



Corporations Legislation Amendment Act 1990

No. 110 of 1990

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Corporations Legislation Amendment Act 1990

No. 110 of 1990

**An Act to amend the *Corporations Act 1989* and related
legislation**

[Assented to 18 December 1990]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Corporations Legislation Amendment Act 1990*.

Commencement

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

(2) The remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

PART 2—CONVERTING THE CORPORATIONS ACT 1989 INTO A LAW FOR THE GOVERNMENT OF THE AUSTRALIAN CAPITAL TERRITORY

Principal Act

3. In this Part, “Principal Act” means the *Corporations Act 1989*.

What this Part does

4. (1) This Part changes the Principal Act from an Act relying on the corporations and other powers, and intended to apply of its own force throughout Australia, into a law for the government of the Australian Capital Territory in relation to corporations, securities, the futures industry and some other matters.

(2) Section 6 of this Act inserts in the Principal Act new Parts providing for the Corporations Law set out in new section 82 of the Act to apply as a law for the government of the Territory.

(3) Section 7 of this Act then creates that Corporations Law out of the existing interpretation and substantive provisions of the Principal Act.

(4) The States (including the Northern Territory) can also apply that Corporations Law as their own law, because the amendments made by this Part are designed to render that Law suitable for application as a uniform law in all States and internal Territories.

Title

5. The title of the Principal Act is amended by omitting “enact a national law about” and substituting “make a law for the government of the Australian Capital Territory in relation to”.

New Parts providing for the Corporations Law to apply in the Australian Capital Territory

6. After the enacting words of the Principal Act the following Parts are inserted:

“PART 1—PRELIMINARY

Short title

“1. This Act may be cited as the *Corporations Act 1989*.”

Commencement

“2. (1) Subject to this section, the provisions of this Act commence on a day or days to be fixed by Proclamation.

“(2) This Part commences on the day on which section 6 of the *Corporations Legislation Amendment Act 1990* commences.

Object

“3. (1) The object of this Act (other than Part 8) is to make a law for the government of the Australian Capital Territory in relation to corporations, securities, the futures industry and some other matters.

“(2) This Act has effect, and is to be interpreted, accordingly.

“(3) Despite subsection (1) of this section and subsection 8 (1) of this Act, neither this Act nor the Corporations Law of the Australian Capital Territory is, for the purposes of subsection 22 (3) of the *Acts Interpretation Act 1901*, an Act providing for the administration or government of the Australian Capital Territory.

Interpretation

“4. (1) In this Act, unless the contrary intention appears: ‘**applicable provision**’, in relation to a jurisdiction, means a provision of:

- (a) the Corporations Law, or Corporations Regulations, of that jurisdiction; or
- (b) the ASC Law, or ASC Regulations, of that jurisdiction; or
- (c) in the case of the Capital Territory—a Commonwealth law as applying, of its own force or because of another Commonwealth law, in relation to:
 - (i) an offence against; or
 - (ii) an act, matter or thing arising under or in respect of; a provision that, because of any other application or applications of this definition, is an applicable provision of the Capital Territory or any other jurisdiction; or
- (d) in the case of a jurisdiction other than the Capital Territory—a Commonwealth law as applying, because of a law of that jurisdiction, in relation to:
 - (i) an offence against; or
 - (ii) an act, matter or thing arising under or in respect of; a provision that, because of any other application or applications of this definition, is an applicable provision of that or any other jurisdiction;

‘**Capital Territory**’ means the Australian Capital Territory and the Jervis Bay Territory;

‘**Commonwealth law**’ means any of the Acts and unwritten laws of the Commonwealth, other than the Corporations Law of the Capital

Territory, the ASC Law of the Capital Territory or provisions prescribed by regulations under section 73;

'jurisdiction' means a State or the Capital Territory;

'modifications' includes additions, omissions and substitutions;

'State' includes the Northern Territory;

'Territory' does not include the Northern Territory.

“(2) For the purposes of this Act, the Jervis Bay Territory is taken to be part of the Australian Capital Territory.

“PART 2—THE CORPORATIONS LAW, AND THE CORPORATIONS REGULATIONS, OF THE CAPITAL TERRITORY

Application in the Capital Territory of the Corporations Law

“5. The Corporations Law set out in section 82 as in force for the time being:

- (a) applies as a law for the government of the Capital Territory; and
- (b) as so applying, may be referred to as the Corporations Law of the Capital Territory.

Application of regulations in force under section 22

“6. (1) The regulations in force for the time being under section 22:

- (a) apply as regulations in force for the purposes of the Corporations Law of the Capital Territory; and
- (b) as so applying, may be referred to as the Corporations Regulations of the Capital Territory.

“(2) Subject to subsection (3) of this section, where regulations under section 22 are expressed to take effect from a specified day that is earlier than the day when they are notified in the *Gazette* under subsection 48 (1) of the *Acts Interpretation Act 1901*, subsection (1) of this section has effect, and is taken always to have had effect, as if those regulations had taken effect from the specified day.

“(3) Subsection (2) does not apply in a case where, if those regulations took effect from the specified day:

- (a) the rights of a person (other than the Commonwealth, a State, the Capital Territory or an authority of the Commonwealth or of a State or the Capital Territory) existing at the day of notification would be affected in a manner prejudicial to that person; or
- (b) liabilities would be imposed on a person (other than the Commonwealth, a State, the Capital Territory or an authority of the Commonwealth or of a State or the Capital Territory) in

respect of anything done or omitted to be done before the day of notification.

“(4) A reference in subsection (3) to rights being affected or liabilities being imposed includes a reference to rights being affected, or liabilities being imposed, because of the effect that those regulations would have because of a provision of a law of a jurisdiction other than the Capital Territory that corresponds to this section.

“(5) If subsection (3) applies, those regulations take effect from the day of notification.

“(6) Since subsections (3), (4) and (5) of this section cover the same ground as subsection 48 (2) of the *Acts Interpretation Act 1901*, that subsection does not apply in relation to regulations under section 22 of this Act.

Interpretation of some expressions in the Corporations Law, and the Corporations Regulations, of the Capital Territory

“7. In the Corporations Law, and the Corporations Regulations, of the Capital Territory:

‘Act of this jurisdiction’ means:

- (a) in section 919, 942, 1236 or 1351 of that Law—an Act of the Parliament; and
- (b) in section 111C of that Law—an Act of the Parliament or an Act or Ordinance of the Capital Territory; and
- (c) otherwise—an Act or Ordinance of the Capital Territory;

‘the Minister for this jurisdiction’ means the Minister;

‘this jurisdiction’ means the Capital Territory.

Corporations Law of the Capital Territory taken to be an Act

“8. (1) Except as provided in this section or as prescribed by regulations under section 73, the Corporations Law of the Capital Territory is taken for all purposes to be an Act.

“(2) Part 1.2 of the Corporations Law of the Capital Territory has effect to the exclusion of the *Acts Interpretation Act 1901*.

“(3) Subject to subsection (2), the *Acts Interpretation Act 1901* as amended and in force at the commencement of this section applies, and that Act as amended and in force at any later time does not apply, in relation to the Corporations Law of the Capital Territory.

“(4) The *Acts Interpretation Act 1901* does not apply in relation to an application order under section 111A of that Law.

“(5) An application order under section 111A of the Corporations Law of the Capital Territory is not a statutory rule within the meaning of the *Statutory Rules Publication Act 1903*.

Corporations Law, and Corporations Regulations, of the Capital Territory not to be affected by later Commonwealth laws

“9. (1) An Act enacted, or an instrument made under an Act, after the commencement of this section is not to be interpreted as amending or repealing, or otherwise altering the effect or operation of, a provision of the Corporations Law, or of the Corporations Regulations, of the Capital Territory.

“(2) Subsection (1) does not affect the interpretation of an Act, or of an instrument made under an Act, so far as that Act provides expressly for that Act or instrument, as the case may be, to have effect despite a specified provision, or despite any provision, of the Corporations Law, or of the Corporations Regulations, of the Capital Territory.

Relationship between the Corporations Law, and the Corporations Regulations, of the Capital Territory and the laws of the Capital Territory

“10. (1) In this section:
‘the Law’ means the Corporations Law, and the Corporations Regulations, of the Capital Territory.

“(2) The object of this section is to avoid or resolve inconsistencies between the Law and the laws of the Capital Territory.

“(3) Subject to this section, the Law has effect despite anything in a law of the Capital Territory.

“(4) Regulations under section 73:

- (a) may provide that specified laws of the Capital Territory have effect despite the Law or specified provisions of the Law; and
- (b) may provide that the Law, or specified provisions of the Law, has or have effect with such modifications as the regulations prescribe.

“(5) Regulations that are made under section 73 and take effect within 12 months after the commencement of this section may amend or repeal laws of the Capital Territory.

“(6) Regulations in force because of subsection (4) or (5) have effect accordingly.

“(7) Nothing in subsection (2) affects the validity of regulations purporting to be made under section 73.

Operation of particular Acts of the Capital Territory

“11. (1) Section 477 of the Corporations Law of the Capital Territory has effect as provided by section 39 of the *Workmen’s Compensation Supplementation Fund Act 1980* of that Territory in relation to the liquidator of a corporation that is an insurer within the meaning of that Act.

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“(2) Division 6 of Part 5.6 of the Corporations Law of the Capital Territory has effect subject to section 40 of the *Workmen’s Compensation Supplementation Fund Act 1980* of that Territory.

“(3) Part 5.7 of the Corporations Law of the Capital Territory does not apply to:

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

“(4) An Act of the Capital Territory may provide that, where an incorporated association is being wound up under Part 5.7 of the Corporations Law of the Capital Territory, specified provisions of the Act apply, and where such an Act so provides, that Part has effect subject to the specified provisions.

“(5) An Act of the Capital Territory may provide that Part 5.7 of the Corporations Law of the Capital Territory applies, subject to the modifications and adaptations prescribed by the Act, in relation to the winding up of an incorporated association, and where such an Act so provides, that Part applies accordingly.

“(6) In subsection (4) or (5):

‘incorporated association’ means an association, society, institution or body incorporated under the *Associations Incorporation Act 1953* of the Capital Territory.

“(7) The Corporations Law of the Capital Territory has effect subject to sections 23 and 24 of the *Trustee Companies Act 1947* of that Territory.

“(8) Nothing in this section limits, or is limited by, anything in section 10.

“PART 3—CITING THE CORPORATIONS LAW AND THE CORPORATIONS REGULATIONS

Simpler citation of Corporations Law, and Corporations Regulations, of the Capital Territory

“12. (1) The Corporations Law of the Capital Territory may be referred to simply as the Corporations Law.

“(2) The Corporations Regulations of the Capital Territory may be referred to simply as the Corporations Regulations.

“(3) This section has effect subject to section 14.

References to Corporations Law, and Corporations Regulations, of other jurisdictions

“13. (1) This section has effect for the purposes of an Act, a law of the Capital Territory, or an instrument made under an Act or under such a law.

“(2) Where a law of a jurisdiction other than the Capital Territory that corresponds to section 5 provides that the Corporations Law set out in section 82 as in force for the time being applies as law of that jurisdiction, the Corporations Law of that jurisdiction is the Corporations Law so set out, applying as law of that jurisdiction.

“(3) Where a law of a jurisdiction other than the Capital Territory that corresponds to section 6 provides that the regulations in force for the time being under section 22 apply for the purposes of the Corporations Law of that jurisdiction, the Corporations Regulations of that jurisdiction are those regulations as so applying.

References to Corporations Law and Corporations Regulations

“14. (1) The object of this section is to help ensure that the Corporations Law of the Capital Territory operates, so far as possible, as if that Law, together with the Corporations Law of each jurisdiction other than the Capital Territory, constituted a single national Corporations Law applying of its own force throughout Australia.

“(2) Subject to this section, a reference in an instrument to the Corporations Law, or to the Corporations Regulations, is to be taken, for the purposes of the laws of the Commonwealth and of the laws of the Capital Territory:

- (a) to be a reference to the Corporations Law, or to the Corporations Regulations, of the Capital Territory; and
- (b) to include a separate reference to the Corporations Law, or to the Corporations Regulations, of each jurisdiction other than the Capital Territory.

“(3) Subsection (2) has effect except so far as the contrary intention appears in the instrument, or the context of the reference otherwise requires.

“(4) Without limiting subsection (3), subsection (2) does not apply in relation to a reference expressed as a reference to the Corporations Law, or to the Corporations Regulations, of a jurisdiction.

“(5) In this section:

‘instrument’ means:

- (a) an Act or an instrument made under an Act; or
- (b) a law of the Capital Territory or an instrument made under such a law; or

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- (c) an award or other industrial determination or order, or an industrial agreement; or
- (d) any other order (whether executive, judicial or otherwise); or
- (e) a notice, certificate or licence; or
- (f) an agreement; or
- (g) an application made, information laid, affidavit sworn, or warrant issued, for any purpose; or
- (h) an indictment, presentment, summons or writ; or
- (j) any other pleading in, or process issued in connection with, a legal or other proceeding; or
- (k) any other document whatever.

Saving of citation provisions of other jurisdictions

“15. Subject to section 14, section 12 is not intended to prevent a law of a jurisdiction other than the Capital Territory from:

- (a) providing that the Corporations Law, or the Corporations Regulations, of that jurisdiction may be referred to simply as the Corporations Law, or the Corporations Regulations; or
- (b) providing for how a reference to the Corporations Law, or to the Corporations Regulations, is to be interpreted for the purposes of the laws of that jurisdiction.

“PART 4—APPLICATION OF THE CORPORATIONS LAW TO THE CROWN

Interpretation

“16. To avoid doubt, a reference in this Part to the Crown in a particular right includes a reference to an instrumentality or agency (whether a body corporate or not) of the Crown in that right.

Corporations Law of the Capital Territory

“17. (1) Chapter 5 (except Part 5.8) of the Corporations Law of the Capital Territory binds the Crown in right of the Commonwealth, of each of the States, of the Capital Territory, of the Northern Territory and of Norfolk Island.

“(2) To avoid doubt, Chapter 7 of the Corporations Law of the Capital Territory does not bind the Crown in right of the Commonwealth, of any State, of the Capital Territory, of the Northern Territory or of Norfolk Island.

Corporations Law of other jurisdictions

“18. Chapter 5 (except Part 5.8) of the Corporations Law of each jurisdiction other than the Capital Territory binds the Crown in right of the Commonwealth, of the Capital Territory and of Norfolk Island.

Crown not liable to prosecution

“19. Nothing in this Part, or in the Corporations Law, renders the Crown in any right liable to be prosecuted for an offence.

This Part overrides the prerogative

“20. Where, because of this Part, a provision of a law of a State binds the Crown in right of the Commonwealth, of the Capital Territory or of Norfolk Island, the Crown in that right is subject to that provision despite any prerogative right or privilege.

“PART 5—POWER TO MAKE REGULATIONS FOR THE PURPOSES OF THE CORPORATIONS LAW

Interpretation

“21. (1) In this Part, unless the contrary intention appears:
‘prescribed’ means prescribed by the regulations;
‘the Law’ means the Corporations Law of the Capital Territory;
‘the regulations’ means the regulations made under section 22.

“(2) An expression has in this Part the meaning it would have if this Part were in Chapter 9 of the Law.

