist’s employer (if any); and
- (c) the newspapers and periodicals to which the financial journalist contributes.

Commission to be notified of changes in certain matters

“90A. (1) As soon as practicable after changing the place where the Register is kept, a person to whom this Part applies shall lodge written notice of the new place where the Register is kept.

“(2) Where, at a particular time during the period beginning when a person complies with subsection 90 (2) and ending immediately after the person next ceases to be a person to whom this Part applies, the person begins or ceases to hold a proper authority from a particular licensee or recognised licensee, the person shall, as soon as practicable after that time,

lodge written notice of that fact and of the name and business address of the licensee or recognised licensee.

“(3) Where, at a particular time during the period beginning when a person complies with subsection 90 (3) and ending immediately after the person next ceases to be a person to whom this Part applies, the person:

- (a) begins or ceases to be employed as a financial journalist by a particular employer; or
- (b) begins or ceases to contribute as a financial journalist to a particular newspaper or periodical;

the person shall, as soon as practicable after that time, lodge written notice of that fact and of:

- (c) the employer’s name and business address; or
- (d) the name of the newspaper or periodical;

as the case may be.

“(4) As soon as practicable after:

- (a) the name or business address of a licensee or recognised licensee from whom a person to whom this Part applies holds a proper authority;
- (b) the name or business address of an employer who employs a person to whom this Part applies as a financial journalist; or
- (c) the name of a newspaper or periodical to which a person to whom this Part applies contributes as a financial journalist;

ceases to be the name or business address of the licensee or employer, or the name of the newspaper or periodical, as the case may be, as last notified by the person under section 90 or this section, the person shall lodge written notice of the new name or business address.

Defences

“91. (1) It is a defence to a prosecution for contravening section 89, 90 or 90A if it is proved that the contravention was due to the defendant not being aware of a fact or occurrence whose existence was necessary to constitute the contravention and that:

- (a) the defendant was not so aware on the date of the information;
- (b) the defendant became so aware less than 14 days before the date of the information; or
- (c) the defendant became so aware not less than 14 days before the date of the information and complied with the relevant section within 14 days after becoming so aware.

“(2) For the purposes of this Part, a person shall, unless the contrary is proved, be presumed to have been aware at a particular time of a fact or occurrence relating to securities if an employee or agent of the person, being an employee or agent having duties or acting in relation to the employer’s or principal’s interest in the relevant securities, was aware of that fact or occurrence at that time.”.

61. Section 93 of the Principal Act is repealed and the following section is substituted:

Power of Commission to require certain information

“93. (1) The Commission may, by written notice, require a person (in this section called the ‘principal’) to supply the Commission with:

- (a) the name and address of the person who contributed or prepared specified advice or a specified analysis or report; or
- (b) the names and addresses of all persons who, during a specified period, contributed or prepared any advice, analysis or report; being advice, or an analysis or report, about securities that was published:
 - (c) in a newspaper or periodical owned or published by the principal;
 - (d) in the course of, or by means of, transmissions that:
 - (i) the principal makes by means of an information service; or
 - (ii) are made by means of an information service that the principal owns, operates or makes available; or
- (e) in sound recordings, video recordings, or data recordings, that the principal makes available as mentioned in paragraph 6E(5) (c).

“(2) A person shall comply with a requirement made of the person under subsection (1).”.

Interpretation

62. Section 122AA of the Principal Act is amended by omitting subsection (5).

Division 2—Amendments of Futures Industry Act 1986³

63. After section 3 of the Principal Act the following heading and section are inserted:

“PART 1A—INTERPRETATION

Effect of this Part

“3A. The provisions of this Part have effect for the purposes of this Act, except so far as the contrary intention appears in this Act.”.

Interpretation

64. Section 4 of the Principal Act is amended:

- (a) by omitting “subsection 11 (1)” from the definitions of “recognised futures adviser” and “recognised futures broker” in subsection (1) and substituting “section 11”;
- (b) by omitting from subsection (1) the definitions of “futures adviser”, “futures broker”, “licence” and “recognised licensee” and substituting the following definitions:

Co-operative Scheme Legislation Amendment No. 92, 1989

“‘futures adviser’ means a person who carries on, or 2 or more persons who together carry on, a futures advice business;

‘futures broker’ means:

(a) a person who carries on, or 2 or more persons who together carry on, a futures broking business, whether or not the person, or any of the persons, also deals in futures contracts on the person’s own account; or

(b) a person who holds a futures broker’s licence under Part IV or the provisions of a law of a participating State or participating Territory that correspond with Part IV;

‘licence’ means a futures broker’s licence or a futures adviser’s licence;

‘recognised licensee’ means a recognised futures broker or a recognised futures adviser and, in relation to a recognised licence, means the person who holds the recognised licence;”;

(c) by omitting from subsection (1) the definitions of “‘futures adviser’s representative”, “‘futures adviser’s representative’s licence”, “‘futures broker’s representative”, “‘futures broker’s representative’s licence”, “‘recognised futures adviser’s representative”, “‘recognised futures broker’s representative” and “‘representative’s licence”;

(d) by inserting in subsection (1) the following definitions:

“‘assets’, in relation to the holder of a futures broker’s licence, means all the assets of the holder, whether or not used in connection with a business of dealing in futures contracts;

‘Australian company law’ means the *Companies Act 1981* or the provisions of:

(a) a previous law of the Territory; or

(b) a law, or a previous law, of a State or of another Territory;

that correspond with that Act;

‘banning order’ means an order made under section 80G and in force under Division 5 of Part IV;

‘condition’, in relation to a licence, means a condition or restriction to which the licence is subject, or will be subject, as the case requires;

‘eligible money market dealer’ means a body corporate in respect of which a declaration is in force under paragraph 97 (7) (b) of the *Companies Act 1981*;

‘event’ includes any happening, circumstance or state of affairs;

‘exempt broker’ means a person who is an exempt broker by virtue of section 10;

‘exempt futures adviser’ means a person who is an exempt futures adviser by virtue of section 10;

Co-operative Scheme Legislation Amendment No. 92, 1989

'exempt public authority' means a body corporate that is incorporated within Australia and is a public authority or an instrumentality or agency of the Crown in right of the Commonwealth or of a State or Territory;

'externally-administered body corporate' means a body corporate:

- (a) that is being wound up under an Australian company law;
- (b) in respect of property of which a receiver, or a receiver and manager, has been appointed under an Australian company law (whether or not by a court) and is acting;
- (c) that is under official management under an Australian company law; or
- (d) that has, whether in the Territory or elsewhere, entered into a compromise or arrangement with its creditors that is still in operation;

'futures advice business' has the meaning given by section 10A;

'futures broking business', in relation to a person, means, subject to subsection 7 (4), a business of dealing in futures contracts on behalf of other persons;

'futures law' means a provision of this Act or a provision of a corresponding law of a participating State or participating Territory;

'futures report' means an analysis or report about futures contracts;

'have', in relation to information, includes be in possession of the information;

'hold', in relation to a person, in relation to a document that is, or purports to be, a copy of a licence, means have in the person's possession;

'information service' means:

- (a) a broadcasting service;
- (b) an interactive or broadcast videotext or teletext service or a similar service;
- (c) an online database service or a similar service; or
- (d) any other prescribed service;

'invalid authority' has the meaning given by section 10B;

'licensee' means a person who holds a licence and, in relation to a licence, means the person who holds the last-mentioned licence;

'liquidator' includes a provisional liquidator;

'lodge' means lodge with the Commission;

Co-operative Scheme Legislation Amendment No. 92, 1989

'non-broker' means a person who is neither a futures broker nor one of 2 or more persons who together constitute a futures broker;

'proper authority' has the meaning given by section 10B;

'publish' includes issue;

'recognised banning order' means a banning order within the meaning of a corresponding law of a participating State or participating Territory;

'recognised licence' means, subject to section 11, a licence within the meaning of a corresponding law of a participating State or participating Territory;

'representative' has the meaning given by section 11A;

'responsible officer', in relation to a body corporate that applies for a licence, means an officer of the body who would perform duties in connection with the holding of the licence;

'serious fraud' means an offence involving fraud or dishonesty, being an offence:

- (a) against a law of the Commonwealth, of a State or of a Territory, or against any other law; and
- (b) punishable by imprisonment for life or for a period, or maximum period, of at least 3 months;

'suspend' has a meaning affected by subsections 80D (7) and (8);

'transmission' means a transmission, by means of electric or electromagnetic energy, of:

- (a) sounds, including speech and music;
- (b) visual images;
- (c) signals for the communication, whether as between persons and persons, persons and things or things and things, of any matter otherwise than in the form of sounds or visual images; or
- (d) signals for the actuation or control of machinery or apparatus."

65. After section 6 of the Principal Act the following sections are inserted:

Businesses of a particular kind

"6A. A reference to a business of a particular kind includes a reference to a business of that kind that is part of, or is carried on in conjunction with, any other business.

Carrying on a business: alone or together with others

“6B. A reference to a person carrying on a business, or a business of a particular kind, is a reference to the person carrying on a business, or a business of that kind, whether alone or together with any other person or persons.”.

Dealing in futures contracts

66. Section 7 of the Principal Act is amended by adding at the end the following subsections:

“(4) Subsection (5) has effect for the purposes of determining:

- (a) whether or not a person deals in a futures contract on another person’s behalf;
- (b) whether or not a person carries on, or holds himself, herself or itself out as carrying on, a futures broking business; and
- (c) what constitutes such a business carried on by the person.

“(5) An act that the person does:

- (a) while employed by, or acting for or by arrangement with, a futures broker;
- (b) as employee or agent of, or otherwise on behalf of, on account of, or for the benefit of, the broker; and
- (c) in connection with a business of dealing in futures contracts that the broker carries on;

shall be disregarded.

“(6) Subsections (3), (4) and (5) do not have effect for the purposes of sections 46 and 50.”.

67. Section 10 of the Principal Act is repealed and the following sections are substituted:

Exempt brokers and exempt futures advisers

“10. (1) A body corporate is both an exempt broker and an exempt futures adviser if it is:

- (a) a prescribed body corporate; or
- (b) an exempt public authority in relation to which a declaration is in force under subsection (2).

“(2) The Ministerial Council may by writing declare that paragraph (1) (b) applies in relation to specified bodies corporate.

“(3) The Commission shall cause a copy of an instrument executed under subsection (2) to be published in the *Gazette*.

“(4) Subject to this section, a person is an exempt broker or an exempt futures adviser if the person is a futures broker or futures adviser, as the case may be, but does not carry on a futures broking business or a futures advice business, as the case may be, except:

Co-operative Scheme Legislation Amendment No. 92, 1989

- (a) as an official receiver or trustee within the meaning of the *Bankruptcy Act 1966*;
- (b) as a receiver, receiver and manager, or liquidator, appointed by a court;
- (c) as a person appointed by a court to carry on the business concerned;
- (d) as a receiver, receiver and manager, or liquidator, appointed otherwise than by a court;
- (e) as an official manager or deputy official manager of a body corporate;
- (f) as a trustee or other person administering a compromise or arrangement between a body corporate and any other person or persons;
- (g) as a personal representative of a dead dealer or investment adviser, as the case maybe; or
- (h) in such other capacity, or in such other circumstances, as are prescribed.

“(5) A person who carries on a futures broking business or futures advice business in a capacity referred to in any of paragraphs (4) (d) to (g), inclusive, shall be taken for the purposes of subsection (4) to carry on the business otherwise than in that capacity unless there is in force under subsection (6) an approval of the person carrying on the business in that capacity.