The Corporations Regulations

“22. The Governor-General may make regulations, not inconsistent with this Act or the Law, prescribing matters:

- (a) required or permitted by the Law to be prescribed by regulations within the meaning of the Law; or
 - (b) necessary or convenient to be prescribed by such regulations for carrying out or giving effect to the Law;
- and, in particular, may make regulations:
- (c) for or in relation to the keeping of registers by the Commission, the lodging of documents with the Commission, the registration of documents by the Commission, the time and manner of lodging or registration, and the requirements with which documents lodged or to be lodged are to comply; and
 - (d) prescribing forms for the purposes of the Law and the method of verifying any information required by or in those forms; and
 - (e) prescribing the manner in which, the persons by whom, and the directions or requirements in accordance with which, the forms prescribed for the purposes of the Law, or any of them, are required or permitted to be signed, prepared, or completed, and generally regulating the signing, preparation and completion of those forms, or any of them; and
 - (f) for or in relation to the convening of, conduct of, and procedure and voting at, meetings of creditors, meetings of contributories and meetings of holders of debentures, and joint meetings of

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creditors and members of companies, the number of persons required to constitute a quorum at any such meeting, the sending of notices of meetings to persons entitled to attend at meetings, the lodging of copies of notices of, and of resolutions passed at, meetings, and generally regulating the conduct of, and procedure at, any such meeting; and

- (g) prescribing the persons by whom, and the circumstances and manner in which, proxies may be appointed and generally regulating the appointment and powers of proxies; and
- (h) for or in relation to the proving of debts in the winding up of a company, the manner of proving debts and the time within which debts are required or permitted to be proved and generally regulating the proving of debts; and
- (j) prescribing the manner in which a liquidator appointed by the Court may:
 - (i) exercise powers and perform functions under subsection 478 (1) of the Law; and
 - (ii) exercise any powers conferred, and perform any duties imposed, on the liquidator by regulations made for the purposes of subsection 488 (1) of the Law; and
- (k) prescribing the manner in which a liquidator in a voluntary winding up may exercise powers and perform functions under section 506 of the Law; and
- (m) prescribing times for the lodging of any documents; and
- (n) for or in relation to the publication of advertisements offering the services of dealers or investment advisers or offering securities for purchase or sale, and the form and content of those advertisements; and
- (p) for or in relation to the publication of advertisements offering the services of futures brokers or futures advisers or offering to deal in futures contracts, and the form and content of those advertisements; and
- (q) for or in relation to the form of balance-sheets and profit and loss accounts required by the Law to be prepared by dealers or futures brokers; and
- (r) for or in relation to prohibiting, or regulating the manner and extent of, the offsetting by a futures broker of dealings in futures contracts (as between dealings on the broker's own account and dealings on behalf of a client or as between dealings on behalf of a client and dealings on behalf of another client) and, without limitation, regulating the manner of, or requiring, the making of margin calls in respect of dealings in futures contracts effected by a futures broker; and
- (s) for or in relation to the furnishing to the Commission of information in addition to, or in variation of, the information contained in a prescribed form lodged with it; and

- (t) for or in relation to the times within which information required to be furnished to the Commission under the Law shall be so furnished; and
- (u) for or in relation to the manner in which:
 - (i) orders made under the Law may be served on persons affected by the orders; and
 - (ii) documents that are required or permitted by the Law to be served on a person may be so served; and
- (w) prescribing penalties not exceeding \$1,000 for contraventions of the regulations.

Regulations may provide for application orders to specify matters

“23. The regulations may require or permit matters to be specified, for the purposes of the regulations, by or in application orders.

Scope of particular regulations

“24. Except as otherwise expressly provided in this Act or the Law, the regulations may be of general or specially limited application or may differ according to differences in time, locality, place or circumstance.

Power to prescribe fees

“25. The regulations may prescribe fees (including fees that are taxes) for chargeable matters.

Aspects of the power to prescribe fees

“26. (1) 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.

“(2) A fee prescribed as a stated amount shall not exceed \$5,000.

“(3) Two or more fees may be prescribed for the same chargeable matter.

“(4) In this section:

‘fee’ includes a fee that is a tax.

Effect of certain provisions

“27. Neither of section 24 and subsection 26 (1) limits the generality of the other or of section 25.

Verifying or certifying documents

“28. The regulations may:

- (a) where documents required by or under the Law to be lodged in accordance with the Law are required to be verified or certified

and no manner of verification or certification is prescribed by or under the Law—require that the documents or any of them be verified or certified by statement in writing made by such persons as are prescribed by the regulations; and

- (b) where no express provision is made in the Law for verification or certification of documents—require that the documents be verified or certified by statement in writing by such persons as are prescribed.

Documents lodged by an agent

“29. The regulations may provide, in such cases as are prescribed, that, if a document that is required by or under the Law to be lodged is signed or lodged on behalf of a person by an agent duly authorised by writing, there must be:

- (a) lodged with; or
- (b) endorsed on; or
- (c) annexed to;

that document, the original, or a verified copy, of the authority.

Exemptions from Chapter 7 or 8

“30. The regulations may provide that, subject to any prescribed terms and conditions, Chapter 7 or 8, or specified provisions of Chapter 7 or 8, of the Law:

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

and may provide that a contravention of a prescribed term or condition is an offence against the regulations.

Penalty notices

“31. (1) The regulations:

- (a) may prescribe offences against the Law (not being offences the penalties applicable to which include a term of imprisonment or a pecuniary penalty that exceeds \$1,000), or offences against the regulations, for the purposes of section 1313 of the Law; and
- (b) must, in relation to each offence that is prescribed under this subsection:
 - (i) prescribe the particulars of that offence that are to be

given in a notice served on a person under that section in relation to the offence; and

- (ii) prescribe the amount of the penalty (being not more than half the amount of the penalty applicable to the offence) that is payable in respect of the offence under a notice served on a person under that section in relation to the offence.

“(2) In subsection (1), a reference to a penalty applicable to an offence is a reference to the penalty that is applicable to that offence because of any of the provisions of section 1311 of the Law.

“(3) The particulars of an offence required to be prescribed by subparagraph (1) (b) (i) may be prescribed by being set out in the form prescribed for the purposes of section 1313 of the Law in relation to the offence.

“PART 6—ACCOUNTING STANDARDS

Accounting standards

“32. (1) The Australian Accounting Standards Board may make for the purposes of Parts 3.6 and 3.7 of the Corporations Law of the Capital Territory a written accounting standard that is not inconsistent with that Law or the Corporations Regulations of that Territory.

“(2) An instrument made under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

“(3) In considering whether or not to make a particular instrument under subsection (1), the Board must have regard to:

- (a) the effect the instrument would have for the purposes of Parts 3.6 and 3.7 of the Corporations Law of each jurisdiction other than the Capital Territory because of a law of that jurisdiction that corresponds to this Act; and
- (b) the fact that section 48 of the *Acts Interpretation Act 1901* would apply in relation to the instrument because of subsection (2) of this section.

“PART 7—IMPOSITION OF FEES AND TAXES

Fees (including taxes) for chargeable matters

“33. This section imposes the fees (including fees that are taxes) that the Corporations Regulations of the Capital Territory prescribe.

Contributions and levies for fidelity funds of securities exchanges

“34. (1) This section imposes:

- (a) the contribution payable under subsection 902 (1) of the

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Corporations Law of the Capital Territory by a person who wishes to be admitted to membership of a securities exchange, or to a partnership in a member firm recognised by a securities exchange; and

- (b) the annual contribution payable under subsection 902 (2) of that Law by a member of a securities exchange; and
- (c) any levy payable under section 904 of that Law by a member of a securities exchange.

“(2) An expression has in subsection (1) the meaning it would have if this section were in Part 7.9 of the Corporations Law of the Capital Territory.

Levies for National Guarantee Fund

“35. This section imposes any levy that is payable under section 938, 940 or 941 of the Corporations Law of the Capital Territory.

Contributions and levies for fidelity funds of futures organisations

“36. (1) This section imposes:

- (a) the contribution payable under subsection 1234 (1) of the Corporations Law of the Capital Territory by a person who wishes to be admitted to membership of a futures organisation; and
- (b) the annual contribution payable under subsection 1234 (2) of that Law by a contributing member of a futures organisation; and
- (c) any levy payable under section 1235 of that Law by a contributing member of a futures organisation.

“(2) An expression has in subsection (1) the meaning it would have if this section were in Part 8.6 of the Corporations Law of the Capital Territory.

“PART 8—NATIONAL ADMINISTRATION AND ENFORCEMENT OF THE CORPORATIONS LAW

“Division 1—Preliminary

Object

“37. The object of this Part is to help ensure that:

- (a) the Corporations Law of the Capital Territory, and the Corporations Law of each jurisdiction other than the Capital Territory, are administered and enforced on a national basis, in the same way as if those Laws constituted a single law of the Commonwealth; and
- (b) the ASC Law of the Capital Territory, and the ASC Law of

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each jurisdiction other than the Capital Territory, are administered and enforced on a national basis, in the same way as if those Laws constituted a single law of the Commonwealth.

Interpretation

“38. In this Part:

‘authority’, in relation to the Commonwealth, includes:

- (a) a body corporate, or an unincorporated body, established for a public purpose by or in accordance with an Act; and
- (b) a court, tribunal or authority established by or in accordance with an Act;

for example:

- (c) the Administrative Appeals Tribunal; and
- (d) the Australian Federal Police;

‘corresponding law’ means:

- (a) an Act of a jurisdiction (other than the Capital Territory) that corresponds to this Act; or
- (b) regulations made under such an Act; or
- (c) the Corporations Law, Corporations Regulations, ASC Law, or ASC Regulations, or any other applicable provision, of such a jurisdiction; or
- (d) rules of court made because of such an Act;

‘officer’, in relation to the Commonwealth, includes:

- (a) a Minister; and
- (b) a person holding:
 - (i) an office established by or under an Act; or
 - (ii) an appointment made under an Act; or
 - (iii) an appointment made by the Governor-General or a Minister but not under an Act; and
- (c) a person who is a member or officer of an authority of the Commonwealth; and
- (d) a person who is in the service or employment of the Commonwealth, or of an authority of the Commonwealth, or is employed or engaged under an Act;

for example:

- (e) a member or special member of the Australian Federal Police; and
- (f) the Director of Public Prosecutions; and
- (g) the Ombudsman; and
- (h) the Privacy Commissioner; and
- (j) a Special Prosecutor.

Effect of Part

“39. Nothing in this Part limits the generality of anything else in it.

“Division 2—Offences against applicable provisions

Object

“40. The object of this Division is to further the object of this Part by providing for an offence against an applicable provision of another jurisdiction to be treated in the Capital Territory as if it were an offence against a law of the Commonwealth.

Effect of Division

“41. (1) This Division has effect subject to this Act, the Corporations Law of the Capital Territory and the *Australian Securities Commission Act 1989*.

“(2) The provisions of subsections 42 (2), (3) and (4) and sections 43 and 44, and any other provision of this Act that has effect for the purposes of any of those provisions, extend to each external Territory.

Application of Commonwealth laws in relation to offences against applicable provisions of other jurisdictions

“42. (1) The Commonwealth laws apply, as laws for the government of the Capital Territory, in relation to an offence against the applicable provisions of another jurisdiction as if those provisions were laws of the Commonwealth.

“(2) The Commonwealth laws that extend to an external Territory apply, as laws for the government of that Territory, in relation to an offence against the applicable provisions of a jurisdiction other than the Capital Territory as if those provisions were laws of the Commonwealth.

“(3) A Commonwealth law, as applying because of subsection (1) or (2), does not require, prohibit, empower, authorise, or otherwise provide for, the doing of an act outside the Capital Territory, or the external Territory concerned, as the case may be.

“(4) The effect that a Commonwealth law has because of subsection (1) or (2) is additional to, and does not prejudice, the effect that the Commonwealth law otherwise has.

Functions and powers under Commonwealth laws as applying because of section 42

“43. (1) This section applies to a Commonwealth law that confers on an officer or authority of the Commonwealth a function or power in relation to an offence against an applicable provision of the Capital Territory.

“(2) The Commonwealth law, as applying because of subsection 42 (1) or (2), confers on that officer or authority the same function or power in relation to an offence against the corresponding applicable provision of a jurisdiction other than the Capital Territory.

“(3) The function or power referred to in subsection (2) may only be performed or exercised in the Capital Territory, or in the external Territory concerned, as the case may be.

“(4) In performing the function or power referred to in subsection (2), the officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power in relation to an offence against the corresponding applicable provision of the Capital Territory.

References in a Commonwealth law to a provision of a Commonwealth law

“44. A reference in a Commonwealth law to a provision of that or another Commonwealth law is taken, for the purposes of the first-mentioned law as applying because of subsection 42 (1) or (2), to be a reference to that provision as applying because of that subsection.

How offences against applicable provisions of other jurisdictions are to be treated

“45. (1) For the purposes of a law of the Commonwealth or a law of the Capital Territory, an offence against the applicable provisions of a jurisdiction other than the Capital Territory:

- (a) is taken to be an offence against the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth; and
- (b) is taken not to be an offence against the laws of that jurisdiction.

“(2) Subsection (1) has effect for the purposes of a law:

- (a) only in so far as it is within the authority of the Parliament to provide in relation to that law as mentioned in paragraph (1) (a); and
- (b) except as prescribed by regulations under section 73.

“(3) Subsection (1) does not have effect for the purposes of this Division or of the Corporations Law, or the ASC Law, of the Capital Territory.

“Division 3—Performance of functions that corresponding laws of States confer on Commonwealth authorities and officers

Ministers

“46. A Minister has such functions and powers as are expressed to be conferred on him or her by or under a corresponding law.

Prescribed functions and powers

“47. (1) Regulations under section 73 may provide that prescribed authorities and officers of the Commonwealth have prescribed functions and powers that are expressed to be conferred on them by or under corresponding laws.

“(2) Regulations under section 73 may provide for and in relation to the doing of acts in the Capital Territory by authorities and officers of the Commonwealth in the performance of functions, and the exercise of powers, that are prescribed because of subsection (1) of this section.

“(3) Regulations in force because of this section have effect accordingly.

Gazette notices under corresponding laws

“48. Where a provision of a corresponding law is expressed to require or permit a document, or a copy of a document, to be published in the *Gazette*, the document or copy is to be so published in accordance with that provision.

“PART 9—JURISDICTION AND PROCEDURE OF COURTS

“Division 1—Vesting and cross-vesting of civil jurisdiction

Operation of Division

“49. (1) This Division provides in relation to:

- (a) the jurisdiction of courts in respect of matters other than criminal matters (in this Division called ‘civil’ matters) arising under the Corporations Law of the Capital Territory; and
- (b) the jurisdiction of the courts of the Capital Territory in respect of civil matters arising under any Corporations Law of a State;

and so provides to the exclusion of:

- (c) the *Jurisdiction of Courts (Cross-vesting) Act 1987*; and
- (d) section 39B of the *Judiciary Act 1903*.

“(2) Nothing in this Division affects any other jurisdiction of any court.

Interpretation

“50. (1) In this Division:

‘**Full Court**’, in relation to a Supreme Court of a State, includes any court of the State to which appeals lie from a single judge of that Supreme Court;

‘**judgment**’ means a judgment, decree or order, whether final or interlocutory.

“(2) In this Division:

- (a) a reference to the Corporations Law of the Capital Territory includes a reference to:
 - (i) the Corporations Regulations of the Capital Territory; and
 - (ii) the ASC Law of the Capital Territory; and
 - (iii) the ASC Regulations of the Capital Territory; and
 - (iv) any other applicable provisions (as defined in section 4) of the Capital Territory; and
 - (v) this Act; and
 - (vi) regulations made under section 73 of this Act or section 252 of the ASC Law of the Capital Territory; and
 - (vii) rules of court made by the Federal Court because of a provision of this Act, and rules of court applied by the Supreme Court of the Capital Territory, or of a State, when exercising jurisdiction conferred by this Division (including jurisdiction conferred by virtue of any previous application or applications of this subparagraph); and
- (b) a reference to the Corporations Law of a State is a reference to the Corporations Law of that State within the meaning of the law of that State corresponding to this Division.

Jurisdiction of Federal Court and State and Territory Supreme Courts

“51. (1) Jurisdiction is conferred on the Federal Court of Australia with respect to civil matters arising under the Corporations Law of the Capital Territory.

“(2) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, jurisdiction is conferred on the Supreme Court of each State and the Capital Territory with respect to civil matters arising under the Corporations Law of the Capital Territory.

“(3) The jurisdiction conferred on a Supreme Court by subsection (2) is not limited by any limits to which any other jurisdiction of that Supreme Court may be subject.

Appeals

“52. (1) An appeal may not be instituted from a decision of a single Judge of the Federal Court to the Full Court of the Supreme Court of a State or Territory.

“(2) An appeal may not be instituted from a decision of a single Judge of the Supreme Court of a State or the Capital Territory to the Full Court of the Supreme Court of another jurisdiction.

“(3) An appeal may not be instituted from a decision of a single Judge of the Supreme Court of a State to the Full Court of the Federal Court.

Transfer of proceedings

“53. (1) This section applies to a proceeding with respect to a civil matter arising under the Corporations Law of the Capital Territory in a court having jurisdiction under section 51.

“(2) Where it appears to the court that, having regard to the interests of justice, it is more appropriate for the proceeding, or an application in the proceeding, to be determined by another court having jurisdiction in the matters for determination in the proceeding or application, the first-mentioned court may transfer the proceeding or application to that other court.

“(3) In deciding whether to transfer a proceeding or application under subsection (2), the court must have regard to:

- (a) the principal place of business of any body corporate concerned in the proceeding or application; and
- (b) the place or places where the events the subject of the proceeding or application took place.

“(4) The court may transfer the proceeding or application:

- (a) on the application of a party made at any stage; or
- (b) of the court’s own motion.

“(5) Where, under subsection (2), a court transfers a proceeding, or an application in a proceeding, to another court:

- (a) the Registrar or other proper officer of the first-mentioned court must transmit to the Registrar or other proper officer of the other court all documents filed in the first-mentioned court in respect of the proceeding or application, as the case may be; and
- (b) the other court must proceed as if:
 - (i) the proceeding had been originally instituted in the other court; and
 - (ii) the same proceedings had been taken in the other court as were taken in the first-mentioned court; and
 - (iii) in a case where an application is transferred—the application had been made in the other court.

Conduct of proceedings

“54. (1) Subject to sections 60 and 61, where it appears to a court that, in determining a matter for determination in a proceeding, the court will, or will be likely to, be exercising relevant jurisdiction, the rules of evidence and procedure to be applied in dealing with that matter are to be such as the court considers appropriate in the circumstances, being rules that are applied in a superior court in Australia or in an external Territory.

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“(2) Where a proceeding is transferred or removed to a court (in this subsection called the ‘**transferee court**’) from another court (in this subsection called the ‘**transferor court**’), the transferee court must deal with the proceeding as if, subject to any order of the transferee court, the steps that had been taken for the purposes of the proceeding in the transferor court (including the making of an order), or similar steps, had been taken in the transferee court.

“(3) In this section:

‘relevant jurisdiction’ means:

- (a) jurisdiction conferred on the Federal Court of Australia with respect to civil matters arising under the Corporations Law of the Capital Territory; or
- (b) jurisdiction conferred on the Federal Court of Australia with respect to civil matters arising under the Corporations Law of a State, being jurisdiction that is being exercised by the Federal Court sitting in the Capital Territory; or
- (c) jurisdiction conferred on the Supreme Court of the Capital Territory with respect to civil matters arising under the Corporations Law of a State; or
- (d) jurisdiction conferred on the Supreme Court of a State with respect to civil matters arising under the Corporations Law of the Capital Territory.

Courts to act in aid of each other

“55. All courts having jurisdiction in civil matters arising under the Corporations Law of the Capital Territory, the Judges of those courts and the officers of, or under the control of, those courts must severally act in aid of, and be auxiliary to, each other in all such matters.

Exercise of jurisdiction pursuant to cross-vesting provisions

“56. (1) Nothing in this or any other Act is intended to override or limit the operation of a provision of a law of a State or Territory relating to cross-vesting of jurisdiction with respect to matters arising under the Corporations Law of the State or Territory.

“(2) The Federal Court or the Supreme Court of the Capital Territory may:

- (a) exercise jurisdiction (whether original or appellate) conferred on that Court by a law of a State corresponding to this Division with respect to matters arising under the Corporations Law of a State; and
- (b) hear and determine a proceeding transferred to that Court under such a provision.

Rights of appearance

“57. A person who is entitled to practise as a barrister or a solicitor, or as both a barrister and a solicitor, in a court has, if a proceeding (in this subsection referred to as the ‘**transferred proceeding**’) in that court

is transferred to another court under this Division or a law of a State that corresponds to this Division, the same entitlements to practise in relation to:

- (a) the transferred proceeding; and
- (b) any other proceeding out of which the transferred proceeding arises or to which the transferred proceeding is related, being another proceeding that is to be determined together with the transferred proceeding;

in the other court that the person would have if the other court were a federal court exercising federal jurisdiction.

Limitation on appeals

“58. An appeal does not lie from a decision of a court:

- (a) in relation to the transfer of a proceeding under this Division; or
- (b) as to which rules of evidence and procedure are to be applied pursuant to subsection 54 (1).

Enforcement of judgments etc.

“59. (1) A judgment of the Federal Court or the Supreme Court of the Capital Territory that is given, in whole or in part, in the exercise of jurisdiction conferred by this Division, or by a law of a State that corresponds to this Division, is enforceable in the Capital Territory as if the judgment had been given by that Court entirely in the exercise of the jurisdiction of that Court apart from this Division or any such law.

“(2) Where:

- (a) a provision of a law of the Commonwealth or of the Capital Territory (not being a law in relation to the enforcement of judgments) refers to a thing done by the Federal Court or the Supreme Court of the Capital Territory or of a State; and
- (b) that thing is done by another court in the exercise of jurisdiction conferred by this Division or a law of a State corresponding to this Division;

the reference in that provision to the Federal Court or the Supreme Court of the Capital Territory, as the case may be, is taken as a reference to that other court.

Rules of the Federal Court

“60. (1) The power to make rules of court conferred by section 59 of the *Federal Court of Australia Act 1976* extends to making rules of court, not inconsistent with the Corporations Law of the Capital Territory:

- (a) with respect to proceedings, and the practice and procedure, of the Federal Court of Australia under that Law; and

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- (b) with respect to any matter or thing that is:
 - (i) required or permitted by that Law to be prescribed by rules within the meaning of that Law; or
 - (ii) necessary or convenient to be prescribed by such rules for carrying out or giving effect to that Law; and
- (c) without limitation, with respect to costs, and with respect to rules about meetings ordered by the Federal Court of Australia.

“(2) When the Federal Court is exercising jurisdiction with respect to matters arising under the Corporations Law of a State, being jurisdiction conferred by a law of a State that corresponds to this Division, that Court must apply the rules of court made under subsection (1), with such alterations as are necessary.

“(3) In this section:

‘Corporations Law of the Capital Territory’ does not include rules of court.

Rules of the Supreme Court

“61. (1) The Judges of the Supreme Court of the Capital Territory or a majority of them may make rules of court, not inconsistent with the Corporations Law of the Capital Territory:

- (a) with respect to proceedings, and the practice and procedure, of that court under that Law; and
- (b) with respect to any matter or thing that is:
 - (i) required or permitted by that Law to be prescribed by rules within the meaning of that Law; or
 - (ii) necessary or convenient to be prescribed by such rules for carrying out or giving effect to that Law; and
- (c) without limitation, with respect to costs, and with respect to rules as to meetings ordered by that Court.

“(2) When the Supreme Court of the Capital Territory is exercising jurisdiction with respect to matters arising under the Corporations Law of a State, being jurisdiction conferred by a law of a State that corresponds to this Division, that Court must apply the rules of court made under subsection (1), with such alterations as are necessary.

“(3) When the Supreme Court of a State is exercising jurisdiction with respect to matters arising under the Corporations Law of the Capital Territory, being jurisdiction conferred by this Division, that Court must apply the rules of court made under the law of the State corresponding to subsection (1), with such alterations as are necessary.

“(4) In this section:

‘Corporations Law of a State’ does not include rules of court;

‘Corporations Law of the Capital Territory’ does not include rules of court.

“Division 2—Vesting and cross-vesting of criminal jurisdiction

Operation of Division

“62. This Division provides in relation to:

- (a) the jurisdiction of courts in respect of criminal matters arising under the Corporations Law of the Capital Territory; and
- (b) the jurisdiction of the courts of the Capital Territory in respect of criminal matters arising under the Corporations Law of any jurisdiction;

and so provides to the exclusion of sections 68, 70 and 70A of the *Judiciary Act 1903*.

Interpretation

“63. (1) In this Division:

‘**magistrate**’ means a magistrate who is remunerated by salary or otherwise.

“(2) In this Division:

- (a) a reference to the Corporations Law of the Capital Territory includes a reference to:
 - (i) the Corporations Regulations of the Capital Territory; and
 - (ii) the ASC Law of the Capital Territory; and
 - (iii) the ASC Regulations of the Capital Territory; and
 - (iv) any other applicable provisions (as defined in section 4) of the Capital Territory; and
 - (v) this Act; and
 - (vi) regulations made under section 73 of this Act or section 252 of the ASC Law of the Capital Territory; and
 - (vii) rules of court made by the Federal Court because of a provision of this Act, and rules of court applied by the Supreme Court of the Capital Territory, or of a State, when exercising jurisdiction conferred by this Division (including jurisdiction conferred by virtue of any previous application or applications of this subparagraph); and
- (b) a reference to the Corporations Law of a State is a reference to the Corporations Law of that State within the meaning of the law of that State corresponding to this Division.

Jurisdiction of courts

“64. (1) Subject to this section, the several courts of each State and the Capital Territory exercising jurisdiction:

- (a) with respect to:
 - (i) the summary conviction; or
 - (ii) the examination and commitment for trial on indictment;
- or

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(iii) the trial and conviction on indictment;
of offenders or persons charged with offences against the laws
of the State or Capital Territory; and
(b) with respect to the hearing and determination of appeals arising
out of any such trial or conviction or out of any connected
proceedings;
have the equivalent jurisdiction with respect to offenders or persons
charged with offences against the Corporations Law of the Capital
Territory.

“(2) Where a provision of a law of a State corresponding to
subsection (1) is expressed to confer jurisdiction with respect to offenders
or persons who are charged with offences against the Corporations Law
of that State upon a court of the Capital Territory, the court may
exercise that jurisdiction.

“(3) The jurisdiction conferred by subsection (1) is not to be
exercised with respect to the summary conviction, or examination and
commitment for trial, of any person except by a magistrate.

“(4) The jurisdiction conferred by subsection (1) includes jurisdiction
in accordance with provisions of a relevant law of a State or the Capital
Territory, and:

- (a) the reference in paragraph (1) (b) to ‘any such trial or conviction’
includes a reference to any conviction or sentencing in
accordance with the provisions of a relevant law; and
- (b) unless the contrary intention appears, a reference to jurisdiction
conferred by subsection (1) includes a reference to such included
jurisdiction.

“(5) A person may be dealt with in accordance with a relevant law
even if, apart from this section, the offence concerned:

- (a) would be required to be prosecuted on indictment; or
- (b) would be required to be prosecuted either summarily or on
indictment.

“(6) For the purposes of the application of a relevant law as provided
by subsection (4):

- (a) a reference in that law to an indictable offence is taken to
include a reference to an offence that may be prosecuted on
indictment; and
- (b) in order to determine the sentence that may be imposed on a
person by a court pursuant to the relevant law, the person is
taken to have been prosecuted and convicted on indictment in
that court.

“(7) Subject to subsections (9) and (10), the jurisdiction conferred
on a court of a State or the Capital Territory by subsection (1) is
conferred despite any limits as to locality of the jurisdiction of that
court under the law of that State or of the Capital Territory.

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“(8) Subject to subsection (9), the jurisdiction conferred on a court of the Capital Territory by a law of a State corresponding to subsection (1) may be exercised despite any limits as to locality of the jurisdiction of that court under the law of the Capital Territory.

“(9) Where:

(a) jurisdiction is conferred on a court of the Capital Territory in relation to the summary conviction of persons charged with offences against the Corporations Law of this or another jurisdiction by subsection (1) or a corresponding provision of a law of a State; and

(b) the court is satisfied that it is appropriate to do so, having regard to all the circumstances including the public interest; the court may decline to exercise that jurisdiction in relation to an offence committed in a State.

“(10) The jurisdiction conferred on a court of a State by subsection (1) in relation to:

(a) the examination and commitment for trial on indictment; and

(b) the trial and conviction on indictment;

of offenders or persons charged with offences against the Corporations Law of the Capital Territory is conferred only in relation to:

(c) offences committed outside Australia; and

(d) offences committed, begun or completed within the State concerned.

“(11) In this section:

‘Australia’ does not include the coastal sea;

‘relevant law’ means a law providing that where, in proceedings before a court, a person pleads guilty to a charge for which he or she could be prosecuted on indictment, the person may be committed, to a court having jurisdiction to try offences on indictment, to be sentenced or otherwise dealt with without being tried in that last-mentioned court.

Laws to be applied

“65. (1) Subject to this Division, the laws of the Capital Territory respecting:

(a) the arrest and custody in the Territory of offenders or persons charged with offences; and

(b) criminal procedure in the Territory in relation to such persons; apply in the Territory, so far as they are applicable, to persons who are charged with offences against the Corporations Law of the Capital Territory or of a State in respect of whom jurisdiction is conferred on a court of the Capital Territory by this Division or a corresponding law of a State.

“(2) Subject to this Division, the laws of a State respecting:

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(a) the arrest and custody in that State of offenders or persons charged with offences; and

(b) criminal procedure in that State in relation to such persons;

apply in that State, so far as they are applicable, to persons who are charged with offences against the Corporations Law of the Capital Territory in respect of whom jurisdiction is conferred on a court of that State by this Division.

“(3) The application of laws by subsections (1) and (2) is in addition to, and not in derogation from, the application of laws effected by Part 8 or the corresponding law of a State.

“(4) In this section:

‘**criminal procedure**’ means the procedure for:

(a) the summary conviction; and

(b) the examination and commitment for trial on indictment; and

(c) the trial and conviction on indictment; and

(d) the hearing and determination of appeals arising out of any such trial or conviction or out of any related proceedings;

of offenders or persons charged with offences, and includes the procedure for holding accused persons to bail;

‘**laws of a State**’ means the laws that apply in relation to offenders, or persons charged with offences, against the Corporations Law of the State concerned.