“(6) The Commission may, on application by a person and after having regard to:

- (a) the prescribed matters (if any); and
- (b) such matters as it thinks appropriate;

by writing approve of the person carrying on a specified futures broking business or futures advice business in a specified capacity, being a capacity referred to in any of paragraphs (4) (d) to (g), inclusive.

“(7) A person is not an exempt broker or an exempt futures adviser except as provided by this section.

“(8) At and after the commencement of section 67 of the *Co-operative Scheme Legislation Amendment Act 1989*, a declaration that, immediately before that commencement, was in force under subsection 10 (2) of this Act as in force before that commencement has effect as if it were a declaration made at that commencement under subsection (2) of this section.

Futures advice business

“10A. (1) A reference to a futures advice business, in relation to a person, is a reference to:

- (a) a business of advising other persons about futures contracts; or
- (b) a business in the course of which the person publishes futures reports.

Co-operative Scheme Legislation Amendment No. 92, 1989

“(2) The remaining provisions of this section apply for the purposes of determining:

- (a) whether or not a person carries on a futures advice business;
- (b) what constitutes a futures advice business carried on by a person; and
- (c) whether or not a person holds himself, herself or itself out to be a futures adviser.

“(3) The fact that the person advises other persons about futures contracts, or publishes futures reports, in some or all of the following circumstances shall be disregarded:

- (a) in a newspaper or periodical:
 - (i) of which the person is the proprietor or publisher; and
 - (ii) that is generally available to the public otherwise than only on subscription;
- (b) in the course of, or by means of, transmissions that:
 - (i) the person makes by means of an information service; or
 - (ii) are made by means of an information service that the person owns, operates or makes available;and are generally available to the public;
- (c) in sound recordings, video recordings, or data recordings, that the person makes generally available to the public in either or both of the following ways:
 - (i) by supplying copies of them to the public;
 - (ii) by causing the sound recordings to be heard by, the video recordings to be seen and heard by, or the contents of the data recordings to be displayed or reproduced for, the public, as the case may be.

“(4) Subsection (3) does not apply in relation to a newspaper or periodical, or transmissions, sound recordings, video recordings or data recordings, whose sole or principal purpose is to advise other persons about futures contracts or to publish futures reports.

“(5) The fact that the person holds himself, herself or itself out as advising other persons, or publishing futures reports, as mentioned in subsection (3) shall be disregarded.

“(6) An act that the person does:

- (a) while employed by, or acting for or by arrangement with, another person;
- (b) as employee or agent of, or otherwise on behalf of, on account of, or for the benefit of, the other person; and
- (c) in connection with a futures advice business carried on by the other person;

shall be disregarded.

Proper authority; invalid authority

“10B. (1) A reference, in relation to a person (in this subsection called the ‘representative’), to a proper authority from a person (in this subsection called the ‘principal’) who holds a licence is a reference to a copy of the licence on which are endorsed:

- (a) a statement:
 - (i) certifying the copy to be a true copy of the licence;
 - (ii) stating that the representative is employed by, or acts for or by arrangement with, the principal; and
 - (iii) signed by the principal; and
- (b) in relation to each licensee (if any), other than the principal, of whom the representative is a representative, a statement that:
 - (i) sets out the name of the licensee;
 - (ii) states that the representative is employed by, or acts for or by arrangement with, the licensee;
 - (iii) states that the licensee consents to the representative being employed by, or acting for or by arrangement with, the principal; and
 - (iv) is signed by the licensee.

“(2) A reference, in relation to a person (in this subsection called the ‘representative’), to an invalid authority from a person (in this subsection called the ‘principal’) is a reference to a document:

- (a) on which is endorsed a statement:
 - (i) stating that the representative is employed by, or acts for or by arrangement with, the principal; and
 - (ii) signed by the principal; and
- (b) that purports to be a copy of a licence and to be a proper authority of the representative from the principal, but is not in fact such a proper authority;

whether or not:

- (c) the principal is, or has ever been, a licensee; or
- (d) the document is in fact a copy of a licence that exists or has ever existed.

“(3) For the purposes of this section, a statement is signed by a person if, and only if, it is signed:

- (a) if the person is a natural person—by the person; or
- (b) if the person is a body corporate:
 - (i) by a director or secretary; or
 - (ii) by an executive officer who is authorised to sign the statement.

“(4) In this section:

‘licence’ includes a recognised licence;

‘licensee’ includes a recognised licensee.”.

68. Section 11 of the Principal Act is repealed and the following section is substituted:

Recognised licensee must be connected with State or Territory concerned

“11. Where a person holds a futures broker’s licence or futures adviser’s licence under the provisions of a law of a participating State or participating Territory that correspond with Part IV, the person is not a recognised futures broker or recognised futures adviser, as the case may be, and the licence is not a recognised licence, unless:

- (a) if the person is a natural person who is not a partner in a firm dealing in futures contracts or carrying on a futures advice business, as the case may be—the person is ordinarily resident in that State or Territory;
- (b) if the person is a natural person who is a partner in such a firm—the firm’s principal place of business is in that State or Territory; or
- (c) if the person is a body corporate—the body:
 - (i) is incorporated in that State or Territory; or
 - (ii) is incorporated outside Australia and the external Territories and is registered under the provisions of a law of that State or Territory that correspond with Division 5 of Part XIII of the *Companies Act 1981*.”.

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

Representatives

“11A. (1) Subject to subsection (2), a person is a representative of another person if, and only if, the first-mentioned person is employed by, or acts for or by arrangement with, the other person in connection with a futures broking business or futures advice business carried on by the other person.

“(2) Except for the purposes of paragraph 10B (1) (b):

- (a) a person who holds a proper authority from a licensee or recognised licensee is a representative of the licensee or recognised licensee; and
- (b) a person who holds an invalid authority from another person is a representative of the other person.

“(3) Subject to subsection (4), a person does an act, or engages in conduct, as a representative of another person if, and only if, the first-mentioned person does the act, or engages in the conduct:

- (a) in connection with a futures broking business or futures advice business carried on by the other person;
- (b) while the first-mentioned person is a representative of the other person;
- (c) as employee or agent of, or otherwise on behalf of, on account of, or for the benefit of, the other person; and

- (d) otherwise than in the course of work of a kind ordinarily done by accountants, clerks or cashiers.

“(4) Except for the purposes of Division 4 of Part IV, a person who holds himself, herself or itself out to be a representative of another person does an act as a representative of the other person.”.

Heading to Part IV

70. The heading to Part IV of the Principal Act is omitted and the following heading is substituted:

“PART IV—PARTICIPANTS IN THE FUTURES INDUSTRY”.

71. Sections 60 to 71, inclusive, of the Principal Act are repealed and the following heading and sections are substituted:

“Division 1—Futures brokers and futures advisers

Futures brokers

“61. A person shall not:

- (a) deal in a futures contract on another person’s behalf; or
- (b) hold himself, herself or itself out as carrying on a futures broking business;

unless the first-mentioned person holds a futures broker’s licence or is a recognised futures broker or an exempt broker.

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

Futures advisers

“63. A person shall not:

- (a) carry on a futures advice business; or
- (b) hold himself, herself or itself out to be a futures adviser;

unless the person is a licensee, a recognised licensee or an exempt futures adviser.

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

Application for a licence

“65. (1) A person may apply to the Commission, in the prescribed form and manner, for a futures broker’s licence or a futures adviser’s licence.

“(2) The Commission may require an applicant for a licence to give the Commission such further information in relation to the application as the Commission thinks necessary.

“(3) Subsections (1) and (2) of this section, and sections 66 to 66B (inclusive), as in force at and after the commencement of section 71 of the *Co-operative Scheme Legislation Amendment Act 1989* apply in relation to an application for a futures broker’s licence or for a futures adviser’s licence that:

- (a) is made at or after that commencement; or
- (b) was made before that commencement but, as at that commencement, had been neither granted nor refused.

Grant of licence to natural person

“66. (1) This section applies where a natural person applies for a licence.

“(2) The Commission shall grant the licence if:

- (a) the application was made in accordance with section 65;
- (b) the person is not an insolvent under administration;
- (c) if the application is for a futures broker’s licence—the person is a member of a relevant organisation;
- (d) the Commission is satisfied that the person’s educational qualifications and experience are adequate having regard to the nature of the duties of a holder of a licence of the kind applied for;
- (e) the Commission has no reason to believe that the person is not of good fame and character; and
- (f) the Commission has no reason to believe that the person will not perform those duties efficiently, honestly and fairly.

“(3) Otherwise, the Commission shall refuse the application.

“(4) In determining whether or not it has reason to believe as mentioned in paragraph (2) (e) or (f), the Commission shall have regard to any conviction of the person, during the 10 years ending on the day of the application, of serious fraud.

Grant of licence to body corporate

“66A. (1) This section applies where a body corporate applies for a licence.

“(2) The Commission shall grant the licence if:

- (a) the application was made in accordance with section 65;
- (b) the applicant is not an externally-administered body corporate;
- (c) if the application is for a futures broker’s licence—the applicant is a member of a relevant organisation;
- (d) the Commission is satisfied that the educational qualifications and experience of each responsible officer of the applicant are adequate having regard to the duties that the officer would perform in connection with the holding of the licence; and
- (e) the Commission has no reason to believe that the applicant will not perform efficiently, honestly and fairly the duties of a holder of a licence of the kind applied for.

“(3) Otherwise, the Commission shall refuse the application.

“(4) In determining whether or not it has reason to believe as mentioned in paragraph (2) (e), the Commission shall have regard, in relation to each responsible officer of the applicant, to:

- (a) whether or not the officer is an insolvent under administration;
- (b) any conviction of the officer, during the 10 years ending on the day of the application, of serious fraud;
- (c) any reason the Commission has to believe that the officer is not of good fame and character; and
- (d) any reason the Commission has to believe that the officer will not perform efficiently, honestly and fairly the duties that the officer would perform in connection with the holding of the licence.

Effect of certain provisions

“66B. (1) Sections 66 and 66A apply subject to sections 80N, 80P and 80R and the regulations.

“(2) Nothing in subsection 66 (4) or 66A (4) limits the matters to which the Commission may have regard:

- (a) in deciding on an application for a licence; or
- (b) in connection with performing or exercising any other function or power under this Part.

Conditions of licence: general

“69. A licence is subject to:

- (a) such conditions and restrictions as are prescribed;
- (b) if the licence was granted before the commencement of section 71 of the *Co-operative Scheme Legislation Amendment Act 1989*—such of the conditions of the licence as at that commencement as were imposed by the Commission; and
- (c) subject to section 80P, such conditions and restrictions as the Commission imposes when granting the licence or while the licence is in force.

Conditions of futures broker’s licence: membership of relevant organisation

“69A. (1) A futures broker’s licence is subject to:

- (a) a condition that the licensee be, throughout the currency of the licence, a member of a relevant organisation; and
- (b) a condition that the licence is suspended throughout a period throughout which the licensee:
 - (i) is a member of no relevant organisation; and
 - (ii) would, but for the suspension of the licensee’s membership of a relevant organisation, be a member of the last-mentioned relevant organisation.

“(2) A person whose membership of a relevant organisation is suspended for a period:

- (a) is, for the purposes of paragraph (1) (a), a member of that relevant organisation throughout that period; and
- (b) is, for the purposes of paragraph (1) (b), a member of that relevant organisation at no time during that period.