“PART 10—THE NATIONAL GUARANTEE FUND

Interpretation

“66. In this Part:

‘**SEGC**’ means a body corporate in relation to which a nomination as the Securities Exchanges Guarantee Corporation is in force under subsection 67 (1).

Minister to nominate SEGC

“67. (1) Subject to subsection (3), the Minister may nominate in writing as the Securities Exchanges Guarantee Corporation a body corporate (whenever incorporated) that is, for the purposes of the Corporations Law of the Capital Territory, a company limited by guarantee.

“(2) The Commission must cause a copy of a nomination by the Minister under subsection (1) to be published in the *Gazette*.

“(3) The Minister may only nominate a body corporate under subsection (1) if he or she is satisfied that:

(a) the Exchange is a member of the body corporate; and

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- (b) none of the members of the body corporate is a person other than an eligible exchange; and
- (c) the body corporate's constitution provides that no person, other than a person of a kind referred to in paragraph (b), may become or remain a member of the body corporate; and
- (d) the body corporate will, if nominated under subsection (1), be able to perform and exercise SEGC's functions and powers under the Fund provisions adequately and with due regard to the interests of the public; and
- (e) the body corporate has obtained, or will within a reasonable period after being nominated under subsection (1) obtain, indemnity insurance in respect of its liabilities for:
 - (i) negligence in; and
 - (ii) defalcation, or fraudulent misuse of property, by an officer, employee or agent of the body corporate in connection with;
the performance or exercise of SEGC's functions or powers under the Fund provisions, or has made or will make other satisfactory provisions for meeting those liabilities; and
- (f) the body corporate's business rules make satisfactory provision:
 - (i) for ensuring the safety of property received by the body corporate; and
 - (ii) generally for the protection of the interests of the public.

"(4) An expression has in subsection (3) the meaning it would have if this section were in Part 7.10 of the Corporations Law of the Capital Territory.

"(5) The body corporate that, immediately before the commencement of this Part, was the National Securities Exchanges Guarantee Corporation for the purposes of Part IXA of the *Securities Industry Act 1980* is taken to have been nominated, at that commencement, under subsection (1).

SEGC's functions and powers under Part 7.10 of the Corporations Law

"68. (1) In addition to the legal capacity and powers it has because of section 161 of the Corporations Law of the Capital Territory, SEGC has such functions and powers as are conferred, or expressed to be conferred, on it by this Part or by Part 7.10 of the Corporations Law.

"(2) Section 162 of the Corporations Law of the Capital Territory does not apply in relation to a function or power conferred, or expressed to be conferred, as mentioned in subsection (1) of this section.

Establishment of National Guarantee Fund

"69. As soon as practicable after the commencement of this Part, SEGC must establish a fund, to be known as the National Guarantee Fund.

“PART 11—MISCELLANEOUS

National business names register

“70. Where the Minister is satisfied that the Commission has access to electronic records of information containing, in relation to a jurisdiction or jurisdictions, names registered from time to time as business names in that jurisdiction or those jurisdictions, the Minister may, by notice published in the *Gazette* identifying the records concerned, declare that he or she is so satisfied.

Companies Unclaimed Money Account

“71. (1) There is to be a Trust Account to be known as the Companies Unclaimed Money Account.

“(2) The Account may contain money required or permitted to be paid into the Account under the Corporations Law of the Capital Territory or of any other jurisdiction.

“(3) Money standing to the credit of the Account may be expended for the purpose of making payments in accordance with Part 9.7 of the Corporations Law of the Capital Territory or of any other jurisdiction.

“(4) The Account is a Trust Account for the purposes of section 62A of the *Audit Act 1901*.

Companies Liquidation Account

“72. (1) In this section:

‘relevant money’ means:

- (a) money that, immediately before the commencement of this section, stood to the credit of the Companies Liquidation Account established by section 428 of the *Companies Act 1981*; and
- (b) money that, after the commencement of this section, is paid into the Companies Liquidation Account under provisions of the *Companies Act 1981* that are taken to continue in force after the commencement of Chapter 5 of the Corporations Law for the purposes of windings up started before the commencement of that Chapter.

“(2) Relevant money is to be dealt with in accordance with section 427 of the *Companies Act 1981*.

Regulations for the purposes of this Act

“73. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act (other than Part 5) to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act (other than Part 5).

“PART 12—TRANSITIONAL

Co-operative Scheme Acts

“74. For the purposes of this Part, the following are the Co-operative Scheme Acts:

Companies Act 1981

Companies (Fees) Act 1981

Companies (Fees: Taxation Component) Act 1989

Companies (Acquisition of Shares) Act 1980

Companies (Acquisition of Shares—Fees) Act 1980

Companies (Acquisition of Shares—Fees: Taxation Component) Act 1989

Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980

Companies (Transitional Provisions) Act 1981

Securities Industry Act 1980

Securities Industry (Fees) Act 1980

Securities Industry (Fees: Taxation Component) Act 1989

Futures Industry Act 1986

Futures Industry (Fees) Act 1986

Futures Industry (Fees: Taxation Component) Act 1989.

National scheme laws of the Capital Territory

“75. For the purposes of this Part, the national scheme laws of the Capital Territory are:

- (a) this Act; and
- (b) the Corporations Law of the Capital Territory; and
- (c) the ASC Law of the Capital Territory.

National scheme laws prevail over Co-operative Scheme Acts

“76. (1) This section provides for the national scheme laws of the Capital Territory to supersede the Co-operative Scheme Acts, which are to continue to operate of their own force only in relation to:

- (a) matters arising before those laws commenced; and
- (b) matters arising, directly or indirectly, out of such matters;

in so far as those laws do not deal with those matters.

“(2) Where a Co-operative Scheme Act is inconsistent (within the meaning of section 109 of the Constitution) with a national scheme law of the Capital Territory, that law prevails and, to the extent of the inconsistency, that Act does not operate.

Regulations may exclude residual operation of Co-operative Scheme Acts

“77. (1) Regulations under section 73 may provide that prescribed provisions of Co-operative Scheme Acts do not operate, either generally or as otherwise prescribed by the regulations.

“(2) Regulations in force because of subsection (1) have effect accordingly.

Effect of sections 76 and 77

“78. To the extent that an Act ceases to operate because of section 76 or 77, the Act is taken for the purposes of the *Acts Interpretation Act 1901* to have been repealed by this Act.

Regulations may modify Co-operative Scheme Acts

“79. (1) Regulations under section 73 may provide that a specified Co-operative Scheme Act, or specified provisions of a Co-operative Scheme Act, has or have effect with such modifications as the regulations prescribe.

“(2) Regulations in force because of subsection (1) have effect accordingly, even if, because of section 76 or 77, the specified Act does not operate of its own force, or the specified provisions do not operate of their own force, as the case requires.

“(3) However, a reference in subsection 76 (2) of this Act to a Co-operative Scheme Act includes a reference to such an Act as it has effect, or to provisions of such an Act as they have effect, because of this section.

Updating references to Co-operative Scheme Acts and regulations

“80. (1) In this section:

‘**instrument**’ has the same meaning as in section 14, but does not include a Co-operative Scheme Act, regulations under such an Act, or this Act.

“(2) Subject to subsection (4), a reference in an instrument to a Co-operative Scheme Act is to be taken to include a reference to such provisions of the national scheme laws of the Capital Territory as correspond to provisions of that Act.

“(3) Subject to subsection (4), a reference in an instrument to regulations under a Co-operative Scheme Act is to be taken to include a reference to such provisions of regulations made under national scheme laws of the Capital Territory as correspond to provisions of the first-mentioned regulations.

“(4) A reference in an instrument to a provision of a Co-operative Scheme Act, or of regulations under such an Act, is to be taken to include a reference to the corresponding provision of a national scheme law of the Capital Territory, or of regulations under such a law, as the case may be.

“(5) Regulations under section 73 may declare that, for the purposes of this section:

(a) prescribed provisions of national scheme laws of the Capital

Territory correspond to prescribed provisions of Co-operative Scheme Acts; and

- (b) prescribed provisions of regulations under national scheme laws of the Capital Territory correspond to prescribed provisions of regulations under Co-operative Scheme Acts.

“(6) Regulations under section 73 may declare that subsection (2), (3) or (4) of this section does not apply in relation to prescribed references in prescribed instruments.

“(7) Regulations in force because of subsection (5) or (6) have effect accordingly.

Saving of provisions about Australian Stock Exchange Limited

“81. (1) Section 76 does not apply in relation to Part IIA of the *Securities Industry Act 1980*.

“(2) Part IIA has effect, as provided in this section, despite the national scheme laws of the Capital Territory.

“(3) A reference in Part IIA to a relevant Act, except in relation to a time before the commencement of this section, is taken to be a reference to a national scheme law of the Capital Territory.

“(4) Subject to subsection (5), a reference in Part IIA to a particular Co-operative Scheme Act, except in relation to a time before that commencement, is taken to be a reference to such provisions of the national scheme laws of the Capital Territory as correspond to provisions of that Act.

“(5) A reference in Part IIA to a provision of a Co-operative Scheme Act (other than a provision of Part IIA itself), except in relation to a time before that commencement, is taken to be a reference to the corresponding provision of a national scheme law of the Capital Territory.

“(6) Regulations in force because of subsection 80 (5) also have effect for the purposes of this section.

“PART 13—THE CORPORATIONS LAW

The Corporations Law

“82. The Corporations Law is as follows:

“THE CORPORATIONS LAW

“CHAPTER 1—INTRODUCTORY

“PART 1.1—PRELIMINARY

Citation

“1. This Law may be referred to as the Corporations Law.

Commission has general administration of this Law

“2. Subject to the ASC Law of this jurisdiction, the Commission has the general administration of the Corporations Law of this jurisdiction.”.

The Principal Act becomes part of the Corporations Law

7. The Principal Act:

- (a) is amended as set out in Schedules 1 and 2 to this Act; and
- (b) as so amended, becomes provisions of the Corporations Law set out in the section 82 inserted by section 6 of this Act.

PART 3—AMENDMENTS OF THE CORPORATIONS LAW

Corporations Law

8. In this Part, “Corporations Law” means the Corporations Law set out in section 82 of the *Corporations Act 1989*¹.

Amendments

- 9. (1) The Corporations Law is amended as set out in Schedules 3, 4 and 5.
- (2) The Corporations Law is amended as set out in Schedule 6.

PART 4—AMENDMENTS OF THE AUSTRALIAN SECURITIES COMMISSION ACT 1989

Principal Act

10. In this Part, “Principal Act” means the *Australian Securities Commission Act 1989*².

What this Part does

11. (1) This Part changes the Principal Act from an Act relying on the corporations power, and intended to apply of its own force throughout Australia, into a law for the government of the Australian Capital Territory in relation to the regulation of corporations, securities and the futures industry.

(2) The States (including the Northern Territory) may confer functions and powers on most of the bodies created by the Principal Act.

(3) For the purpose of the performance of those functions and the exercise of those powers by those bodies, the States (including the Northern Territory) can apply certain provisions of the Principal Act as their own law, because amendments made by this Part are designed to render those provisions suitable for application as a uniform law in the States and the Northern Territory.

12. Section 1 of the Principal Act is repealed and the following Divisions and heading are substituted:

“Division 1—Objects

Objects

“1. (1) The objects of this Act are:

- (a) to establish an Australian Securities Commission to administer such laws of the Capital Territory, the States and the other Territories as confer functions and powers under those laws on the Commission; and
- (b) to provide for the functions, powers and business of the Commission; and
- (c) to establish a Companies and Securities Advisory Committee to provide informed and expert advice to the Minister about the content, operation and administration of those laws, about corporations and about the securities markets and futures markets; and
- (d) to establish a Corporations and Securities Panel, a Companies Auditors and Liquidators Disciplinary Board, an Australian Accounting Standards Board and a Parliamentary Joint Committee on Corporations and Securities.

“(2) In performing its functions and exercising its powers, the Commission must strive:

- (a) to maintain, facilitate, and improve, the performance of companies, and of the securities markets and futures markets, in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy; and
- (b) to maintain the confidence of investors in the securities markets and futures markets by ensuring adequate protection for such investors; and
- (c) to achieve uniformity throughout Australia in how the Commission and its delegates perform those functions and exercise those powers; and
- (d) to administer national scheme laws effectively but with a minimum of procedural requirements; and
- (e) to receive, process, and store, efficiently and quickly, the documents lodged with, and the information given to, the Commission under national scheme laws; and
- (f) to ensure that those documents, and that information, are available as soon as possible for access by the public; and
- (g) to take whatever action it can take, and is necessary, in order to enforce and give effect to national scheme laws.

“(3) This Act has effect, and is to be interpreted, accordingly.

“(4) Despite subsection (1), this Act is taken not to be, for the purposes of subsection 22 (3) of the *Acts Interpretation Act 1901*, an Act providing for the administration or government of the Australian Capital Territory.

“Division 2—Citation

Short title

“1A. This Act may be cited as the *Australian Securities Commission Act 1989*.

Alternative citations of this Act and regulations under section 251

“1B. (1) This Act may also be referred to as the ASC Law of the Australian Capital Territory or, subject to section 1D, simply as the ASC Law.

“(2) Regulations under section 251 may be referred to as the ASC Regulations of the Australian Capital Territory or, subject to section 1D, simply as the ASC Regulations.

Citation of provisions of this Act, and regulations under section 251, applying as law of another jurisdiction

“1C. (1) This section has effect for the purposes of an Act, a law of the Australian Capital Territory, or an instrument made under an Act or under such a law.

“(2) Where a law of a jurisdiction other than the Capital Territory contains provisions corresponding to sections 5 and 6 of the *Corporations Act 1989* and also provides for provisions of this Act to apply as law of that jurisdiction, those provisions of this Act, as so applying, are the ASC Law of that jurisdiction.

“(3) Where a law of a jurisdiction other than the Capital Territory provides for the regulations in force for the time being under section 251 of this Act to apply for the purposes of the ASC Law of that jurisdiction, those regulations as so applying are the ASC Regulations of that jurisdiction.

References to ASC Law and ASC Regulations

“1D. (1) The object of this section is to help ensure that, so far as possible:

- (a) the bodies established by the ASC Law of the Capital Territory, and the staff of those bodies, can perform functions and exercise powers; and
- (b) persons can have dealings with those bodies;

as if the ASC Law of the Capital Territory, together with the ASC Law of each jurisdiction other than the Capital Territory, constituted a single national ASC Law applying of its own force throughout Australia.

“(2) Subject to this section, a reference in an instrument to the ASC Law, or to the ASC Regulations, is to be taken, for the purposes of the laws of the Commonwealth and of the laws of the Capital Territory:

- (a) to be a reference to the ASC Law, or to the ASC Regulations, of the Capital Territory; and
- (b) to include a separate reference to the ASC Law, or to the ASC Regulations, of each jurisdiction other than the Capital Territory.

“(3) Subsection (2) has effect except so far as the contrary intention appears in the instrument, or the context of the reference otherwise requires.

“(4) Without limiting subsection (3), subsection (2) does not apply in relation to a reference expressed as a reference to the ASC Law, or to the ASC Regulations, of a jurisdiction.

“(5) In this section:

‘instrument’ means:

- (a) an Act or an instrument made under an Act; or
- (b) a law of the Capital Territory or an instrument made under such a law; or
- (c) an award or other industrial determination or order, or an industrial agreement; or
- (d) any other order (whether executive, judicial or otherwise); or
- (e) a notice, certificate or licence; or
- (f) an agreement; or
- (g) an application made, information laid, affidavit sworn, or warrant issued, for any purpose; or
- (h) an indictment, presentment, summons or writ; or
- (j) any other pleading in, or process issued in connection with, a legal or other proceeding; or
- (k) any other document whatever.

Saving of citation provisions of other jurisdictions

“1E. Subject to section 1D, section 1B is not intended to prevent a law of a jurisdiction other than the Capital Territory from:

- (a) providing that the ASC Law, or the ASC Regulations, of that jurisdiction may be referred to simply as the ASC Law, or the ASC Regulations; or
- (b) providing for how a reference to the ASC Law, or to the ASC Regulations, is to be interpreted for the purposes of the laws of that jurisdiction.

“Division 3—Commencement and application”.

Repeal of section 3

13. Section 3 of the Principal Act is repealed.

Insertion of Division heading

14. After section 4 of the Principal Act the following heading is inserted:

“Division 4—Interpretation”.

Further amendments

15. The Principal Act is further amended as set out in Schedule 7.

PART 5—AMENDMENTS OF OTHER ACTS

Amendments of the Acts Interpretation Act

16. (1) In this section, “Principal Act” means the *Acts Interpretation Act 1901*³.

(2) After section 40 of the Principal Act the following section is inserted in Part IX:

References to Corporations Law and ASC Law

“40A. In any Act, unless the contrary intention appears: ‘ASC Law’ and ‘ASC Regulations’ have the meaning provided for by the *Australian Securities Commission Act 1989*; ‘Corporations Law’ and ‘Corporations Regulations’ have the meaning provided for by the *Corporations Act 1989*.”.

Amendments of the Cash Transaction Reports Act

17. (1) In this section, “Principal Act” means the *Cash Transaction Reports Act 1988*⁴.

(2) Section 3 of the Principal Act is amended by omitting from subsection (1) the definition of “CTR information” and substituting the following definition:

“‘CTR information’ means information obtained by the Director under Part II and includes:

- (a) information included in a notice under subsection 18 (5), (5A) or (7) or 22 (1) or a copy of a record given under subsection 24 (5); and
- (b) information obtained by the Director under section 243D of the ASC Law of a State or Territory;”.

Amendments of the Crown Debts (Priority) Act

18. (1) In this section, “Principal Act” means the *Crown Debts (Priority) Act 1981*⁵.

(2) Section 4 of the Principal Act is amended by omitting “or in the *Companies Act 1981*” and substituting “, in the *Companies Act 1981* or in the Corporations Law of the Australian Capital Territory”.

Amendments of the Taxation Administration Act

19. (1) In this section, “Principal Act” means the *Taxation Administration Act 1953*⁶.

(2) Section 2 of the Principal Act is amended:

(a) by inserting after paragraph (d) of the definition of “head” the following paragraph:

“(da) in the case of the Australian Securities Commission—the Chairperson of that Commission;”;

(b) by inserting after paragraph (d) of the definition of “law enforcement agency” the following paragraph:

“(da) the Australian Securities Commission;”.

PART 6—REPEAL OF ACTS

Repeals

20. (1) These Acts are repealed:

Corporations (Fees) Act 1989

Futures Organisations (Application for Membership) Fidelity Funds Contribution Act 1989

Futures Organisations Fidelity Funds Levy Act 1989

Futures Organisations (Membership) Fidelity Funds Contribution Act 1989

National Guarantee Fund (Members of Participating Exchanges) Levy Act 1989

National Guarantee Fund (Participating Exchanges) Levy Act 1989

National Guarantee Fund (Reportable Transactions) Levy Act 1989

Securities Exchanges (Application for Membership) Fidelity Funds Contribution Act 1989

Securities Exchanges Fidelity Funds Levy Act 1989

Securities Exchanges (Membership) Fidelity Funds Contribution Act 1989.

(2) Unless they have commenced before the commencement of section 33 of the *Corporations Act 1989* as amended by section 6 of this Act, the following Acts are repealed:

Companies (Fees: Taxation Component) Act 1989

Companies (Acquisition of Shares—Fees: Taxation Component) Act 1989

Securities Industry (Fees: Taxation Component) Act 1989

Futures Industry (Fees: Taxation Component) Act 1989.

SCHEDULE 1

Paragraph 7 (a)

**AMENDMENTS TO ENABLE THE CORPORATIONS LAW
TO BE APPLIED AS A LAW OF EACH STATE AND TERRITORY**

Amendments of Chapter 1

Heading to Chapter 1:

Omit the heading.

Part 1.1:

Repeal the Part.

Section 6:

Add at the end:

“(3) This Part applies for the purposes of Chapter 6 as if a reference in this Part to a body corporate included a reference to a Chapter 6 body.”.

Section 8:

Repeal the section, substitute:

How to read references to provisions of this Law

“8. (1) The object of this section is to help ensure that the Corporations Law of this jurisdiction operates, so far as possible, as if that Law, together with the Corporations Law of each jurisdiction other than this jurisdiction, constituted a single national Corporations Law applying of its own force throughout Australia.

“(2) A reference to this Law is a reference to this Law or the Corporations Law of another jurisdiction.

“(3) A reference to a provision of this Law is a reference to that provision or the corresponding provision of the Corporations Law of another jurisdiction.

“(4) Subsections (2) and (3) have effect:

- (a) except so far as the contrary intention appears or the context otherwise requires; and
- (b) except as prescribed.

“(5) Without limiting subsection (4):

- (a) subsection (2) does not apply in relation to a reference to this Law that is expressed as a reference to the Corporations Law of this jurisdiction; and
- (b) subsection (3) does not apply in relation to a reference to a

SCHEDULE 1—continued

provision of this Law that is expressed as a reference to that provision of the Corporations Law of this jurisdiction; and

- (c) neither of subsections (2) and (3) applies in relation to a reference in this section, section 8A, 58, 58A or 58B, Division 9, 10 or 11 of this Part, Part 1.3, 2.2 or 3.5, Part 4.1 (except section 363), Part 5.7, Division 2 of Part 7.3, section 1039 or 1042, Division 3 or 4 of Part 7.11, Division 5 of Part 7.12, Division 2 of Part 8.3, or Part 9.10.

Corporations Regulations, and application orders, of a jurisdiction treated as part of that jurisdiction's Corporations Law

“8A. (1) Except in subsection 8 (3) or Part 1.3, a reference to this Law includes a reference to the regulations and the application orders.

“(2) A reference in Part 1.3 to this Law includes a reference to the regulations.

“(3) Subject to this section, a reference to the Corporations Law of a jurisdiction includes a reference to:

- (a) the Corporations Regulations of that jurisdiction; and
- (b) the application orders under section 111A of that Law.

“(4) A reference to a provision of this Law includes a reference to the application orders (if any) in force for the purposes of that provision.

“(5) A reference to a provision of the Corporations Law of a jurisdiction includes a reference to the application orders (if any) under section 111A of that Law that are in force for the purposes of the first-mentioned provision.

“(6) No earlier subsection of this section applies in relation to a reference in this section.”.

Section 9 (definition of “accounting standard”):

Omit the definition, substitute:

“‘accounting standard’, except in section 288, means:

- (a) an instrument in¹force under section 32 of the *Corporations Act 1989*, as the instrument has effect for the purposes of Parts 3.6 and 3.7 of the Corporations Law of this jurisdiction; and
- (b) a provision of such an instrument as it so has effect;”.

Section 9 (definition of “Act”):

Omit the definition, substitute:

“‘Act’ means:

- (a) except in relation to a jurisdiction—an Act of the Commonwealth; and
- (b) in relation to a jurisdiction:

SCHEDULE 1—continued

- (i) in the case of a State—an Act passed by the Parliament of that State; or
- (ii) in the case of the Northern Territory—an Act of the Northern Territory; or
- (iii) in the case of the Capital Territory—an Act or Ordinance of the Capital Territory;”.

Section 9 (definition of “ancillary offence”):

Omit the definition, substitute:

“‘**ancillary offence**’, in relation to another offence, means an offence against:

- (a) section 5, 6, 7 or 7A of the *Crimes Act 1914*; or
- (b) subsection 86 (1) of that Act by virtue of paragraph 86 (1) (a) of that Act; or
- (c) such a provision of the *Crimes Act 1914* as it applies as a law of this jurisdiction;

being an offence that is related to that other offence;”.

Section 9 (definition of “approved securities organisation”):

Omit the definition, substitute:

“‘**approved securities organisation**’ means a body corporate in relation to which an approval under section 770 of the Corporations Law of this jurisdiction is in force;”.

Section 9 (definition of “Australia”):

Omit the definition, substitute:

“‘**Australia**’ includes the coastal sea of each jurisdiction but does not include an external Territory;”.

Section 9 (definition of “banning order”):

Omit the definition, substitute:

“‘**banning order**’ means:

- (a) in section 835 or 836—an order by the Commission in force under Division 5 of Part 7.3; and
- (b) in any other provision of Chapter 7—an order by the Commission in force under Division 5 of Part 7.3 of the Corporations Law of this jurisdiction; and
- (c) in section 1199 or 1199A—an order by the Commission in force under Division 5 of Part 8.3; and
- (d) in any other provision of Chapter 8—an order by the Commission in force under Division 5 of Part 8.3 of the Corporations Law of this jurisdiction;”.

SCHEDULE 1—continued

Section 9 (paragraph (a) of the definition of “Board”):

Omit the paragraph, substitute:

“(a) in Parts 3.6 and 3.7—the Australian Accounting Standards Board; or”.

Section 9 (definition of “body corporate”):

Omit the definition, substitute:

“‘body corporate’ includes a body corporate that is being wound up or has been dissolved and:

- (a) in this Chapter (except subsection 66A (3)) and section 230, includes an unincorporated registrable body; and
- (b) in Chapter 6, includes a Chapter 6 body;”.

Section 9 (subparagraph (a) (ii) of the definition of “clearing house”):

(a) Omit “that is an eligible corporation and”.

(b) After “1131 (2)” insert “or is taken because of subsection 1131 (4) to be in force”.

Section 9 (subparagraph (b) (ii) of the definition of “clearing house”):

(a) Omit “that is an eligible corporation and”.

(b) After “1131 (2)” insert “or is taken because of subsection 1131 (4) to be in force”.

Section 9 (paragraph (c) of the definition of “clients’ segregated account”):

Omit “or a corresponding law”.

Section 9 (definition of “close corporation”):

Omit the definition.

Section 9 (definition of “commencement”):

Omit the definition, substitute:

“‘commencement’ means/

(a) in relation to this Law or a provision of this Law—the time at which the Law or provision came into operation; or

(b) in relation to an accounting standard:

(i) in the case of an accounting standard as originally in effect—the time when the accounting standard took effect; or

(ii) in the case of an accounting standard as varied by a particular provision of an instrument made under section 32 of the *Corporations Act 1989*, as the instrument has effect for the purposes of Parts 3.6 and 3.7 of the

SCHEDULE 1—continued

Corporations Law of this jurisdiction—the time when that provision took effect;”.

Section 9 (definition of “Commission delegate”):

Omit “Commission Act”, substitute ‘ASC Law of this jurisdiction’.

Section 9 (definition of “company”):

Omit the definition, substitute:

“‘company’ means a company incorporated, or taken to be incorporated, under the Corporations Law of this jurisdiction and:

- (a) in sections 74, 220, 444 and 500, includes a recognised company; and
- (b) in Part 3.5, has a meaning affected by subsection 261 (1); and
- (c) in Part 5.8 (except sections 595 and 596), includes a Part 5.7 body; and
- (d) in Chapter 6, includes a body corporate (other than a prescribed body corporate) that:
 - (i) is incorporated, or taken to be incorporated, in this jurisdiction, but not under that Law; and
 - (ii) is included in an official list of a securities exchange within the meaning of that Chapter;and a Chapter 6 company that is formed in this jurisdiction and has a share capital;”.

Section 9 (definition of “company limited by shares”):

Omit the definition, substitute:

“‘company limited by shares’ means a company formed on the principle of having the liability of its members limited by the memorandum to the amount (if any) unpaid on the shares respectively held by them;”.

Section 9 (paragraph (a) of the definition of “constitution”):

Omit the paragraph, substitute:

- “(a) in the case of a company, a recognised company or any other body that has a memorandum and articles—the memorandum and articles of the company, recognised company or other body; or”.

Section 9 (definition of “corporation”):

Omit the definition, substitute:

“‘corporation’ includes:

- (a) any body corporate, whether incorporated in this jurisdiction or elsewhere; and
- (b) a company; and
- (c) a recognised company; and

SCHEDULE 1—continued

- (d) an unincorporated body that:
- (i) is formed outside this jurisdiction; and
 - (ii) under the law of its place of formation, may sue or be sued, or may hold property in the name of its secretary or of an officer of the body duly appointed for that purpose; and
 - (iii) does not have its head office or principal place of business in this jurisdiction;

but does not include:

- (e) an exempt public authority; or
- (f) a corporation sole; or
- (g) an exempt body in relation to this jurisdiction as defined by section 66A;”.

Section 9 (definition of “Court”):

Omit the definition, substitute:

“‘Court’ means the Federal Court, or the Supreme Court of this or any other jurisdiction, when exercising the jurisdiction of this jurisdiction;”.

Section 9 (definition of “dealers licence”):

Omit the definition, substitute:

“‘dealers licence’ means:

- (a) in this Chapter or section 780, 806, 807 or 1017A—a dealers licence granted under Part 7.3; or
- (b) in any other provision of Chapter 7—a dealers licence granted under Part 7.3 of the Corporations Law of this jurisdiction;”.

Section 9 (paragraph (b) of the definition of “debenture”):

Omit “corporation” (wherever occurring), substitute “body corporate”.

Section 9 (definition of “Division 1 company”):

Insert “of the Corporations Law of this jurisdiction” after “Part 2.2”.

Section 9 (definition of “Division 2 company”):

Omit the definition, substitute:

“‘Division 2 company’ means a body corporate that, because it is taken to be registered under Division 2 of Part 2.2 of the Corporations Law of this jurisdiction, is a company because of subsection 150 (3) and, in section 220, includes a body corporate that is a Division 2 company for the purposes of the Corporations Law of another jurisdiction;”.

SCHEDULE 1—continued

Section 9 (definition of “Division 3 company”):

Insert “of the Corporations Law of this jurisdiction” after “Part 2.2”.

Section 9 (definition of “Division 4 company”):

Insert “of the Corporations Law of this jurisdiction” after “Part 2.2”.

Section 9 (definition of “eligible circumstances”):

Omit the definition.

Section 9 (definition of “eligible corporation”):

Omit the definition.

Section 9 (definition of “eligible futures advice business”):

Omit the definition.

Section 9 (definition of “eligible futures adviser”):

Omit the definition.

Section 9 (definition of “eligible futures broker”):

Omit the definition.

Section 9 (definition of “eligible futures broking business”):

Omit the definition.

Section 9 (definition of “eligible futures conduct”):

Omit the definition.

Section 9 (definition of “eligible futures contract”):

Omit the definition.

Section 9 (definition of “eligible futures market”):

Omit the definition.

Section 9 (definition of “eligible investment advice business”):

Omit the definition.

Section 9 (definition of “eligible securities”):

Omit the definition.

Section 9 (definition of “eligible securities business”):

Omit the definition.