Conditions of futures broker's licence: assets and liabilities

“69B. (1) Without limiting the generality of section 69, one or more of the following may be imposed under that section on a futures broker's licence:

- (a) a condition or restriction about limiting the liability that the licensee may incur in connection with a business of dealing in futures contracts;
- (b) a condition or restriction about incurring, or a condition about disclosing, liabilities of the licensee that arise otherwise than in connection with such a business;
- (c) a condition or restriction about the licensee's financial position, whether or not in relation to such a business;
- (d) without limiting the generality of paragraph (c), a condition that the licensee's assets include, or not include, specified assets;
- (e) without limiting the generality of paragraph (c), a condition that the sum of the values of specified assets included in the licensee's assets be not less than, or not greater than, an amount ascertained in accordance with the condition.

“(2) A condition imposed by virtue of paragraph (1) (e) may provide for the values of assets to be ascertained, for the purposes of applying the condition, in a manner specified in, or determined in accordance with, the condition.

“(3) Without limiting the generality of paragraph (1) (e), a condition imposed by virtue of that paragraph may provide for the amount referred to in that paragraph to be a specified percentage of the sum of:

- (a) the values of all the licensee's assets;
- (b) the values of specified assets included in the licensee's assets;
- (c) the amounts of all the licensee's liabilities; or
- (d) the amounts of specified liabilities included in the licensee's liabilities.

Conditions of licence: supervision of representatives

“69C. Without limiting the generality of section 69, one or more of the following may be imposed under that section on a licence:

- (a) a condition about what the licensee is to do, by way of supervision or otherwise, in order to prevent the licensee's representatives from contravening:
 - (i) a futures law; or
 - (ii) other conditions of the licence;
- (b) a condition about what the licensee is to do to ensure that each representative of the licensee has adequate qualifications and

experience having regard to what the representative will do on the licensee's behalf in connection with a futures broking business or futures advice business carried on by the licensee.

Revocation and variation of licence conditions

“69D. Subject to section 80P, the Commission may at any time revoke or vary a condition of a licence unless it was imposed by the regulations.

Relevant organisations to be informed about conditions of futures broker's licence

“69E. (1) As soon as practicable after imposing a condition on, or revoking or varying a condition of, a futures broker's licence, the Commission shall inform in writing:

- (a) each relevant organisation of which the licensee is a member; and
- (b) each body corporate that is a clearing house for a futures exchange of which the licensee is a member.

“(2) A contravention of subsection (1) does not affect the validity of an act done by the Commission.

Licensee to notify breach of licence condition

“70. (1) Within one business day after the happening of an event constituting a contravention of a condition of a licence, the licensee shall give to:

- (a) the Commission; and
- (b) each relevant organisation of which the licensee is a member;

a written notice setting out particulars of the event.

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

“(2) It is a defence to a prosecution for failing to give a particular notice to a person as required by this section if it is proved that:

- (a) when the requirement arose, the defendant was unaware of the event that gave rise to the requirement; and
- (b) the defendant:
 - (i) did not become aware of the event before the date of the information; or
 - (ii) did become so aware before that date but gave the notice to that person as soon as reasonably practicable after becoming so aware.

Commission may require licensed futures broker to give information

“71. (1) The Commission may, by writing given to the holder of a futures broker's licence, direct the holder to give the Commission specified information about, or a specified statement relating to, a business of dealing in futures contracts that the holder carries on or has carried on.

“(2) A direction under subsection (1) to give a specified statement may also direct the holder to cause the statement to be audited by a registered company auditor before it is given to the Commission.

“(3) A person shall comply with a direction under this section:

- (a) if the direction specifies a reasonable period for compliance—within that period; or
 - (b) in any other case—within a reasonable period;
- or within that period as extended, or further extended, by the Commission by writing given to the person.

Penalty: \$1,000.”.

Register of Licence Holders

72. Section 72 of the Principal Act is amended by omitting subsections (2) and (3) and substituting the following subsections:

“(1A) The Commission shall include in the Register of Licence Holders, in relation to each licence, a copy of:

- (a) the licence; and
- (b) each instrument that imposes conditions on the licence, or revokes or varies conditions of the licence, after the licence is granted.

“(2) The Commission shall enter in the Register of Licence Holders, in relation to each licence:

- (a) the name of the licensee;
- (b) if the licensee is a body corporate—the name of each director, and of each secretary, of the body;
- (c) the day on which the licence was granted;
- (d) in relation to each business to which the licence relates:
 - (i) the address of the principal place of business at which the business is carried on;
 - (ii) the addresses of the other places (if any) at which the business is carried on; and
 - (iii) if the business is carried on under a name or style other than the name of the licensee—the name or style;
- (e) in the case of a futures broker’s licence—the name, and the address of the principal place of business, of each relevant organisation of which the licensee is a member;
- (f) particulars of any suspension of the licence; and
- (g) such other matters (if any) as are prescribed.

“(3) Where a person no longer holds a particular licence, the Commission shall remove from the Register of Licence Holders the documents included in it, and the particulars entered in it, in relation to that licence.”.

73. Sections 73 and 74 of the Principal Act are repealed and the following sections are substituted:

Notifying change in particulars

“73. Within 21 days after:

- (a) the holder of a futures broker’s licence ceases to carry on the business to which the licence relates;
- (b) the holder of a futures adviser’s licence ceases to act as, or to hold himself, herself or itself out to be, a futures adviser; or
- (c) there is a change in a matter particulars of which are required by virtue of paragraph 72 (2) (a), (b), (d), (e) or (g) to be entered, in relation to a licence, in the Register of Licence Holders;

the holder of the licence shall lodge written particulars, in the prescribed form, of that fact, or of that change, as the case may be.

Annual statement of licensee

“74. (1) A person who is or has been a licensee shall lodge, in respect of each year or part of a year during which the licence is or was in force, a statement in the prescribed form that complies with this section.

“(2) The statement shall set out the number of persons:

- (a) who, when the statement is lodged, hold; or
- (b) who, when the person last ceased to be a licensee, held;

as the case may be, proper authorities from the person.

“(3) The statement shall also contain such information as is prescribed.”.

When annual statement to be lodged

74. Section 75 of the Principal Act is amended:

- (a) by omitting from paragraph (b) “granted; and” and substituting “granted.”;
- (b) by omitting paragraph (c).

75. Sections 77, 78, 79 and 80 of the Principal Act are repealed and the following Divisions are substituted:

“Division 2—Agreements with unlicensed persons

“Subdivision A—Agreements affected

Excluded clients

“77A. In this Division:

‘excluded client’ means a person who is:

- (a) a futures broker;
- (b) a futures adviser; or
- (c) one of 2 or more persons who together constitute a futures broker or futures adviser.

Agreement about a dealing in breach of section 61

“77B. Where a person (in this section and Subdivision B called the ‘non-licensee’) and another person (in this section and Subdivision B called the ‘client’), not being an excluded client, enter into an agreement relating to a dealing or proposed dealing in a futures contract by the non-licensee on the client’s behalf, being a dealing or proposed dealing involving a contravention by the non-licensee of subsection 61 (1) or (2), Subdivision B applies, whether or not anyone else is a party to the agreement.

Agreement with person acting in breach of section 63

“77C. Where, during a period when a person (in this section and Subdivision B called the ‘non-licensee’), in contravention of section 63, carries on a futures advice business or holds himself, herself or itself out to be a futures adviser, the non-licensee and a client (other than an excluded client) of the non-licensee enter into an agreement that relates to advising the client about futures contracts or to giving the client futures reports, Subdivision B applies, whether or not anyone else is a party to the agreement.

“Subdivision B—Effect on agreements

Client may give notice of rescission

“77D. (1) Subject to this section, the client may, whether before or after completion of the agreement, give to the non-licensee a written notice stating that the client wishes to rescind the agreement.

“(2) The client may only give a notice under this section within a reasonable period after becoming aware of the facts entitling the client to give the notice.

“(3) The client is not entitled to give a notice under this section if the client engages in conduct by engaging in which the client would, if the entitlement so to give a notice were a right to rescind the agreement for misrepresentation by the non-licensee, be taken to have affirmed the agreement.

“(4) The client is not entitled to give a notice under this section if, within a reasonable period before the agreement was entered into, the non-licensee informed the client (whether or not in writing) that:

- (a) the non-licensee did not hold a futures broker’s licence; or
- (b) the non-licensee did not hold a futures broker’s licence and did not hold a futures adviser’s licence;

as the case requires.

“(5) If, at a time when a futures broker’s licence or futures adviser’s licence held by the non-licensee was suspended, the non-licensee informed the client that the licence was suspended, the non-licensee is to be taken for the purposes of subsection (4) to have informed the client at that time that the non-licensee did not hold a futures broker’s licence or futures adviser’s licence, as the case may be.

“(6) A reference in subsection (4) or (5) to a futures broker’s licence or futures adviser’s licence is a reference to a futures broker’s licence or futures adviser’s licence, as the case may be, granted under this Part or under the provisions of a law of a participating State or participating Territory that correspond with this Part.

“(7) None of subsections (2), (3) and (4) limits the generality of either of the others.

“(8) Subject to this section, the client may give a notice under this section whether or not:

- (a) the notice will result under section 77E in rescission of the agreement; or
- (b) the Court will, if the notice so results, be empowered to make a particular order, or any order at all, under section 77G.

Effect of notice under section 77D

“77E. A notice given under section 77D rescinds the agreement unless rescission of the agreement would prejudice a right, or an estate in property, acquired by a person (other than the non-licensee) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

Client may apply to Court for partial rescission

“77F. (1) If the client gives a notice under section 77D but the notice does not rescind the agreement because rescission of it would prejudice a right or estate of the kind referred to in section 77E, the client may, within a reasonable period after giving the notice, apply to the Court for an order under subsection (4) of this section.

“(2) The Court may extend the period for making an application under subsection (1).

“(3) If an application is made under subsection (1), the Court may make such orders expressed to have effect until the determination of the application as it would have power to make if the notice had rescinded the agreement under section 77E and the application were for orders under section 77G.

“(4) On an application under subsection (1), the Court may make an order:

- (a) varying the agreement in such a way as to put the client in the same position, as nearly as can be done without prejudicing such a right or estate acquired before the order is made, as if the agreement had not been entered into; and
- (b) declaring the agreement to have had effect as so varied at and after the time when it was originally made.

“(5) If the Court makes an order under subsection (4), the agreement shall be taken for the purposes of section 77G to have been rescinded under section 77E.

“(6) An order under subsection (4) does not affect the application of section 77J or 77L in relation to the agreement as originally made or as varied by the order.

Court may make consequential orders

“77G. (1) Subject to subsection (2), on rescission of the agreement under section 77E, the Court may, on the application of the client or the non-licensee, make such orders as it would have power to make if the client had duly rescinded the agreement for misrepresentation by the non-licensee.

“(2) The Court is not empowered to make a particular order under subsection (1) if the order would prejudice a right, or an estate in property, acquired by a person (other than the non-licensee) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

Agreement unenforceable against client

“77H. (1) This section:

(a) applies while both of the following are the case:

(i) the client is entitled to give a notice under section 77D;

(ii) a notice so given will result under section 77E in rescission of the agreement; and

(b) applies after the agreement is rescinded under section 77E;

but does not otherwise apply.

“(2) The non-licensee is not entitled, as against the client:

(a) to enforce the agreement, whether directly or indirectly; or

(b) to rely on the agreement, whether directly or indirectly and whether by way of defence or otherwise.

Non-licensee not entitled to recover commission

“77J. (1) Without limiting the generality of section 77H, this section:

(a) applies while the client is entitled to give a notice under section 77D; and

(b) applies after the client so gives a notice, even if the notice does not result under section 77E in rescission of the agreement;

but does not otherwise apply.

“(2) The non-licensee is not entitled to recover by any means (including, for example, set-off or a claim on a *quantum meruit*) any brokerage, commission or other fee for which the client would, but for this section, have been liable to the non-licensee under or in connection with the agreement.

Onus of establishing non-application of section 77H or 77J

“77K. For the purposes of determining in a proceeding whether or not the non-licensee is, or was at a particular time, entitled as mentioned in subsection 77H (2) or 77J (2), it shall be presumed, unless the contrary is proved, that section 77H or 77J, as the case may be, applies, or applied at that time, as the case may be.

Client may recover commission paid to non-licensee

“77L. (1) Without limiting the generality of section 77G, if the client gives a notice under section 77D, the client may, even if the notice does not result under section 77E in rescission of the agreement, recover from the non-licensee as a debt the amount of any brokerage, commission or other fee that the client has paid to the non-licensee under or in connection with the agreement.

“(2) The Commission may, if it considers that it is in the public interest to do so, bring an action under subsection (1) in the name of, and for the benefit of, the client.

Remedies under this Division additional to other remedies

“77M. The client’s rights and remedies under this Division are additional to, and do not prejudice, any other right or remedy of the client.

“Division 3—Representatives

Representatives of futures brokers

“78A. A natural person shall not do an act as a representative of a futures broker (other than an exempt broker) unless:

- (a) the broker holds a futures broker’s licence or is a recognised futures broker; and
- (b) the person holds a proper authority from the broker.

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

Representatives of futures advisers

“78B. A natural person shall not do an act as a representative of a futures adviser (other than an exempt futures adviser) unless:

- (a) the futures adviser:
 - (i) is also a futures broker and either holds a futures broker’s licence or is a recognised futures broker; or
 - (ii) holds a futures adviser’s licence or is a recognised futures adviser; and
- (b) the person holds a proper authority from the futures adviser.

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

Defence

“78C. It is a defence to a prosecution for a contravention of section 78A or 78B constituted by an act done by a person as a representative of another person if it is proved that:

- (a) but for the revocation of, or the making under section 80D or a provision of a law of a participating State or participating Territory that corresponds with that section of an order relating to, a licence or recognised licence held by the other person, the act would not have been such a contravention;
- (b) when he or she did the act, the first-mentioned person:
 - (i) believed in good faith that the other person held the licence or recognised licence; and
 - (ii) was unaware of the revocation or order; and
- (c) in all the circumstances it was reasonable for the first-mentioned person so to believe and to be unaware of the revocation or order.

Body corporate not to act as representative

“78D. A body corporate shall not do an act as a representative of a person.

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

Licensee to keep register of holders of proper authorities

“78E. (1) A licensee shall establish a register of the persons who hold proper authorities from the licensee and shall keep it in accordance with this section.

“(2) The register shall be in writing or in such other form as the Commission approves.

“(3) The register shall contain, in relation to each person (if any) who holds a proper authority from the licensee:

- (a) a copy of the proper authority;
- (b) the person’s name;
- (c) the person’s current residential address;
- (d) unless the person’s current business address is the same as the licensee’s—the person’s current business address; and
- (e) such other information (if any) as is prescribed.

“(4) A copy of a proper authority of a person from the licensee that subsection (3) requires the register to contain shall be included in the register within 2 business days after the person begins to hold that proper authority.

“(5) Information that subsection (3) requires the register to contain in relation to a person shall be entered in the register within 2 business days after:

- (a) the person begins to hold a proper authority from the licensee; or

(b) the licensee receives the information;
whichever happens later.

“(6) Within 2 business days after a person ceases to hold a proper authority from the licensee, the licensee shall:

(a) in any case:

(i) include, in a part of the register separate from the part in which copies of proper authorities are included under subsection (4); and

(ii) remove from the last-mentioned part;

the copy of the proper authority that was included in the last-mentioned part; and

(b) unless, at the end of those 2 business days, the person again holds a proper authority from the licensee:

(i) enter, in a part of the register separate from the part in which information is entered under subsection (5); and

(ii) remove from the last-mentioned part;

the information that has been entered in the last-mentioned part in relation to the person.

“(7) Information that has been entered under paragraph (6) (b) in a separate part of the register shall be deemed for the purposes of subsections (3) and (5) not to be contained or entered in the register.

Licensee to notify Commission of location and contents of register

“78F. (1) This section has effect where a licensee keeps a register under section 78E.

“(2) Within 14 days after establishing the register, the licensee shall lodge written notice of where the register is kept.

“(3) As soon as practicable after changing the place where the register is kept, the licensee shall lodge written notice of the new place where the register is kept.

“(4) Within 2 business days after the day on which a person begins to hold a particular proper authority from the licensee, the licensee shall, whether or not the person has previously held a proper authority from the licensee, lodge:

(a) a copy of the first-mentioned proper authority; and

(b) a written notice stating that the person began to hold that proper authority on that day.

“(5) Within the period within which subsection 78E (5) requires the licensee to enter in the register information that the register must contain because of paragraph 78E (3) (b), (c), (d) or (e), the licensee shall lodge a written notice setting out the information and stating that the information has been, or is to be, entered in the register.

“(6) Within 2 business days after a person ceases to hold a proper authority from the licensee, the licensee shall, unless at the end of those 2 business days the person again holds a proper authority from the licensee, lodge a written notice stating that the person has ceased to hold such a proper authority.

Inspection and copying of register

“78G. (1) A licensee shall ensure that a register kept under section 78E by the licensee is open for inspection without charge.

“(2) A person may by writing request a licensee to give the person a copy of the whole, or of a specified part, of a register kept by the licensee under section 78E.

“(3) A licensee shall comply with a request under subsection (2) within 2 business days after:

- (a) if the licensee requires the person to pay for the copy an amount of not more than the prescribed amount—receiving the amount from the person; or
- (b) otherwise—receiving the request.

Commission may require production of authority

“78H. (1) Where the Commission has reason to believe that a person:

- (a) holds a proper authority from a licensee or recognised licensee; or
- (b) has done an act as a representative of another person;

then, whether or not the Commission knows who the licensee, recognised licensee or other person is, it may require the first-mentioned person to produce:

- (c) any proper authority from a licensee or recognised licensee; or
- (d) any invalid authority from a person;

that the first-mentioned person holds.

“(2) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

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

Commission may give licensee information about representative

“78J. (1) Where the Commission believes on reasonable grounds that:

- (a) a person (in this section called the ‘holder’) holds, or will hold, a proper authority from a licensee;
- (b) having regard to that fact, the Commission should give to the licensee particular information that the Commission has about the person; and
- (c) the information is true;

the Commission may give the information to the licensee.

“(2) Where the Commission gives information under subsection (1), the licensee or an officer of the licensee may, for a purpose connected with:

- (a) the licensee making a decision about what action (if any) to take in relation to the holder, having regard to, or to matters including, the information; or
- (b) the licensee taking action pursuant to such a decision;

or for 2 or more such purposes, and for no other purpose, give to another person, make use of, or make a record of, some or all of the information.

“(3) A person to whom information has been given, in accordance with subsection (2) or this subsection, for a purpose or purposes may, for that purpose or one or more of those purposes, and for no other purpose, give to another person, make use of, or make a record of, that information.

“(4) Subject to subsections (2) and (3), a person shall not give to another person, make use of, or make a record of, information given by the Commission under subsection (1).

“(5) A person has qualified privilege in respect of an act done by the person as permitted by subsection (2) or (3).

“(6) A person to whom information is given in accordance with this section shall not:

- (a) give any of the information to a court; or
- (b) produce in a court a document that sets out some or all of the information;

except:

- (c) for a purpose connected with:
 - (i) the licensee making a decision about what action (if any) to take in relation to the holder, having regard to, or to matters including, some or all of the information;
 - (ii) the licensee taking action pursuant to such a decision; or
 - (iii) proving in a proceeding in that court that particular action taken by the licensee in relation to the holder was so taken pursuant to such a decision;

or for 2 or more such purposes, and for no other purpose;

- (d) in a proceeding in that court, in so far as the proceeding relates to an alleged contravention of this section;
- (e) in a proceeding in respect of an ancillary offence relating to an offence against this section; or
- (f) in a proceeding in respect of the giving to a court of false information being or including some or all of the first-mentioned information.

“(7) A reference in this section to a person taking action in relation to another person is a reference to the first-mentioned person:

- (a) taking action by way of making, terminating, or varying the terms and conditions of; or
- (b) otherwise taking action in relation to;

an agreement, in so far as the agreement relates to the other person being employed by, or acting for or by arrangement with, the first-mentioned

person in connection with a futures broking business or futures advice business carried on by the first-mentioned person.

“(8) In this section:

‘licensee’ includes a recognised licensee.

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

Holder of authority may be required to return it

“78K. (1) Where a person holds a proper authority from a licensee but is neither employed by, nor authorised to act for or by arrangement with, the licensee, the licensee may, by writing given to the person, require the person to give the proper authority to the licensee within a specified period of not less than 2 business days.

“(2) Where a person holds an invalid authority from another person, the other person may, by writing given to the first-mentioned person, require the first-mentioned person to give the invalid authority to the other person within a specified period of not less than 2 business days.

“(3) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement made of the person in accordance with subsection (1) or (2).

“(4) In this section:

‘licensee’ includes a recognised licensee.

“Division 4—Liability of principals for representatives’ conduct

Conduct engaged in as a representative

“79A. Where a person engages in conduct as a representative of another person (in this section called the ‘principal’), then, as between the principal and a third person (other than the Commission), the principal is liable in respect of that conduct in the same manner, and to the same extent, as if the principal had engaged in it.

Liability where identity of principal unknown

“79B. (1) This section applies for the purposes of a proceeding in a court where:

- (a) a person (in this section called the ‘representative’) engages in particular conduct while the person is a representative of 2 or more persons (in this section called the ‘indemnifying principals’); and
- (b) it is proved for the purposes of the proceeding that the representative engaged in the conduct as a representative of some person (in this section called the ‘unknown principal’) but it is not proved for those purposes who the unknown principal is.

“(2) If only one of the indemnifying principals is a party to the proceeding, he, she or it is liable in respect of that conduct as if he, she or it were the unknown principal.

“(3) If 2 or more of the indemnifying principals are parties to the proceeding, each of those parties is liable in respect of that conduct as if he, she or it were the unknown principal.

Liability of principals where act done in reliance on representative’s conduct

“79C. (1) This section applies where:

- (a) at a time when a person (in this section called the ‘representative’) is a representative of only one person (in this section called the ‘indemnifying principal’) or of 2 or more persons (in this section called the ‘indemnifying principals’), the representative:
 - (i) engages in particular conduct; or
 - (ii) proposes, or represents that the representative proposes, to engage in particular conduct;
- (b) another person (in this section called the ‘client’) does, or omits to do, a particular act because the client believes at a particular time in good faith that the representative engaged in, or proposes to engage in, as the case may be, that conduct:
 - (i) on behalf of some person (in this section called the ‘assumed principal’) whether or not identified, or identifiable, at that time by the client; and
 - (ii) in connection with a futures broking business or futures advice business carried on by the assumed principal; and
- (c) it is reasonable to expect that a person in the client’s circumstances would so believe and would do, or omit to do, as the case may be, that act because of that belief;

whether or not that conduct is or would be within the scope of the representative’s employment by, or authority from, any person.