SCHEDULE 1—continued

Section 9 (definition of “eligible securities conduct”):

Omit the definition, substitute:

“**‘eligible securities conduct’** means conduct in the course of, for the purposes of, or otherwise in connection with:

- (a) dealing in securities; or
- (b) advising a person about securities; or
- (c) giving to a person a securities report;”.

Section 9 (definition of “Exchange subsidiary”):

Omit the definition, substitute:

“**‘Exchange subsidiary’** means:

- (a) in Chapter 6—a securities exchange or stock exchange within the meaning of that Chapter that is a subsidiary of the Exchange; and
- (b) in section 779 or subsection 920 (1)—a securities exchange that is a subsidiary of the Exchange; and
- (c) in any other provision of Chapter 7—a local securities exchange that is a subsidiary of the Exchange;”.

Section 9 (definition of “exempt public authority”):

Omit the definition, substitute:

“**‘exempt public authority’** means a body corporate that is incorporated within Australia or an external Territory and is:

- (a) a public authority; or
- (b) an instrumentality or agency of the Crown in right of the Commonwealth, in right of a State or in right of a Territory;”.

Section 9 (subparagraph (b) (ii) of the definition of “financial year”):

Omit “Act”, substitute “Law”.

Section 9 (paragraphs (c) and (d) of the definition of “financial year”):

Omit the paragraphs.

Section 9 (paragraphs (e) and (f) of the definition of “financial year”):

Omit the paragraphs, substitute:

“(e) in any case—a period that:

- (i) ended at a time when the body was not a company but was a company for the purposes of a corresponding previous law; and
- (ii) was a financial year of the body for the purposes of that law as in force at that time; or

(f) in any case—a period that:

- (i) ended at a time when the body was neither a company,

SCHEDULE 1—continued

nor a company for the purposes of a previous corresponding law; and

- (ii) in respect of which a profit and loss account of the body was made out, or was required by the law of the body's incorporation as at that time to be made out;”.

Section 9 (definition of “foreign company”):

Omit the definition, substitute:

“ ‘foreign company’ means:

- (a) a body corporate incorporated in an external Territory or outside Australia and the external Territories, not being:
 - (i) a corporation sole; or
 - (ii) an exempt public authority; or
- (b) an unincorporated body that:
 - (i) is formed in an external Territory or outside Australia and the external Territories; and
 - (ii) under the law of its place of formation, may sue or be sued, or may hold property in the name of its secretary or of an officer of the body duly appointed for that purpose; and
 - (iii) does not have its head office or principal place of business in Australia;”.

Section 9 (definition of “foreign corporation”):

Omit the definition.

Section 9 (definition of “Fund”):

Omit “929 (1)”, substitute “section 69 of the *Corporations Act 1989*”.

Section 9 (definition of “futures advisers licence”):

Omit the definition, substitute:

“ ‘futures advisers licence’ means:

- (a) in this Chapter or section 1173—a futures advisers licence granted under Part 8.3; and
- (b) in any other provision of Chapter 8—a futures advisers licence granted under Part 8.3 of the *Corporations Law* of this jurisdiction;”.

Section 9 (definition of “futures association”):

Omit the definition, substitute:

“ ‘futures association’ means:

- (a) in this Chapter or section 1220, 1222, 1223 or 1269—a body corporate in relation to which an approval under section 1132

SCHEDULE 1—continued

is in force or is taken because of subsection 1132 (3) to be in force; or

- (b) in any other provision of Chapter 8—a local futures association;”.

Section 9 (paragraph (a) of the definition of “futures broker”):

Omit “Parts 8.4 and”, substitute “section 1209 and Part”.

Section 9 (paragraph (b) of the definition of “futures broker”):

Omit the paragraph, substitute:

- “(b) in section 1209 or Part 8.5 (except a provision of that section or Part referred to in paragraph (c) of this definition)—the holder of a futures brokers licence granted under Part 8.3 of the Corporations Law of this jurisdiction; and
- (c) in subsection 1209 (14), (15) or (16) or section 1221 or 1222—the holder of a futures brokers licence;”.

Section 9 (definition of “futures brokers licence”):

Omit the definition, substitute:

“ ‘futures brokers licence’ means:

- (a) in this Chapter or section 1142, 1172, 1173 or 1269—a futures brokers licence granted under Part 8.3; and
- (b) in any other provision of Chapter 8—a futures brokers licence granted under Part 8.3 of the Corporations Law of this jurisdiction;”.

Section 9 (definition of “futures exchange”):

Omit the definition, substitute:

“ ‘futures exchange’ means:

- (a) in this Chapter or section 1220, 1222, 1223 or 1269—a body corporate in relation to which an approval under section 1126 is in force or is taken because of subsection 1126 (3) to be in force; or
- (b) in any other provision of Chapter 8—a local futures exchange;”.

Section 9 (definition of “futures law”):

Omit “, or a law corresponding to a provision of,”.

Section 9 (definition of “futures organisation”):

Omit the definition, substitute:

“ ‘futures organisation’ means:

- (a) in this Chapter, section 1141A or subsection 1242 (3) or 1249 (3)—a futures exchange or a futures association; and
- (b) in Part 8.6:

SCHEDULE 1—continued

- (i) a local futures exchange; or
- (ii) a local futures association, other than a futures association each of whose members is also a member of a futures exchange; and
- (c) in any other provision of Chapter 8—a local futures exchange or a local futures association;”.

Section 9 (definition of “incorporate”):

After “form” insert “and has a meaning affected by section 76”.

Section 9 (definition of “insurance corporation”):

Omit the definition.

Section 9 (definition of “interstate”):

Omit the definition.

Section 9 (definition of “investment advisers licence”):

Omit the definition, substitute:

“‘investment advisers licence’ means:

- (a) in this Chapter or section 807—an investment advisers licence granted under Part 7.3; or
- (b) in any other provision of Chapter 7—an investment advisers licence granted under Part 7.3 of the Corporations Law of this jurisdiction;”.

Section 9 (definition of “investment contract”):

Omit “Australia” (wherever occurring), substitute “this jurisdiction”.

Section 9 (definition of “law”):

Omit the definition, substitute:

“‘law’, in relation to a jurisdiction, means, subject to section 58, a law of, or a law in force in, that jurisdiction and, in the case of the Capital Territory, includes, without limitation:

- (a) the *Corporations Act 1989* and regulations under it; and
- (b) the Corporations Law, Corporations Regulations, ASC Law, and ASC Regulations, of the Capital Territory; and
- (c) a relevant Act within the meaning of the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980*; and
- (d) regulations under such an Act;

‘Law’, in the case of a reference to this Law or to the Corporations Law of a jurisdiction, has the additional meaning given by sections 8 and 8A;”.

SCHEDULE 1—continued

Section 9 (definitions of “licence” and “licensee”):

Omit the definitions, substitute:

“ ‘**licence**’ means:

- (a) in section 808—a securities licence; and
- (b) in any other provision of Chapter 7—a dealers licence, or an investment advisers licence, granted under Part 7.3 of the Corporations Law of this jurisdiction; and
- (c) in section 1174 or subsection 1220 (2) or 1221 (3)—a futures licence; and
- (d) in any other provision of Chapter 8—a futures brokers licence, or a futures advisers licence, granted under Part 8.3 of the Corporations Law of this jurisdiction;

‘**licensee**’ means:

- (a) in section 781 or subsection 879 (1)—a securities licensee; and
- (b) in any other provision of Chapter 7—a person who holds a dealers licence, or an investment advisers licence, granted under Part 7.3 of the Corporations Law of this jurisdiction; and
- (c) in section 1143—a futures licensee; and
- (d) in any other provision of Chapter 8—a person who holds a futures brokers licence, or a futures advisers licence, granted under Part 8.3 of the Corporations Law of this jurisdiction; and
- (e) in relation to a licence—the person who holds the licence;”.

Section 9 (definition of “listed corporation”):

After “exchange” insert “(as defined, for the purposes of this definition, by the regulations)”.

Section 9 (definition of “lodge”):

Add at the end “in this or any other jurisdiction”.

Section 9 (definition of “management company”):

Omit “corporation”, substitute “body corporate”.

Section 9 (definition of “marketable securities”):

Omit “corporation” (wherever occurring), substitute “body corporate”.

Section 9 (definition of “member firm”):

Omit “within the meaning of Chapter 7”.

Section 9 (definition of “Minister”):

Omit the definition, substitute:

“ ‘**Minister**’ has the meaning given by section 80A;”.

SCHEDULE 1—continued

Section 9 (definition of “NSEGC”):

Before “law” insert “previous”.

Section 9 (paragraph (a) of the definition of “option contract”):

Omit all the words after “class of securities,” substitute “, being securities of a kind referred to in paragraph 92 (1) (a), (b), (c) or (d), at a price specified in, or to be determined in accordance with, the contract; or”.

Section 9 (paragraph (b) of the definition of “option contract”):

Omit “within the meaning of Chapter 7”.

Section 9 (paragraphs (a), (b) and (c) of the definition of “Part 5.1 body”):

Omit the paragraphs, substitute:

“(a) a company; or

(b) a registrable body (other than a registrable local body) that is registered under Division 1 or 2 of Part 4.1 of the Corporations Law of this jurisdiction;”.

Section 9 (definition of “Part 5.7 body”):

Omit the definition, substitute:

“‘Part 5.7 body’ means:

(a) a registrable body (other than a registrable local body) that:

(i) is registered under Division 1 or 2 of Part 4.1 of the Corporations Law of this jurisdiction; or

(ii) carries on business in this jurisdiction; or

(b) a partnership, association or other body (whether a body corporate or not) that consists of more than 5 members;”.

Section 9 (definition of “place of origin”):

Omit the definition, substitute:

“‘place of origin’, in relation to a body corporate, means:

(a) in the case of a body incorporated in a State or Territory—that State or Territory; or

(b) otherwise—the place of the body’s incorporation;”.

Section 9 (definition of “prescribed”):

Omit “this Act”, substitute “the Corporations Law of this jurisdiction”.

Section 9 (definition of “previous Fund”):

Omit “a law corresponding to section 929”, substitute “subsection 122CA (1) of the *Securities Industry Act 1980*”.

SCHEDULE 1—continued

Section 9 (definition of “proprietary company”):

Omit the definition, substitute:

“**‘proprietary company’** means:

- (a) a body corporate incorporated as a proprietary company by virtue of section 116; or
- (b) a body corporate converted into a proprietary company under subsection 168 (1); or
- (c) a body corporate registered as a proprietary company under subsection 137 (4) or 145 (4);

being a body corporate that has not since ceased under section 168 or 170 to be a proprietary company;”.

Section 9 (definition of “prospectus”):

Omit “corporation”, substitute “body corporate”.

Section 9 (definition of “public company”):

Omit the definition, substitute the following definition:

“**‘public company’** means a company other than a proprietary company and, in the definition of ‘public corporation’ in this section, paragraph 228 (1) (b) and subsection 879 (1), includes a body corporate that is a public company for the purposes of the Corporations Law of another jurisdiction;”.

Section 9 (definition of “public corporation”):

Omit the definition, substitute:

“**‘public corporation’** means:

- (a) a public company; or
- (b) in relation to a prescribed interest that relates to an undertaking, scheme, enterprise, contract or arrangement (in this paragraph called the **‘relevant undertaking’**)—a body corporate, other than a public company, that is declared by the Commission, by writing, to be a public corporation for the purposes of Part 7.12 in relation to:
 - (i) the relevant undertaking; or
 - (ii) a class of undertakings, schemes, enterprises, contracts or arrangements that includes the relevant undertaking;”.

Section 9 (definition of “registered Australian corporation”):

Omit the definition, substitute:

“**‘registered Australian body’** means:

- (a) in this Chapter—a registrable Australian body that is registered under Division 1 of Part 4.1; or
- (b) otherwise—a registrable Australian body that is registered under Division 1 of Part 4.1 of the Corporations Law of this jurisdiction;”.

SCHEDULE 1—continued

Section 9 (definition of “registered body”):

Omit the definition, substitute:

“‘**registered body**’ means:

- (a) in this Chapter, subsection 358 (2) or section 363 or 364—a registered Australian body or a registered foreign company; or
- (b) otherwise—a registrable body that is registered under Division 1 or 2 of Part 4.1 of the Corporations Law of this jurisdiction;”.

Section 9 (definition of “registered company auditor”):

Omit the definition, substitute:

“‘**registered company auditor**’ means:

- (a) in sections 1287 and 1288—a person registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the Corporations Law of this jurisdiction; and
- (b) otherwise—a person registered as an auditor, or taken to be registered as an auditor, under Part 9.2;

and, in relation to a body corporate that is not a company, includes a person qualified to act as the body’s auditor under the law of the body’s incorporation;”.

Section 9 (definition of “registered foreign company”):

Omit the definition, substitute:

“‘**registered foreign company**’ means:

- (a) in this Chapter or section 363—a foreign company that is registered under Division 2 of Part 4.1; or
- (b) otherwise—a foreign company that is registered under Division 2 of Part 4.1 of the Corporations Law of this jurisdiction;”.

Section 9 (definition of “registered liquidator”):

Omit the definition, substitute:

“‘**registered liquidator**’ means:

- (a) in sections 1287 and 1288—a person registered as a liquidator under subsection 1282 (2), or taken to be registered as a liquidator under Part 9.2, of the Corporations Law of this jurisdiction; and
- (b) otherwise—a person registered as a liquidator under subsection 1282 (2) or taken to be registered as a liquidator under Part 9.2;”.

Section 9 (definition of “registered office”):

Omit the definition, substitute:

“‘**registered office**’, in relation to a body corporate, means the body’s registered office under section 217 or 359, as the case requires;”.

SCHEDULE 1—continued

Section 9 (definition of “registrable Australian corporation”):

Omit the definition, substitute:

“ ‘registrable Australian body’ means:

- (a) a body corporate, not being:
 - (i) a company; or
 - (ii) a recognised company; or
 - (iii) an exempt public authority; or
 - (iv) a corporation sole; or
- (b) an unincorporated body that, under the law of its place of formation, may sue or be sued, or may hold property in the name of its secretary or of an officer of the body duly appointed for that purpose;

but does not include a foreign company;”.

Section 9 (definition of “registrable body”):

Omit “corporation”, substitute “body”.

Section 9 (definition of “registration day”):

(a) After paragraph (a) insert:

“(aa) in relation to a Division 2 company—the day of commencement of Division 2 of Part 2.2; or”.

(b) Omit from paragraph (b) “2,”.

Section 9 (definition of “rules”):

Omit the definition, substitute:

“ ‘rules’ means:

- (a) rules of the Federal Court; or
- (b) rules of the Supreme Court of this or another jurisdiction; as the case requires;”.

Section 9 (paragraph (a) of the definition of “securities exchange”):

(a) Before “Chapter 6” insert “this Chapter or”.

(b) Add at the end “or”.

Section 9 (paragraph (c) of the definition of “securities exchange”):

Omit the paragraph, substitute:

“(c) in this Chapter, section 773, 778, 779, 874 or 879, subsection 920 (1) or Part 7.12:

- (i) a stock exchange; or

SCHEDULE 1—continued

- (ii) a body corporate in relation to which an approval under section 770 is in force; or
- (d) in any other provision of Chapter 7:
 - (i) a local stock exchange; or
 - (ii) an approved securities organisation;”.

Section 9 (definition of “securities law”):

Omit “, or a law corresponding to a provision of,”.