“(2) If:

- (a) subparagraph (1) (a) (i) applies; or
- (b) subparagraph (1) (a) (ii) applies and the representative engages in that conduct;

then:

- (c) as between the indemnifying principal and the client or a person claiming through the client, the indemnifying principal is liable; or
- (d) as between any of the indemnifying principals and the client or a person claiming through the client, each of the indemnifying principals is liable;

as the case may be, in respect of that conduct in the same manner, and to the same extent, as if he, she or it had engaged in it.

“(3) Without limiting the generality of subsection (2), the indemnifying principal, or each of the indemnifying principals, as the case may be, is liable to pay damages to the client in respect of any loss or damage that the client suffers as a result of doing, or omitting to do, as the case may be, the act referred to in paragraph (1) (b).

“(4) If:

- (a) there are 2 or more indemnifying principals;
- (b) 2 or more of them are parties (in this subsection called the ‘indemnifying parties’) to a proceeding in a court;
- (c) it is proved for the purposes of the proceeding:
 - (i) that the representative engaged in that conduct as a representative of some person; and
 - (ii) who that person is; and
- (d) that person is among the indemnifying parties;

subsections (2) and (3) do not apply, for the purposes of the proceeding, in relation to the indemnifying parties other than that person.

Presumptions about certain matters

“79D. (1) Where it is proved, for the purposes of a proceeding in a court that a person (in this subsection called the ‘representative’) engaged in particular conduct while the person was a representative of:

- (a) only one person (in this subsection called the ‘indemnifying principal’); or
- (b) 2 or more persons (in this subsection called the ‘indemnifying principals’);

then, unless the contrary is proved for the purposes of the proceeding, it shall be presumed for those purposes that the representative engaged in the conduct as a representative of:

- (c) the indemnifying principal; or
- (d) as a representative of some person among the indemnifying principals;

as the case may be.

“(2) Where, for the purposes of establishing in a proceeding in a court that section 79C applies, it is proved that a person did, or omitted to do, a particular act because the person believed at a particular time in good faith that certain matters were the case, then, unless the contrary is proved for those purposes, it shall be presumed for those purposes that it is reasonable to expect that a person in the first-mentioned person’s circumstances would so believe and would do, or omit to do, as the case may be, that act because of that belief.

No contracting out of liability for representative’s conduct

“79E. (1) For the purposes of this section, a liability of a person:

- (a) in respect of conduct engaged in by another person as a representative of the first-mentioned person; or
- (b) arising under section 79C because another person has engaged in, proposed to engage in, or represented that the other person proposed to engage in, particular conduct;

is a liability of the first-mentioned person in respect of the other person.

“(2) Subject to this section, an agreement is void in so far as it purports to exclude, restrict or otherwise affect a liability of a person in respect of another person, or to provide for a person to be indemnified in respect of a liability of the person in respect of another person.

“(3) Subsection (2) does not apply in relation to an agreement in so far as it:

- (a) is a contract of insurance;
- (b) provides for a representative of a person to indemnify the person in respect of a liability of the person in respect of the representative;
or
- (c) provides for a licensee from whom a person holds a proper authority to indemnify another such licensee in respect of a liability of the other licensee in respect of the person.

“(4) In paragraph (3) (c):

‘licensee’ includes a recognised licensee.

“(5) A person shall not make, offer to make, or invite another person to offer to make, in relation to a liability of the first-mentioned person in respect of a person, an agreement that is or would be void, in whole or in part, by virtue of subsection (2).

Effect of Division

“79F. (1) Where 2 or more persons are liable under this Division in respect of the same conduct or the same loss or damage, they are so liable jointly and severally.

“(2) Nothing in section 79A, 79B or 79C:

- (a) affects a liability arising otherwise than by virtue of this Division;
- (b) despite paragraph (a) of this subsection, entitles a person to be compensated more than once in respect of the same loss or damage;
or
- (c) makes a person guilty of an offence.

“Division 5—Excluding persons from the futures industry

Power to revoke, without a hearing, licence held by natural person

“80A. The Commission may, by written order, revoke a licence held by a natural person if the person:

- (a) becomes an insolvent under administration;
- (b) is convicted of serious fraud;
- (c) becomes incapable, through mental or physical incapacity, of managing his or her affairs; or
- (d) asks the Commission to revoke the licence.

Power to revoke, without a hearing, licence held by body corporate

“80B. The Commission may, by written order, revoke a licence held by a body corporate if:

- (a) the body ceases to carry on business;
- (b) the body becomes an externally-administered body corporate;
- (c) the body asks the Commission to revoke the licence; or
- (d) a director, secretary or executive officer of the body contravenes this Act because:
 - (i) he or she does not hold a licence; or
 - (ii) a licence he or she holds is suspended.

Power to revoke licence after a hearing

“80C. (1) Subject to section 80P, the Commission may, by written order, revoke a licence if:

- (a) the application for the licence contained matter that was false in a material particular or materially misleading;
- (b) there was an omission of material matter from the application for the licence;
- (c) the licensee contravenes a futures law;
- (d) the licensee contravenes a condition of the licence;
- (e) the licensee is a natural person and the Commission has reason to believe that he or she is not of good fame and character;
- (f) the licensee is a body corporate and the Commission is satisfied that the educational qualifications or experience of a person who:
 - (i) is an officer of the body; and
 - (ii) was not an officer of the body when the licence was granted;are or is inadequate having regard to the duties that the officer performs, or will perform, in connection with the holding of the licence;
- (g) the licensee is a body corporate and the Commission is satisfied that:
 - (i) an officer of the body performs, or will perform, in connection with the holding of the licence, duties that are or include duties (in this paragraph called the ‘different duties’) other than those having regard to which the Commission was satisfied, before granting the licence, that the officer’s educational qualifications and experience were adequate; and
 - (ii) the officer’s educational qualifications or experience are or is inadequate having regard to the different duties;
- (h) the licensee is a body corporate and:
 - (i) a licence held by a director, secretary or executive officer of the body is suspended or revoked; or
 - (ii) an order is made under section 80G against such a director, secretary or executive officer;

- (j) the Commission has reason to believe that the licensee has not performed efficiently, honestly and fairly the duties of a holder of a futures broker's licence or a futures adviser's licence, as the case requires; or
- (k) the Commission has reason to believe that the licensee will not perform those duties efficiently, honestly and fairly.

“(2) In determining whether or not it has reason to believe as mentioned in paragraph (1) (e) or (k) in relation to a licensee, the Commission is not precluded from having regard to a matter that arose before the time when the licence was granted unless the Commission was aware of the matter at that time.

Power to suspend licence instead of revoking it

“80D. (1) Subject to section 80P, where:

- (a) section 80A or 80B empowers the Commission to revoke a licence otherwise than because the licensee has asked for the revocation; or
- (b) the Commission is empowered by virtue of paragraph 80C (1) (c), (d), (f), (g), (h), (j) or (k) to revoke a licence;

the Commission may, if it considers it desirable to do so, instead:

- (c) by written order, suspend the licence for a specified period; or
- (d) by written order, prohibit the licensee, either permanently or for a specified period, from doing specified acts, being acts that section 61 or 63 would prohibit the licensee from doing if it did not hold the licence.

“(2) The Commission may at any time, by written order, vary or revoke an order in force under this section.

“(3) For the purposes of sections 61, 63, 78A and 78B, a licensee or recognised licensee shall be taken not to hold the licence or recognised licence at any time during a period for which the licence or recognised licence is suspended.

“(4) Where an order in force under this section prohibits a licensee as mentioned in paragraph (1) (d):

- (a) the licensee shall not contravene the order; and
- (b) in relation to the doing by a person, as a representative of the licensee, of an act specified in the order, sections 78A and 78B apply, or apply during the period specified in the order, as the case requires, as if the licensee did not hold the licence.

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

“(5) Subsection (4) applies in relation to a person who holds a licence within the meaning of a corresponding law of a participating State or participating Territory and so applies as if:

- (a) a reference in that subsection to a licensee were a reference to the person; and

- (b) a reference in that subsection to this section or to paragraph (1) (d) were a reference to a provision of a law of that State or Territory that corresponds with this section or that paragraph, as the case may be.

“(6) The effect that subsection (4) has by virtue of subsection (5) is additional to, and does not prejudice, the effect subsection (4) otherwise has.

“(7) A reference in this Act (other than this section) to the Commission suspending a licence includes a reference to the Commission making under paragraph (1) (d) an order relating to the licence.

“(8) A reference in this Act to the Commission suspending a recognised licence includes a reference to the Commission making under a provision of a law of a participating State or participating Territory that corresponds with paragraph (1) (d) an order relating to the recognised licence.

Power to make banning order where licence revoked or suspended

“80E. Subject to section 80P, where the Commission:

- (a) revokes under section 80A;
- (b) revokes by virtue of paragraph 80C (1) (a), (b), (c), (d), (j) or (k);
- (c) revokes by virtue of paragraph 80C (1) (e);
- (d) suspends by virtue of paragraph 80D (1) (a); or
- (e) suspends by virtue of paragraph 80D (1) (b);

a licence held by a natural person, it may also make a banning order against the person.

Power to make banning order against unlicensed person

“80F. Subject to section 80P, the Commission may make a banning order against a natural person (other than a licensee or recognised licensee) if:

- (a) he or she becomes an insolvent under administration;
- (b) he or she is convicted of serious fraud;
- (c) he or she becomes incapable, through mental or physical incapacity, of managing his or her affairs;
- (d) he or she contravenes a futures law;
- (e) the Commission has reason to believe that he or she is not of good fame and character;
- (f) the Commission has reason to believe that he or she has not performed efficiently, honestly and fairly the duties of:
 - (i) a representative of a futures broker; or
 - (ii) a representative of a futures adviser; or
- (g) the Commission has reason to believe that he or she will not perform efficiently, honestly and fairly the duties of:
 - (i) a representative of a futures broker; or

- (ii) a representative of a futures adviser.

Nature of banning order

“80G. (1) Where this Division empowers the Commission to make a banning order against a person, the Commission may, by written order, prohibit the person:

- (a) in any case—permanently; or
- (b) except where the Commission is empowered by virtue of paragraph 80E (c) or 80F (e) to make the order—for a specified period;

from doing an act as:

- (c) a representative of a futures broker;
- (d) a representative of a futures adviser; or
- (e) a representative of a futures broker or of a futures adviser;

whichever the order specifies.

“(2) The Commission shall not vary or revoke a banning order except under section 80H, 80J or 80K.

Exceptions to banning order

“80H. (1) An order made against a person under subsection 80G (1) may include a provision that permits the person, subject to such conditions (if any) as are specified, to do, or to do in specified circumstances, specified acts that the order would otherwise prohibit the person from doing.

“(2) Subject to section 80P, the Commission may, at any time, by written order, vary a banning order against a person:

- (a) by adding a provision that permits the person as mentioned in subsection (1);
- (b) by varying such a provision in relation to conditions, circumstances or acts specified in the provision;
- (c) by omitting such a provision and substituting another such provision; or
- (d) by omitting such a provision.

Variation or revocation of banning order on application

“80J. (1) Subject to sections 80K and 80P, this section has effect where a person applies to the Commission to vary or revoke a banning order relating to the person.

“(2) If:

- (a) the person is not an insolvent under administration;
- (b) the Commission has no reason to believe that the person is not of good fame and character; and
- (c) the Commission has no reason to believe that the person will not perform efficiently, honestly and fairly the duties of:
 - (i) a representative of a futures broker; or

(ii) a representative of a futures adviser;
the Commission shall, by written order:

- (d) if only one of subparagraphs (c) (i) and (ii) applies—vary the banning order so that it no longer prohibits the person from doing an act as a representative of a futures broker or of a futures adviser, as the case may be; or
- (e) otherwise—revoke the banning order.

“(3) Otherwise, the Commission shall refuse the application.

“(4) In determining whether or not it has reason to believe as mentioned in paragraph (2) (b) or (c), the Commission shall have regard to any conviction of the person, during the 10 years ending on the day of the application, of serious fraud.

“(5) Nothing in subsection (4) limits the matters to which the Commission may have regard:

- (a) in deciding on the application; or
- (b) in connection with performing or exercising any other function or power under this Part.

Revocation of banning order in certain cases

“80K. Where:

- (a) section 80J requires the Commission to vary a banning order so that it no longer has a particular operation; and
- (b) the order has no other operation;

the Commission shall, by written order, instead revoke the banning order.

Effect and publication of orders under this Division

“80L. (1) An order by the Commission under this Division takes effect when served on the person to whom the order relates.

“(2) As soon as practicable on or after the day on which an order by the Commission under this Division takes effect, the Commission shall publish in the *Gazette* a notice that sets out a copy of:

- (a) if the order is made under section 80A, 80B, 80C, 80D or 80G or revokes a banning order—the first-mentioned order; or
- (b) if the order varies a banning order—the banning order as in force immediately after the first-mentioned order takes effect;

and states that the first-mentioned order, or the banning order as so in force, as the case may be, took effect on that day.

“(3) Where:

- (a) but for this subsection, subsection (2) would require publication of a notice setting out a copy of a banning order as in force at a particular time;
- (b) the banning order as so in force includes a provision that permits a person as mentioned in subsection 80H (1); and

(c) in the Commission's opinion, the notice would be unreasonably long if it set out a copy of the whole of that provision;
the notice may, instead of setting out a copy of that provision, set out a summary of the provision's effect.

Contravention of banning order

"80M. A person shall not contravene a banning order or recognised banning order relating to the person.

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

Banned person ineligible for licence

"80N. The Commission shall not grant a futures broker's licence or a futures adviser's licence to a person if a banning order or recognised banning order prohibits the person (except as permitted by the order) from doing an act as a representative of a futures broker, or of a futures adviser, as the case may be.

Opportunity for hearing

"80P. (1) The Commission shall not:

- (a) refuse an application for a licence on the ground, or grounds including the ground, that paragraph 66 (2) (d), (e) or (f) or 66A (2) (d) or (e) does not apply in relation to the applicant;
 - (b) impose conditions on a licence;
 - (c) vary the conditions of a licence;
 - (d) revoke or suspend a licence otherwise than by virtue of section 80A or 80B or paragraph 80D (1) (a);
 - (e) make, otherwise than by virtue of paragraph 80E (a) or (d) or 80F (a), (b) or (c), an order under section 80G against a person;
 - (f) make under subsection 80H (2) an order varying a banning order against a person; or
 - (g) refuse an application by a person under section 80J;
- unless the Commission complies with subsection (2) of this section.

"(2) The Commission shall give the applicant, licensee or person, as the case may be, an opportunity:

- (a) to appear at a hearing before the Commission that takes place in private; and
- (b) to make submissions and give evidence to the Commission in relation to the matter.

Disqualification by the Court

"80Q. (1) Where the Commission:

- (a) revokes under section 80A or 80B or subsection 80C (1) a licence held by a person; or
- (b) makes under section 80G against a person an order that is to operate otherwise than only for a specified period;

Co-operative Scheme Legislation Amendment No. 92, 1989

the Commission may apply to the Court for an order or orders under this section in relation to the person.

“(2) On an application under subsection (1), the Court may make one or more of the following:

(a) an order disqualifying the person, permanently or for a specified period, from holding:

(i) a futures broker’s licence;

(ii) a futures adviser’s licence; or

(iii) a futures broker’s licence or a futures adviser’s licence;

whichever the order specifies;

(b) an order prohibiting the person, permanently or for a specified period, from doing an act as:

(i) a representative of a futures broker;

(ii) a representative of a futures adviser; or

(iii) a representative of a futures broker or of a futures adviser;

whichever the order specifies;

(c) such other order as it thinks fit;

or may refuse the application.

“(3) The Court may revoke or vary an order in force under this section.

Effect of order under section 80Q or corresponding law

“80R. (1) The Commission shall not grant a futures broker’s licence or a futures adviser’s licence to a person whom an order disqualifies from holding a futures broker’s licence or a futures adviser’s licence, as the case may be, under this Part or the provisions of a law of a participating State or participating Territory that correspond with this Part.

“(2) A person shall not contravene an order that prohibits the person from doing an act as:

(a) a representative of a futures broker;

(b) a representative of a futures adviser; or

(c) a representative of a futures broker or of a futures adviser;

whichever the order specifies.

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

“(3) In this section:

‘order’ means:

(a) an order in force under section 80Q or a provision of a law of a participating State or participating Territory that corresponds with that section; or

(b) an order as it has effect because of subsection 80S (2) or a provision of a law of a participating State or participating Territory that corresponds with that subsection.

Effect of order under previous Territory law corresponding with section 80Q

“80S. (1) This section applies where, immediately before the commencement of section 75 of the *Co-operative Scheme Legislation Amendment Act 1989*, a person was disqualified, either permanently or for a period, because of an order that was made under subsection 78 (4) of this Act as in force before that commencement, from holding:

- (a) a futures broker’s licence;
- (b) a futures adviser’s licence;
- (c) a futures broker’s representative’s licence; or
- (d) a futures adviser’s representative’s licence.

“(2) As from that commencement, the order has effect for the purposes of this Act as if it were an order in force under section 80Q:

- (a) disqualifying the person, permanently or for that period, as the case may be, from holding:
 - (i) if paragraph (1) (a) applies—a futures broker’s licence; or
 - (ii) if paragraph (1) (b) applies—a futures adviser’s licence; or
- (b) prohibiting the person, permanently or for that period, as the case may be, from doing an act as:
 - (i) if paragraph (1) (c) applies—a representative of a futures broker; or
 - (ii) if paragraph (1) (d) applies—a representative of a futures adviser;

as the case requires.”.

Division 3—Consequential amendments of the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980

Definitions

76. Section 9 of the Principal Act is amended by inserting the following definitions:

“ ‘ancillary offence’ means an offence constituted by:

- (a) aiding, abetting, counselling or procuring the commission of an offence;
- (b) being, by act or omission, in any way, directly or indirectly, knowingly concerned in, or party to, the commission of an offence;
- (c) receiving or assisting a person who is, to the offender’s knowledge, guilty of an offence, in order to enable the person to escape punishment or to dispose of the proceeds of the last-mentioned offence;
- (d) attempting or conspiring to commit an offence; or
- (e) inciting, urging, aiding or encouraging, or printing or publishing any writing that incites, urges, aids or encourages,

the commission of an offence or the carrying on of any operations for or by the commission of an offence; 'qualified privilege' has the meaning given by section 38C;".

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

Qualified privilege

"38C. (1) This section applies where a provision of a relevant Act provides that a person has qualified privilege in respect of an act, matter or thing.

"(2) The person is not, in the absence of malice on the person's part, liable to an action for defamation, at the suit of a person, in respect of that act, matter or thing.

"(3) Neither that provision nor this section limits or affects any right, privilege or immunity that a person has, apart from that provision or this section, as defendant in an action for defamation."

PART 9—AMENDMENTS OF CO-OPERATIVE SCHEME FEES ACTS

Division 1—Amendment of Companies (Fees) Act 1981

78. Sections 3, 4 and 5 of the Principal Act are repealed and the following sections are substituted:

Interpretation

"3. (1) In this Act, unless the contrary intention appears:

'act' includes thing;

'chargeable matter' means a matter of a kind referred to in any of paragraphs 4 (1) (a) to (h), inclusive;

'for', in relation to a fee, includes in respect of;

'lodge' means lodge with the Commission.

"(2) Subject to subsection (1), an expression has the same meaning in this Act as in the *Companies Act 1981*.

"(3) The *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980* applies to this Act.

Power to prescribe fees

"4. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing fees for:

(a) the lodgment of documents under the *Companies Act 1981*;

(b) the registration of documents under that Act;

(c) the inspection or search of registers kept by, or documents in the custody of, the Commission under that Act;

- (d) the making available by the Commission, under that Act, of information (whether in the form of a document or otherwise);
- (e) the production by the Commission, under a subpoena, of such registers or documents;
- (f) the issuing of documents or copies of documents, the granting of licences, consents or approvals, or the doing of other acts, by the Ministerial Council or the Commission under that Act;
- (g) the making of inquiries of, or applications to, the Ministerial Council or the Commission in relation to matters arising under that Act; and
- (h) the submission to the Commission of documents for examination by the Commission.

“(2) The power conferred by subsection (1) extends, by virtue of this subsection but not otherwise, to prescribing fees that, but for subsection 6 (2), could not be prescribed under this Act unless it were a law imposing taxation but that could be if it were.

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

Aspects of the power to prescribe fees

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

“(2) The regulations may provide for a fee for a chargeable matter to be determined by reference to a prescribed matter or prescribed matters, whether or not the prescribed matter, or any of the prescribed matters, has a direct or indirect connection with the chargeable matter.

“(3) A fee prescribed as a stated amount shall not exceed \$5,000.

“(4) 2 or more fees may be prescribed for the same chargeable matter.

“(5) Neither of subsections (1) and (2) limits the generality of the other or of section 4.

Fees payable

“6. (1) Subject to subsection (2), where the regulations prescribe a fee for a chargeable matter, the fee shall be paid to the Commonwealth for that matter.

“(2) Despite subsection (1), where, by virtue of subsection 4 (2), the regulations prescribe a fee for a chargeable matter, the fee shall be paid to the Commonwealth for that matter if, and only if, the fee is imposed by another Act.

Maximum fees payable for one matter

“7. Despite section 6, where but for this section the fee, or the total of the fees, payable under that section for a chargeable matter would exceed \$25,000, so much of that fee, or of that total, as exceeds \$25,000 is not payable.

Fee where document taken to be lodged

“8. (1) This section applies where:

- (a) because of section 265A of the *Companies Act 1981*, a company is taken, for the purposes of that Act, to lodge a document at a particular time; and
- (b) if the company had in fact lodged the document at that time, a fee would have been payable under section 6 of this Act for the lodgment.

“(2) The company shall be taken, for the purposes of this Act (other than section 9), to lodge the document at that time.

“(3) As from that time, the fee that, because of subsection (2) of this section, is payable under section 6 for the lodgment of the document is a debt due to the Commonwealth and payable by the company.

Lodgment of document without payment of fee

“9. (1) Where:

- (a) a fee is payable under section 6 for the lodgment of a document; and
- (b) the document is submitted for lodgment without payment of the fee;

the document shall be taken not to have been lodged until the fee is paid.