Section 9 (definition of “securities recommendation”):

Omit “eligible” (wherever occurring).

Section 9 (definition of “SEGC”):

Omit “925 (1)”, substitute “67 (1) of the *Corporations Act 1989* or is taken because of subsection 67 (5) of that Act to be so in force”.

Section 9 (definition of “sole trader”):

Omit “within the meaning of Chapter 7”.

Section 9 (definition of “State”):

Omit the definition, substitute:

“‘State’ means a State of the Commonwealth and includes the Northern Territory;”.

Section 9 (paragraph (a) of the definition of “stock exchange”):

- (a) Before “Chapter 6” insert “this Chapter or”.
- (b) Add at the end “or”.

Section 9 (paragraph (c) of the definition of “stock exchange”):

Omit “in Chapter 7—any of the following that is an eligible corporation;”, substitute “in this Chapter, section 869 or 1115 or Part 7.12—any of the following;”.

Section 9 (subparagraph (c) (xi) of the definition of “stock exchange”):

Omit the subparagraph, substitute:

“(xi) a body corporate in relation to which an approval under section 769 is in force; or”.

Section 9 (definition of “stock exchange”):

Add at the end:

“(d) in any other provision of Chapter 7—a local stock exchange;”.

SCHEDULE 1—continued

Section 9 (definition of “Table A proprietary company”):

Omit the definition, substitute:

“**Table A proprietary company**’ means a company limited by shares that is a proprietary company;”.

Section 9 (definition of “takeover scheme”):

Omit the definition, substitute:

“**takeover scheme**’ has the meaning given by section 603;”.

Section 9 (definition of “Territory”):

Omit the definition, substitute:

“**Territory**’ means the Capital Territory or an external Territory;”.

Section 9 (definition of “this Act”):

Omit the definition, substitute:

“**this Law**’ has the additional meaning given by sections 8 and 8A;”.

Section 9 (definition of “trading activities”):

Omit the definition.

Section 9 (definition of “trading corporation”):

Omit the definition.

Section 9 (definition of “transfer day”):

Omit the definition.

Section 9 (definition of “Type A body”):

Omit the definition.

Section 9 (definition of “Type B body”):

Omit the definition.

Section 9 (definition of “unlimited company”):

Omit the definition, substitute:

“**unlimited company**’ means a company formed on the principle of having no limit placed on the liability of its members;”.

Section 9:

Insert:

“**Account**’ means the Companies Unclaimed Money Account established by section 71 of the *Corporations Act 1989*;

act’ includes thing;

Advisory Committee’ means the Companies and Securities Advisory Committee established by section 145 of the *Australian Securities Commission Act 1989*;

SCHEDULE 1—continued

‘another jurisdiction’ means a jurisdiction other than this jurisdiction;

‘application order’ means an order under section 111A of the Corporations Law of this jurisdiction;

‘appoint’ includes re-appoint;

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

‘calendar year’ means a period of 12 months commencing on 1 January;

‘Chapter 6 body’ has the meaning given by section 53A;

‘Chapter 6 company’ has the meaning given by section 53A;

‘chargeable matter’ means any of the following:

- (a) the lodgment of a document under the Corporations Law of this jurisdiction;
- (b) the registration of a document under that Law;
- (c) the inspection or search of a register kept by, or a document in the custody of, the Commission under that Law;
- (d) the making available by the Commission, under that Law, of information (whether in the form of a document or otherwise);
- (e) the production by the Commission, under a subpoena, of such a register or document;
- (f) the issuing of a document or of a copy of a document, the granting of a licence, consent or approval, or the doing of any other act, under that Law, by the Minister or the Commission;
- (g) the making of an inquiry of, or an application to, the Minister, or the Commission, in relation to a matter arising under that Law;
- (h) the submission to the Commission of a document for examination by the Commission;

‘coastal sea’:

(a) in relation to Australia—means:

- (i) the territorial sea of Australia; and
- (ii) the sea on the landward side of the territorial sea of Australia and not within the limits of a State or internal Territory;

and includes the airspace over, and the sea-bed and subsoil beneath, any such sea; and

(b) in relation to a jurisdiction—means so much of the coastal sea of Australia as is within the area described in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967* under the heading that refers to that jurisdiction;

‘Consolidated Revenue Fund’ means the Consolidated Revenue Fund of the Commonwealth;

SCHEDULE 1—continued

- ‘Constitution’** means the Constitution of the Commonwealth;
- ‘contravene’** includes fail to comply with;
- ‘Corporations Law’**, in relation to a jurisdiction, has the additional meaning given by section 8A;
- ‘corresponding previous law’** has the meaning given by section 58;
- ‘court’** means any court when exercising the jurisdiction of this jurisdiction;
- ‘court of summary jurisdiction’** means any justice or justices of the peace or other magistrate sitting as a court for the making of summary orders or the summary punishment of offences:
- (a) under a law of the Commonwealth or of this or any other jurisdiction; or
 - (b) by virtue of his or her commission or their commissions;
- ‘estate’** includes any estate or interest, charge, right, title, claim, demand, lien or encumbrance, at law or in equity;
- ‘Executive Council’** means the Federal Executive Council;
- ‘exempt body’** has the meaning given by section 66A;
- ‘exempt securities’** has the meaning given by section 69A;
- ‘external Territory’** means a Territory, not being an internal Territory, provision for the government of which as a territory is made by any Act;
- ‘Federal Court’** means the Federal Court of Australia;
- ‘fee’**, in Part 9.10, includes a fee that is a tax;
- ‘for’**, in relation to a fee or tax, includes in respect of;
- ‘foreign country’** means any country (whether or not an independent sovereign state) outside Australia and the external Territories;
- ‘Gazette’** means the *Commonwealth of Australia Gazette*;
- ‘Government Printer’** includes any person printing for the Government of the Commonwealth;
- ‘internal Territory’** means the Capital Territory or the Northern Territory;
- ‘Jervis Bay Territory’** means the Territory referred to in the *Jervis Bay Territory Acceptance Act 1915*;
- ‘jurisdiction’** means a State or the Capital Territory and, in the case of a State, includes the coastal sea of the State;
- ‘justice of the peace’** includes a justice of the peace for a State or part of a State or for a Territory;
- ‘land’** includes messuages, tenements and hereditaments, corporeal and incorporeal, of any tenure or description, and whatever may be the estate or interest therein;
- ‘local corporation’** means:
- (a) a company; or

SCHEDULE 1—continued

(b) any other corporation that is incorporated in this jurisdiction;
‘local futures association’ means a body corporate in relation to which an approval under section 1132 of the Corporations Law of this jurisdiction is in force;

‘local futures exchange’ means a body corporate in relation to which an approval under section 1126 of the Corporations Law of this jurisdiction is in force;

‘local securities exchange’ means a local stock exchange or an approved securities organisation;

‘local stock exchange’ means:

(a) the Exchange; or

(b) a body corporate referred to in any of subparagraphs (c) (ii) to (x), inclusive, of the definition of ‘stock exchange’ that conducts in this jurisdiction, or proposes so to conduct, a stock market;
or

(c) a body corporate in relation to which an approval under section 769 of the Corporations Law of this jurisdiction is in force;

‘magistrate’ means a magistrate who is remunerated by salary or otherwise;

‘manage’, in relation to a body corporate, has in sections 229, 230, 599 and 600 a meaning affected by section 91A;

‘month’ means calendar month;

‘national business names register’ means the record or records of information identified by the Minister in a notice under section 70 of the *Corporations Act 1989*;

‘non-company’ means a body corporate other than:

(a) a company; or

(b) a recognised company; or

(c) a corporation sole; or

(d) a body of a kind referred to in:

(i) paragraph (b) of the definition of ‘foreign company’; or

(ii) paragraph (b) of the definition of ‘registrable Australian body’;

‘Northern Territory’ means the Northern Territory of Australia;

‘office’, in relation to the Commission, means an office of the Commission in this jurisdiction or elsewhere;

‘originating provision’, in relation to a provision of this Law, means the provision enacted by the Parliament as a direct or indirect result of which the provision of this Law was included in this Law;

‘other jurisdictions’ means 2 or more jurisdictions other than this jurisdiction;

‘outstanding property’, in relation to a body corporate that has been dissolved, means outstanding property (other than unpaid capital, whether called or uncalled) that was vested in the body, to which it

SCHEDULE 1—continued

was entitled, or over which it had a disposing power, when it was dissolved, but that neither the body nor its liquidator got in, realised on or otherwise disposed of or dealt with;

‘Parliament’ means the Parliament of the Commonwealth;

‘person’ includes a body politic or corporate as well as an individual;

‘Proclamation’ means a Proclamation by the Governor-General published in the *Gazette*;

‘recognised company’ means a body corporate that, because of the definition of ‘company’ in section 9 of the Corporations Law of another jurisdiction, is a company for the purposes of that section of that Law;

‘record’ includes information stored or recorded by means of a computer;

‘registrable local body’ means a registrable Australian body that:

- (a) is incorporated in this jurisdiction; or
- (b) is unincorporated but is formed, or has its head office or principal place of business, in this jurisdiction;

‘relevant body’ means:

- (a) in sections 599 and 600:
 - (i) a corporation; or
 - (ii) a Part 5.7 body; or
 - (iii) a corporation or Part 5.7 body that is being wound up or has been dissolved; and
- (b) otherwise:
 - (i) a corporation; or
 - (ii) a body corporate;

‘relevant previous law’, in relation to a jurisdiction, means:

- (a) in the case of the Capital Territory—a relevant Act within the meaning of the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980*; and
- (b) in the case of any other jurisdiction—a relevant Code within the meaning of a law of that other jurisdiction;

‘regulations’ means the Corporations Regulations of this jurisdiction;

‘statutory declaration’ means a declaration made by virtue of any Act of the Commonwealth, of a State or of a Territory authorising a declaration to be made otherwise than in the course of a judicial proceeding;

‘Territory’ means a Territory referred to in section 122 of the Constitution, other than the Northern Territory;

‘this jurisdiction’ includes the coastal sea of this jurisdiction;

‘writing’ includes any mode of representing or reproducing words, figures, drawings or symbols in a visible form.”.

SCHEDULE 1—continued

Section 22:

Repeal the section.

Paragraph 25 (4) (b):

Omit the paragraph.

After section 53:

Insert:

Chapter 6 body and Chapter 6 company

“53A. (1) A body is a Chapter 6 body or a Chapter 6 company if, and only if, a notice declaring the body to be a Chapter 6 body or Chapter 6 company, as the case may be, is in force under subsection (2).

“(2) The Commission may, by *Gazette* notice, declare an unincorporated body to be a Chapter 6 body, or a Chapter 6 company, for the purposes of the Corporations Law.”.

Section 58:

Repeal the section, substitute:

Corresponding laws and corresponding previous laws

“58. (1) A reference, in relation to this Law, to a corresponding law is a reference to the Corporations Law of another jurisdiction.

“(2) A reference, in relation to a provision of this Law, to a corresponding law, or a reference to a law corresponding to a provision of this Law, is a reference to the provision of the Corporations Law of another jurisdiction that corresponds to that provision of this Law.

“(3) A reference to a corresponding previous law is a reference:

- (a) to a previous law of this jurisdiction that corresponds, in whole or in part, to this Law, to the extent that it so corresponds; and
- (b) except where the contrary intention appears—to a previous law of another jurisdiction that corresponds to a law referred to in paragraph (a).

“(4) A reference, in relation to a provision of this Law, to a corresponding previous law, or a reference to a previous law corresponding to a provision of this Law, is a reference:

- (a) to a provision of a previous law of this jurisdiction that:
 - (i) corresponds to that provision of this Law; or
 - (ii) is declared by the regulations to be a provision that so corresponds; and
- (b) except where the contrary intention appears—to a provision of

SCHEDULE 1—continued

a previous law of another jurisdiction that corresponds to the provision referred to in paragraph (a).

“(5) A reference to the lodgment or registration of a prospectus under a corresponding previous law is a reference to the lodgment of a copy of a prospectus with, or the registration of a copy of a prospectus by, as the case may be, the NCSC under:

- (a) a corresponding previous law of this jurisdiction; or
- (b) a law of another jurisdiction that corresponds to that corresponding previous law.”.

After section 58:

Insert:

Recognition of acts etc. done under corresponding laws

“58A. (1) A reference to an act done by or in relation to the Commission is a reference to such an act done under or for the purposes of the Corporations Law of this or any other jurisdiction.

“(2) A reference to an act done by or in relation to a court is a reference to such an act done under or for the purposes of the Corporations Law of this or any other jurisdiction.

Discharge of obligations under this Law

“58B. (1) Except as expressly provided in this Law, any act done, whether within Australia or elsewhere, which, if it had been done under or for the purposes of this Law, would have discharged an obligation under this Law, discharges that obligation.

“(2) Subject to subsection (3), an act required to be done under this Law may, for the purposes of this Law, be done anywhere in Australia, whether within or outside this jurisdiction.

“(3) Nothing in subsection (2) affects the operation of any provision of this Law that:

- (a) expressly requires a particular act to be done within this jurisdiction; or
- (b) expressly or by implication permits a particular act to be done outside Australia.”.

Subparagraph 62 (2) (c) (i):

Omit “this Act or the company law of a State or Territory”, substitute “the Corporations Law”.

Subparagraph 62 (2) (c) (ii):

Omit “this Act or that law, as the case may be”, substitute “the Corporations Law”.

SCHEDULE 1—continued

Paragraph 62 (2) (d):

Omit “this Act or the company law of a State or Territory”, substitute “the Corporations Law”.

Section 63:

Repeal the section.

Paragraph 65 (1) (a):

Omit “corporation”, substitute “body corporate”.

Paragraph 65 (1) (b):

Omit “corporation” (first occurring), substitute “body corporate”.

Subparagraph 65 (1) (b) (ii):

(a) Omit “corporation”, substitute “body corporate”.

(b) Omit “a body”, substitute “another body”.

Paragraph 65 (1) (c):

(a) Omit “corporation” (first and third occurring), substitute “body corporate”.

(b) Omit “corporations” (first occurring), substitute “bodies corporate”.

Paragraph 65 (3) (a):

Omit “corporation”, substitute “body corporate”.

Subsection 66 (1) (definition of “listed corporation”):

Omit “within the meaning of Chapter 7”.

Subsection 66 (1) (paragraph (a) of the definition of “prospectus”):

After “corresponding”, insert “previous”.

Paragraphs 66 (2) (a), (b), (c), (d), (e), (f), (g), (h), (j) and (k):

Add at the end “or”.

Paragraphs 66 (3) (a), (b), (c), (d), (e), (f), (g), (h) and (j):

Add at the end “or”.

Subparagraphs 66 (2) (e) (i) and (3) (e) (i):

Add at the end “or”.

SCHEDULE 1—continued

After section 66:

Insert:

Exempt bodies

“66A. (1) Each of the following is an exempt body in relation to New South Wales:

- (a) a society, association or union registered under the *Co-operation Act 1923* of New South Wales;
- (b) a society or association registered under the *Permanent Building Societies Act 1967* of New South Wales;
- (c) a credit union, an association of credit unions, or a union of associations of credit unions, registered under the *Credit Union Act 1969* of New South Wales;
- (d) a registrable body or recognised company in respect of which an exemption from compliance with:
 - (i) subsection 61 (1) of the *Co-operation Act 1923* of New South Wales; or
 - (ii) subsection 35 (1) of the *Permanent Building Societies Act 1967* of New South Wales; or
 - (iii) subsection 28 (1) of the *Credit Union Act 1969* of New South Wales;is in force.