“(2) Subsection (1) does not apply where, at the time when the document is submitted for lodgment, the amount of the fee cannot be ascertained, but if the Commission, before or at that time, requires under section 12 the payment of a deposit on account of the fee, the document shall be taken not to have been lodged until the deposit or the fee has been paid.

Doing of act without payment of fee

“10. (1) Where a fee is payable under section 6 for a matter involving the doing of an act by the Ministerial Council or the Commission, the Ministerial Council or the Commission shall not do that act until the fee is paid.

“(2) Subsection (1) does not prohibit the doing of the act at a particular time if, as at that time:

- (a) the amount of the fee cannot be ascertained; and
- (b) if the Commission has required under section 12 the payment of a deposit on account of the fee—the deposit has been paid.

Effect of sections 9 and 10

“11. Sections 9 and 10 have effect despite anything in the *Companies Act 1981*.

Commission may require payment of deposit on account of fee

“12. Where the amount of a fee payable under section 6 for:

- (a) the lodgment of a document; or
- (b) a matter involving the doing of an act by the Ministerial Council or the Commission;

cannot be ascertained, the Commission may:

- (c) before or at the time when the document is submitted for lodgment; or
- (d) before the Ministerial Council or the Commission does the act;

as the case may be, require the payment to the Commission, on account of the fee, of a deposit of a specified amount that the Commission considers it reasonable to expect will be the amount of the fee.

Fee not ascertainable when it becomes payable

“13. (1) This section applies where the amount of a fee payable under section 6 cannot be ascertained when the fee becomes payable, but at a later time becomes able to be ascertained.

“(2) If a person has paid a deposit on account of the fee, the Commission shall apply towards payment of the fee so much of the deposit as does not exceed the amount of the fee and:

- (a) if the amount of the deposit exceeds the amount of the fee—the Commission shall refund to the person the amount of the excess; or
- (b) if the amount of the fee exceeds the amount of the deposit—as from the later time, so much of the fee as exceeds the amount of the deposit is a debt due to the Commonwealth and payable by the person.

“(3) Otherwise, the fee is, as from the later time, a debt due to the Commonwealth and payable by the person whom the Commission determines in writing to be the person who it is reasonable to expect would have paid the fee had the fee been able to be ascertained when it became payable.

Waiver and refund of fees

“14. Nothing in this Act prevents the Commonwealth from:

- (a) waiving or reducing, in a particular case or in particular classes of cases, fees that would otherwise be payable under this Act; or
- (b) refunding, in whole or in part, in a particular case or in particular classes of cases, fees paid under this Act.

Debts due to the Commonwealth

“15. The Commission may recover in a court of competent jurisdiction a debt due under this Act.

Act not to impose taxation

“16. Nothing in this Act shall be taken to impose taxation.

Payment of fee does not give right to inspect or search

“17. To avoid doubt, nothing in this Act or in the *Companies (Fees: Taxation Component) Act 1989*, and nothing done under this Act:

- (a) imposes on the Commission a duty to allow the inspection or search of a register or document, or to make available information; or
- (b) confers a right to inspect or search a register or document or to have information made available;

except so far as such a duty or right would exist under some other law but for the effect of section 10.”

Division 2—Amendment of Companies (Acquisition of Shares—Fees) Act 1980

79. Sections 3, 4 and 5 of the Principal Act are repealed and the following sections are substituted:

Interpretation

“3. (1) In this Act, unless the contrary intention appears:

‘act’ includes thing;

‘chargeable matter’ means a matter of a kind referred to in any paragraphs 4 (1) (a) to (h), inclusive;

‘for’, in relation to a fee, includes in respect of;

‘lodge’ means lodge with the Commission.

“(2) Subject to subsection (1), an expression has the same meaning in this Act as in the *Companies (Acquisition of Shares) Act 1980*.

Power to prescribe fees

“4. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing fees for:

- (a) the lodgment of documents under the *Companies (Acquisition of Shares) Act 1980*;
- (b) the registration of documents under that Act;
- (c) the inspection or search of registers kept by, or documents in the custody of, the Commission under that Act;
- (d) the making available by the Commission, under that Act, of information (whether in the form of a document or otherwise);
- (e) the production by the Commission, under a subpoena, of such registers or documents;
- (f) the issuing of documents or copies of documents, the granting of licences, consents or approvals, or the doing of other acts, by the Ministerial Council or the Commission under that Act;

- (g) the making of inquiries of, or applications to, the Ministerial Council or the Commission in relation to matters arising under that Act; and
- (h) the submission to the Commission of documents for examination by the Commission.

“(2) The power conferred by subsection (1) extends, by virtue of this subsection but not otherwise, to prescribing fees that, but for subsection 6 (2), could not be prescribed under this Act unless it were a law imposing taxation but that could be if it were.

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

Aspects of the power to prescribe fees

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

“(2) The regulations may provide for a fee for a chargeable matter to be determined by reference to a prescribed matter or prescribed matters, whether or not the prescribed matter, or any of the prescribed matters, has a direct or indirect connection with the chargeable matter.

“(3) A fee prescribed as a stated amount shall not exceed \$5,000.

“(4) 2 or more fees may be prescribed for the same chargeable matter.

“(5) Neither of subsections (1) and (2) limits the generality of the other or of section 4.

Fees payable

“6. (1) Subject to subsection (2), where the regulations prescribe a fee for a chargeable matter, the fee shall be paid to the Commonwealth for that matter.

“(2) Despite subsection (1), where, by virtue of subsection 4 (2), the regulations prescribe a fee for a chargeable matter, the fee shall be paid to the Commonwealth for that matter if, and only if, the fee is imposed by another Act.

Maximum fees payable for one matter

“7. Despite section 6, where but for this section the fee, or the total of the fees, payable under that section for a chargeable matter would exceed \$25,000, so much of that fee, or of that total, as exceeds \$25,000 is not payable.

Lodgment of document without payment of fee

“8. (1) Where:

- (a) a fee is payable under section 6 for the lodgment of a document; and

- (b) the document is submitted for lodgment without payment of the fee;

the document shall be taken not to have been lodged until the fee is paid.

“(2) Subsection (1) does not apply where, at the time when the document is submitted for lodgment, the amount of the fee cannot be ascertained, but if the Commission, before or at that time, requires under section 11 the payment of a deposit on account of the fee, the document shall be taken not to have been lodged until the deposit or the fee has been paid.

Doing of act without payment of fee

“9. (1) Where a fee is payable under section 6 for a matter involving the doing of an act by the Ministerial Council or the Commission, the Ministerial Council or the Commission shall not do that act until the fee is paid.

“(2) Subsection (1) does not prohibit the doing of the act at a particular time if, as at that time:

- (a) the amount of the fee cannot be ascertained; and
- (b) if the Commission has required under section 11 the payment of a deposit on account of the fee—the deposit has been paid.

Effect of sections 8 and 9

“10. Sections 8 and 9 have effect despite anything in the *Companies (Acquisition of Shares) Act 1980*.

Commission may require payment of deposit on account of fee

“11. Where the amount of a fee payable under section 6 for:

- (a) the lodgment of a document; or
- (b) a matter involving the doing of an act by the Ministerial Council or the Commission;

cannot be ascertained, the Commission may:

- (c) before or at the time when the document is submitted for lodgment; or
- (d) before the Ministerial Council or the Commission does the act;

as the case may be, require the payment to the Commission, on account of the fee, of a deposit of a specified amount that the Commission considers it reasonable to expect will be the amount of the fee.

Fee not ascertainable when it becomes payable

“12. (1) This section applies where the amount of a fee payable under section 6 cannot be ascertained when the fee becomes payable, but at a later time becomes able to be ascertained.

“(2) If a person has paid a deposit on account of the fee, the Commission shall apply towards payment of the fee so much of the deposit as does not exceed the amount of the fee and:

- (a) if the amount of the deposit exceeds the amount of the fee—the Commission shall refund to the person the amount of the excess; or
- (b) if the amount of the fee exceeds the amount of the deposit—as from the later time, so much of the fee as exceeds the amount of the deposit is a debt due to the Commonwealth and payable by the person.

“(3) Otherwise, the fee is, as from the later time, a debt due to the Commonwealth and payable by the person whom the Commission determines in writing to be the person who it is reasonable to expect would have paid the fee had the fee been able to be ascertained when it became payable.

Waiver and refund of fees

“13. Nothing in this Act prevents the Commonwealth from:

- (a) waiving or reducing, in a particular case or in particular classes of cases, fees that would otherwise be payable under this Act; or
- (b) refunding, in whole or in part, in a particular case or in particular classes of cases, fees paid under this Act.

Debts due to the Commonwealth

“14. The Commission may recover in a court of competent jurisdiction a debt due under this Act.

Act not to impose taxation

“15. Nothing in this Act shall be taken to impose taxation.

Payment of fee does not give right to inspect or search

“16. To avoid doubt, nothing in this Act or in the *Companies (Acquisition of Shares—Fees: Taxation Component) Act 1989*, and nothing done under this Act:

- (a) imposes on the Commission a duty to allow the inspection or search of a register or document, or to make available information; or
- (b) confers a right to inspect or search a register or document or to have information made available;

except so far as such a duty or right would exist under some other law but for the effect of section 9.”.

Division 3—Amendment of Securities Industry (Fees) Act 1980

80. Sections 3, 4 and 5 of the Principal Act are repealed and the following sections are substituted:

Interpretation

“3. (1) In this Act, unless the contrary intention appears:

‘act’ includes thing;

‘chargeable matter’ means a matter of a kind referred to in any of paragraphs 4 (1) (a) to (h), inclusive;

‘for’, in relation to a fee, includes in respect of;

'lodge' means lodge with the Commission.

"(2) Subject to subsection (1), an expression has the same meaning in this Act as in the *Securities Industry Act 1980*.

"(3) The *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980* applies to this Act.

Power to prescribe fees

"4. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing fees for:

- (a) the lodgment of documents under the *Securities Industry Act 1980*;
- (b) the registration of documents under that Act;
- (c) the inspection or search of registers kept by, or documents in the custody of, the Commission under that Act;
- (d) the making available by the Commission, under that Act, of information (whether in the form of a document or otherwise);
- (e) the production by the Commission, under a subpoena, of such registers or documents;
- (f) the issuing of documents or copies of documents, the granting of licences, consents or approvals, or the doing of other acts, by the Ministerial Council or the Commission under that Act;
- (g) the making of inquiries of, or applications to, the Ministerial Council or the Commission in relation to matters arising under that Act; and
- (h) the submission to the Commission of documents for examination by the Commission.

"(2) The power conferred by subsection (1) extends, by virtue of this subsection but not otherwise, to prescribing fees that, but for subsection 6 (2), could not be prescribed under this Act unless it were a law imposing taxation but that could be if it were.

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

Aspects of the power to prescribe fees

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

"(2) The regulations may provide for a fee for a chargeable matter to be determined by reference to a prescribed matter or prescribed matters, whether or not the prescribed matter, or any of the prescribed matters, has a direct or indirect connection with the chargeable matter.

"(3) A fee prescribed as a stated amount shall not exceed \$5,000.

"(4) 2 or more fees may be prescribed for the same chargeable matter.

“(5) Neither of subsections (1) and (2) limits the generality of the other or of section 4.

Fees payable

“6. (1) Subject to subsection (2), where the regulations prescribe a fee for a chargeable matter, the fee shall be paid to the Commonwealth for that matter.

“(2) Despite subsection (1), where, by virtue of subsection 4 (2), the regulations prescribe a fee for a chargeable matter, the fee shall be paid to the Commonwealth for that matter if, and only if, the fee is imposed by another Act.

Maximum fees payable for one matter

“7. Despite section 6, where but for this section the fee, or the total of the fees, payable under that section for a chargeable matter would exceed \$25,000, so much of that fee, or of that total, as exceeds \$25,000 is not payable.

Lodgment of document without payment of fee

“8. (1) Where:

- (a) a fee is payable under section 6 for the lodgment of a document; and
- (b) the document is submitted for lodgment without payment of the fee;

the document shall be taken not to have been lodged until the fee is paid.

“(2) Subsection (1) does not apply where, at the time when the document is submitted for lodgment, the amount of the fee cannot be ascertained, but if the Commission, before or at that time, requires under section 11 the payment of a deposit on account of the fee, the document shall be taken not to have been lodged until the deposit or the fee has been paid.

Doing of act without payment of fee

“9. (1) Where a fee is payable under section 6 for a matter involving the doing of an act by the Ministerial Council or the Commission, the Ministerial Council or the Commission shall not do that act until the fee is paid.

“(2) Subsection (1) does not prohibit the doing of the act at a particular time if, as at that time:

- (a) the amount of the fee cannot be ascertained; and
- (b) if the Commission has required under section 11 the payment of a deposit on account of the fee—the deposit has been paid.

Effect of sections 8 and 9

“10. Sections 8 and 9 have effect despite anything in the *Securities Industry Act 1980*.

Commission may require payment of deposit on account of fee

“11. Where the amount of a fee payable under section 6 for:

- (a) the lodgment of a document; or
- (b) a matter involving the doing of an act by the Ministerial Council or the Commission;

cannot be ascertained, the Commission may:

- (c) before or at the time when the document is submitted for lodgment; or
- (d) before the Ministerial Council or the Commission does the act;

as the case may be, require the payment to the Commission, on account of the fee, of a deposit of a specified amount that the Commission considers it reasonable to expect will be the amount of the fee.

Fee not ascertainable when it becomes payable

“12. (1) This section applies where the amount of a fee payable under section 6 cannot be ascertained when the fee becomes payable, but at a later time becomes able to be ascertained.

“(2) If a person has paid a deposit on account of the fee, the Commission shall apply towards payment of the fee so much of the deposit as does not exceed the amount of the fee and:

- (a) if the amount of the deposit exceeds the amount of the fee—the Commission shall refund to the person the amount of the excess; or
- (b) if the amount of the fee exceeds the amount of the deposit—as from the later time, so much of the fee as exceeds the amount of the deposit is a debt due to the Commonwealth and payable by the person.

“(3) Otherwise, the fee is, as from the later time, a debt due to the Commonwealth and payable by the person whom the Commission determines in writing to be the person who it is reasonable to expect would have paid the fee had the fee been able to be ascertained when it became payable.

Waiver and refund of fees

“13. Nothing in this Act prevents the Commonwealth from:

- (a) waiving or reducing, in a particular case or in particular classes of cases, fees that would otherwise be payable under this Act; or
- (b) refunding, in whole or in part, in a particular case or in particular classes of cases, fees paid under this Act.

Debts due to the Commonwealth

“14. The Commission may recover in a court of competent jurisdiction a debt due under this Act.

Act not to impose taxation

“15. Nothing in this Act shall be taken to impose taxation.

Payment of fee does not give right to inspect or search

“16. To avoid doubt, nothing in this Act or in the *Securities Industry (Fees: Taxation Component) Act 1989*, and nothing done under this Act:

- (a) imposes on the Commission a duty to allow the inspection or search of a register or document, or to make available information; or
- (b) confers a right to inspect or search a register or document or to have information made available;

except so far as such a duty or right would exist under some other law but for the effect of section 9.”.

Division 4—Amendment of Futures Industry (Fees) Act 1986

81. Sections 3, 4 and 5 of the Principal Act are repealed and the following sections are substituted:

Interpretation

“3. (1) In this Act, unless the contrary intention appears:

‘act’ includes thing;

‘chargeable matter’ means a matter of a kind referred to in any of paragraphs 4 (1) (a) to (h), inclusive;

‘for’, in relation to a fee, includes in respect of;

‘lodge’ means lodge with the Commission.

“(2) Subject to subsection (1), an expression has the same meaning in this Act as in the *Futures Industry Act 1986*.

“(3) The *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980* applies to this Act.

Power to prescribe fees

“4. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing fees for:

- (a) the lodgment of documents under the *Futures Industry Act 1986*;
 - (b) the registration of documents under that Act;
 - (c) the inspection or search of registers kept by, or documents in the custody of, the Commission under that Act;
 - (d) the making available by the Commission, under that Act, of information (whether in the form of a document or otherwise);
 - (e) the production by the Commission, under a subpoena, of such registers or documents;
 - (f) the issuing of documents or copies of documents, the granting of licences, consents or approvals, or the doing of other acts, by the Ministerial Council or the Commission under that Act;
 - (g) the making of inquiries of, or applications to, the Ministerial Council or the Commission in relation to matters arising under that Act;
- and

(h) the submission to the Commission of documents for examination by the Commission.

“(2) The power conferred by subsection (1) extends, by virtue of this subsection but not otherwise, to prescribing fees that, but for subsection 6 (2), could not be prescribed under this Act unless it were a law imposing taxation but that could be if it were.

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

Aspects of the power to prescribe fees

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

“(2) The regulations may provide for a fee for a chargeable matter to be determined by reference to a prescribed matter or prescribed matters, whether or not the prescribed matter, or any of the prescribed matters, has a direct or indirect connection with the chargeable matter.

“(3) A fee prescribed as a stated amount shall not exceed \$5,000.

“(4) 2 or more fees may be prescribed for the same chargeable matter.

“(5) Neither of subsections (1) and (2) limits the generality of the other or of section 4.

Fees payable

“6. (1) Subject to subsection (2), where the regulations prescribe a fee for a chargeable matter, the fee shall be paid to the Commonwealth for that matter.

“(2) Despite subsection (1), where, by virtue of subsection 4 (2), the regulations prescribe a fee for a chargeable matter, the fee shall be paid to the Commonwealth for that matter if, and only if, the fee is imposed by another Act.

Maximum fees payable for one matter

“7. Despite section 6, where but for this section the fee, or the total of the fees, payable under that section for a chargeable matter would exceed \$25,000, so much of that fee, or of that total, as exceeds \$25,000 is not payable.

Lodgment of document without payment of fee

“8. (1) Where:

(a) a fee is payable under section 6 for the lodgment of a document; and

(b) the document is submitted for lodgment without payment of the fee;

the document shall be taken not to have been lodged until the fee is paid.

“(2) Subsection (1) does not apply where, at the time when the document is submitted for lodgment, the amount of the fee cannot be ascertained, but if the Commission, before or at that time, requires under section 11 the payment of a deposit on account of the fee, the document shall be taken not to have been lodged until the deposit or the fee has been paid.

Doing of act without payment of fee

“9. (1) Where a fee is payable under section 6 for a matter involving the doing of an act by the Ministerial Council or the Commission, the Ministerial Council or the Commission shall not do that act until the fee is paid.

“(2) Subsection (1) does not prohibit the doing of the act at a particular time if, as at that time:

- (a) the amount of the fee cannot be ascertained; and
- (b) if the Commission has required under section 11 the payment of a deposit on account of the fee—the deposit has been paid.

Effect of sections 8 and 9

“10. Sections 8 and 9 have effect despite anything in the *Futures Industry Act 1986*.

Commission may require payment of deposit on account of fee

“11. Where the amount of a fee payable under section 6 for:

- (a) the lodgment of a document; or
- (b) a matter involving the doing of an act by the Ministerial Council or the Commission;

cannot be ascertained, the Commission may:

- (c) before or at the time when the document is submitted for lodgment; or
- (d) before the Ministerial Council or the Commission does the act;

as the case may be, require the payment to the Commission, on account of the fee, of a deposit of a specified amount that the Commission considers it reasonable to expect will be the amount of the fee.

Fee not ascertainable when it becomes payable

“12. (1) This section applies where the amount of a fee payable under section 6 cannot be ascertained when the fee becomes payable, but at a later time becomes able to be ascertained.

“(2) If a person has paid a deposit on account of the fee, the Commission shall apply towards payment of the fee so much of the deposit as does not exceed the amount of the fee and:

- (a) if the amount of the deposit exceeds the amount of the fee—the Commission shall refund to the person the amount of the excess; or
- (b) if the amount of the fee exceeds the amount of the deposit—as from the later time, so much of the fee as exceeds the amount of

the deposit is a debt due to the Commonwealth and payable by the person.

“(3) Otherwise, the fee is, as from the later time, a debt due to the Commonwealth and payable by the person whom the Commission determines in writing to be the person who it is reasonable to expect would have paid the fee had the fee been able to be ascertained when it became payable.

Waiver and refund of fees

“13. Nothing in this Act prevents the Commonwealth from:

- (a) waiving or reducing, in a particular case or in particular classes of cases, fees that would otherwise be payable under this Act; or
- (b) refunding, in whole or in part, in a particular case or in particular classes of cases, fees paid under this Act.

Debts due to the Commonwealth

“14. The Commission may recover in a court of competent jurisdiction a debt due under this Act.

Act not to impose taxation

“15. Nothing in this Act shall be taken to impose taxation.

Payment of fee does not give right to inspect or search

“16. To avoid doubt, nothing in this Act or in the *Futures Industry (Fees: Taxation Component) Act 1989*, and nothing done under this Act:

- (a) imposes on the Commission a duty to allow the inspection or search of a register or document, or to make available information; or
- (b) confers a right to inspect or search a register or document or to have information made available;

except so far as such a duty or right would exist under some other law but for the effect of section 9.”.

Division 5—Saving of existing Fees Regulations

Effect of regulations after commencement of this section

82. At and after the commencement of this section, the regulations that, immediately before that commencement, were in force under each of the Acts amended by Divisions 1, 2, 3 and 4 have effect as if they were regulations made at that commencement under that Act as amended by this Act.

Co-operative Scheme Legislation Amendment No. 92, 1989

NOTES

1. No. 89, 1981, as amended. For previous amendments, see No. 153, 1981; Nos. 26 and 80, 1982; No. 108, 1983; No. 13, 1984; Nos. 140, 192 and 193, 1985; Nos. 68 and 163, 1986; and Nos. 6 and 99, 1987.
2. No. 66, 1980, as amended. For previous amendments, see Nos. 3, 96 and 153, 1981; No. 26, 1982; No. 108, 1983; No. 13, 1984; No. 192, 1985; No. 74, 1986; and No. 6, 1987.
3. No. 72, 1986.
4. No. 68, 1980, as amended. For previous amendments, see Nos. 4, 98 and 153, 1981; No. 108, 1983; No. 13, 1984; No. 192, 1985; and No. 6, 1987.
5. No. 90, 1981, as amended. For previous amendments, see No. 153, 1981; and No. 120, 1985.
6. No. 65, 1980, as amended. For previous amendments, see No. 95, 1981.
7. No. 67, 1980, as amended. For previous amendments, see Nos. 97 and 153, 1981.
8. No. 73, 1986.

*[Minister's second reading speech made in—
House of Representatives on 12 April 1989
Senate on 26 May 1989]*