“(2) Each of the following is an exempt body in relation to Queensland:

- (a) a society within the meaning of *The Co-operative and Other Societies Act 1967-1986* of Queensland;
- (b) a registered society within the meaning of *The Building Societies Act 1985-1987* of Queensland;
- (c) a society within the meaning of *The Co-operative Housing Societies Act 1958-1974* of Queensland;
- (d) an association within the meaning of *The Primary Producers’ Co-operative Associations Act 1923* of Queensland;
- (e) an association, society, institution or body incorporated under *The Associations Incorporation Act 1981-1989* of Queensland.

“(3) A body corporate is an exempt body in relation to South Australia if, and only if:

- (a) it is not a company for the purposes of section 9 of the *Corporations Law of South Australia*; and
- (b) it is incorporated by or under a law of South Australia other than that Law or a corresponding previous law.

“(4) Each of the following is an exempt body in relation to Western Australia:

- (a) a society within the meaning of section 5 of the *Building Societies Act 1976* of Western Australia;

SCHEDULE 1—continued

- (b) a credit union, foreign credit union, society or corporation of the kind referred to in subsection 5 (1) of the *Credit Unions Act 1979* of Western Australia;
- (c) a body corporate that is:
 - (i) a company for the purposes of section 9 of the *Corporations Law of Western Australia*; and
 - (ii) a co-operative company;
- (d) a society registered under the *Co-operative and Provident Societies Act 1903* of Western Australia;
- (e) an association, society, institution or body incorporated under the *Associations Incorporation Act 1895* of Western Australia.

“(5) Each of the following is an exempt body in relation to Tasmania:

- (a) a trustee bank registered under the *Trustee Banks Act 1984* of Tasmania;
- (b) a society registered under the *Building Societies Act 1876*, the *Co-operative Industrial Societies Act 1928*, or the *Co-operative Housing Societies Act 1963*, of Tasmania;
- (c) an association, society, institution or body incorporated under the *Associations Incorporation Act 1964* of Tasmania;
- (d) a body corporate created by section 75Q of the *Conveyancing and Law of Property Act 1884* of Tasmania.

“(6) Each of the following is an exempt body in relation to the Northern Territory:

- (a) a society within the meaning of the *Building Societies Act* of the Northern Territory;
- (b) a credit union, or foreign credit union, within the meaning of the *Credit Unions Act* of the Northern Territory;
- (c) a society registered under the *Co-operative Societies Act* of the Northern Territory;
- (d) an association, society, institution or body incorporated under the *Associations Incorporation Act* of the Northern Territory;
- (e) a corporation constituted under the *Unit Titles Act* of the Northern Territory.

“(7) Each of the following is an exempt body in relation to the Capital Territory:

- (a) a society registered under the *Co-operative Societies Act 1939* of the Capital Territory;
- (b) an association, society, institution or body incorporated under the *Associations Incorporation Act 1953* of the Capital Territory;
- (c) a corporation constituted under the *Unit Titles Act 1970* of the Capital Territory.”.

SCHEDULE 1—continued

Paragraphs 67 (4) (a) to (g) (inclusive):

Omit the paragraphs, substitute:

- “(a) as an official receiver or trustee within the meaning of the *Bankruptcy Act 1966*; or
- (b) as a receiver, receiver and manager, or liquidator, appointed by a court; or
- (c) as a person appointed by a court to carry on the business concerned; or
- (d) as a receiver, receiver and manager, or liquidator, appointed otherwise than by a court; or
- (e) as an official manager or deputy official manager of a body corporate; or
- (f) as a trustee or other person administering a compromise or arrangement between a body corporate and any other person or persons; or
- (g) as a personal representative of a dead futures broker or futures adviser, as the case may be; or”.

Subsection 69 (2):

- (a) Omit “a State or Territory”, substitute “another jurisdiction”.
- (b) Omit “the State or Territory”, substitute “that jurisdiction”.

Subparagraph 69 (3) (a) (ii):

Omit the subparagraph, substitute:

“or (ii) a recognised company; or”.

Paragraphs 69 (3) (b) and (c):

Omit the paragraphs, substitute:

“or (b) a public company of this or another jurisdiction; or”.

Paragraphs 69 (4) (a) and (b):

Omit the paragraphs, substitute:

“(a) a proprietary company of this or another jurisdiction; or”.

Subsection 69 (6):

Omit the subsection, substitute:

“(6) For the purposes of subsections (3) and (4), a recognised company is neither a public company, nor a proprietary company, of the jurisdiction concerned if a licence is in force in respect of it under section 383 of the Corporations Law of that jurisdiction.”.

SCHEDULE 1—continued

Section 69:

Add at the end:

“(10) A reference in subsection 857 (19), 858 (7), 1215 (19) or 1216 (7) to an exempt proprietary company includes a reference to a body corporate that is an exempt proprietary company for the purposes of the Corporations Law of another jurisdiction.”.

After section 69:

Insert:

Exempt securities

“69A. (1) The following are exempt securities in relation to New South Wales:

- (a) securities of a society, association or union registered under the *Co-operation Act* 1923, or under the *Permanent Building Societies Act* 1967, of New South Wales;
- (b) securities of a credit union, association of credit unions, or union of associations of credit unions, registered under the *Credit Union Act* 1969 of New South Wales.

“(2) Securities are exempt securities in relation to Victoria if, and only if, they are securities of a co-operative company that is a company for the purposes of section 9 of the Corporations Law of Victoria and that:

- (a) immediately before the commencement of the *Companies Act* 1958 of Victoria, was a company to which section 356 of the *Companies Act* 1938 of Victoria did not apply; or
- (b) immediately before the commencement of the *Companies (Application of Laws) Act* 1981 of Victoria, was exempted for the time being from the provisions of section 374 of the *Companies Act* 1961 of Victoria by order of the Governor in Council of Victoria; or
- (c) the regulations declare to be a body to which this subsection applies.

“(3) Subsection (2) does not apply in relation to a body that the regulations declare to be a body to which that subsection does not apply.

“(4) The following are exempt securities in relation to South Australia:

- (a) securities of a building society registered under the *Building Societies Act, 1975–1981* of South Australia;
- (b) securities of a credit union registered under the *Credit Unions Act, 1976–1980* of South Australia;

SCHEDULE 1—continued

- (c) securities of a society registered under the Friendly Societies Act, 1919–1975 of South Australia.

“(5) The following are exempt securities in relation to the Northern Territory:

- (a) securities of a society within the meaning of the *Building Societies Act* of the Northern Territory;
- (b) securities of a credit union, or foreign credit union, within the meaning of the *Credit Unions Act* of the Northern Territory;
- (c) securities of a society registered under the *Co-operative Societies Act* of the Northern Territory.”.

Subsection 71 (2):

Omit the subsection.

Subsection 71 (3):

Omit the subsection, substitute:

“(3) The remaining provisions of this subsection apply for the purposes of determining:

- (a) whether or not a person carries on a futures advice business; and
- (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.”.

Subsection 73 (1):

Omit the subsection, substitute:

“(1) Subject to subsection (2), a person is a futures representative of another person if, and only if, the first-mentioned person:

- (a) is employed by; or
- (b) 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.”.

Paragraph 73 (3) (a):

Omit the paragraph, substitute:

- “(a) in connection with a futures broking business or futures advice business carried on by the other person;”.

Section 76:

Repeal the section, substitute:

SCHEDULE 1—continued

Incorporated in a jurisdiction or in Australia

“76. (1) A company is incorporated in this jurisdiction.

“(2) A body corporate that, because of the definition of ‘company’ in section 9 of the Corporations Law of another jurisdiction, is a company for the purposes of that section of that Law is incorporated in that jurisdiction.

“(3) A body corporate incorporated by or under a law of a jurisdiction is incorporated in that jurisdiction.

“(4) A body corporate incorporated by or under a law of the Commonwealth, or of a jurisdiction, is incorporated in Australia.

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

Subsection 77 (2):

Omit the subsection.

Subsection 77 (3):

Omit the subsection, substitute:

“(3) The remaining provisions of this section apply for the purposes of determining:

- (a) whether or not a person carries on an investment advice business; and
- (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.”.

Section 80:

Repeal the section, substitute:

Jervis Bay Territory taken to be part of the Australian Capital Territory

“80. The Jervis Bay Territory is taken to be part of the Australian Capital Territory.”.

After section 80:

Insert:

References to Ministers

“80A. (1) In this Law:

‘Minister’ means one of the Queen’s Ministers of State for the Commonwealth and, in relation to any particular Minister, includes

SCHEDULE 1—continued

any other Minister or member of the Executive Council for the time being acting for or on behalf of that Minister;

‘the Minister for a jurisdiction’ means the person who is the Minister for that jurisdiction for the purposes of the Corporations Law of that jurisdiction.

“(2) Where a provision of this Law refers to a Minister, using the expression **‘the Minister’** without specifying which Minister is referred to, the expression means:

- (a) if, for the time being, 2 or more Ministers administer the *Corporations Act 1989*—any one of those Ministers; or
- (b) otherwise—the Minister for the time being administering that Act.

“(3) Where this Law refers to a Minister, specifying the Minister merely by reference to the fact that the Minister administers a specified Act, or a specified provision of an Act, it refers to:

- (a) if, for the time being, different Ministers administer the specified Act or provision in respect of different matters:
 - (i) if 2 or more Ministers administer the specified Act or provision in respect of the relevant matter—any one of those Ministers; or
 - (ii) if only one Minister administers the specified Act or provision in respect of the relevant matter—that Minister; or
- (b) if paragraph (a) does not apply and, for the time being, 2 or more Ministers administer the specified Act or provision—any one of those Ministers; or
- (c) otherwise—the Minister for the time being administering the specified Act or provision.

“(4) To avoid doubt, where:

- (a) a provision of an Act is administered by 2 or more Ministers; and
- (b) because of this section, a provision of this Law requires or permits anything to be done by or in relation to any one of those Ministers;

that provision of this Law does not require or permit it to be done in any particular case by or in relation to more than one of those Ministers.”.

Section 81:

Repeal the section.

Subsections 91 (1), (2), (3) and (4):

Insert “previous” after “corresponding” (wherever occurring).

SCHEDULE 1—continued

After section 91:

Insert:

Effect of prohibition, order or notice under section 229, 230, 599 or 600

“91A. (1) This section has effect for the purposes of sections 229, 230, 599 and 600.

“(2) A person manages a local corporation if the person, in this jurisdiction or elsewhere, is a director or promoter of, or is in any way (whether directly or indirectly) concerned in or takes part in the management of, the corporation.

“(3) A person manages a corporation (other than a local corporation) if the person:

- (a) in this jurisdiction, does an act as a director or promoter of, or is in any way (whether directly or indirectly) concerned in or takes part in the management of, the corporation; or
- (b) in this jurisdiction or elsewhere, does an act as a director or promoter of, or is in any way (whether directly or indirectly) concerned in or takes part in the management of, the corporation in connection with:
 - (i) the corporation carrying on business in this jurisdiction; or
 - (ii) an act that the corporation does, or proposes to do, in this jurisdiction; or
 - (iii) a decision by the corporation whether or not to do, or to refrain from doing, an act in this jurisdiction.

“(4) Except as provided in this section, a person is not taken to manage a corporation.”.

Paragraphs 92 (1) (a), (b), (c) and (d):

Omit the paragraphs, substitute:

- “(a) debentures, stocks or bonds issued or proposed to be issued by a government; or
- (b) shares in, or debentures of, a body corporate or an unincorporated body; or
- (c) prescribed interests; or
- (d) units of such shares or of prescribed interests; or
- (e) an option contract within the meaning of Chapter 7;”.

Subsection 92 (2):

Omit “Subject to subsection (3), ‘securities’, where that expression is”, substitute “The expression ‘securities’, when”.

SCHEDULE 1—continued

Subsection 92 (3):

Omit the subsection, substitute:

“(3) A provision of this Law (except Part 7.12) that applies in relation to securities of a body corporate:

- (a) also applies in relation to securities (as defined by subsection (1)) issued by a government, an unincorporated body or any other person; and
- (b) applies, in relation to securities so issued, in the same way, as nearly as practicable, as if the government, body or person were a body corporate.

“(4) A provision of Part 7.12 that applies in relation to securities of a body corporate:

- (a) also applies in relation to prescribed interests made available by a person or body other than a body corporate; and
- (b) applies, in relation to such prescribed interests, in the same way, as nearly as practicable, as if the person or body were a body corporate.

“(5) Subsections (3) and (4) have effect subject to subsection 1063 (2).

“(6) An express mention of a related body corporate in connection with a reference to securities of a body corporate does not of itself show an intention to exclude the application of subsection (3) or (4) in so far as it can apply.”.

Subsection 93 (2):

Omit the subsection.

Paragraph 93 (3) (a):

Omit “or eligible securities business”.

Subsection 94 (1):

Omit the subsection, substitute:

“(1) Subject to subsection (2), a person is a securities representative of another person if, and only if, the first-mentioned person:

- (a) is employed by; or
- (b) 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.”.

Paragraph 94 (3) (a):

Omit the paragraph, substitute:

“(a) in connection with a securities business or investment advice business carried on by the other person;”.

SCHEDULE 1—continued

Section 98:

Repeal the section.

After section 100:

Insert:

Operation of certain laws relating to instruments on which stamp duty has not been paid

“100A. Nothing in this Law affects the operation of any provision of any law:

- (a) relating to the admissibility in evidence, or any other use, in any proceedings, of a document in respect of which any applicable stamp duty has not been paid; or
- (b) prohibiting the registration by a company of a transfer of securities if any stamp duty applicable in respect of the transfer has not been paid.”.

After section 102:

Insert:

Application not to be granted unless applications also made under corresponding laws

“102A. (1) This section facilitates the administration, on a national basis, of the Corporations Law of each jurisdiction by requiring some kinds of application to be made under the Corporations Law of each jurisdiction.

“(2) This can be done by expressing an application to be made under the Corporations Law (rather than under the Corporations Law of a particular jurisdiction), so that it has effect as an application under the relevant provision of the Corporations Law of each jurisdiction.

“(3) Subject to subsection (6), this section applies to an application under section 341, 344, 769, 770, 782, 1020A, 1067, 1126, 1131, 1132, 1144 or 1279 of the Corporations Law of this jurisdiction.

“(4) The application is not to be granted unless the applicant has also made (by the means described in subsection (2) or otherwise) a corresponding application under the corresponding section of the Corporations Law of each jurisdiction other than this jurisdiction.

“(5) Also, the application is not to be granted if a corresponding application has been refused, or if it is proposed to refuse a corresponding application.

“(6) This section does not apply in relation to an application that:

SCHEDULE 1—continued

- (a) was made under a previous law of this jurisdiction corresponding to a provision of this Law; and
- (b) is taken because of a provision of this Law to have been made under the provision to which that previous law corresponds.

“In Australia or elsewhere”, “in this jurisdiction or elsewhere”

“102B. The expression ‘in Australia or elsewhere’, or a similar expression, does not limit the generality of the expression ‘in this jurisdiction or elsewhere’ or a similar expression.”.

Subsection 105 (3):

Omit the subsection, substitute:

“(3) Where the last day of any period prescribed or allowed by this Law for the doing of anything falls on a day that is not a business day in the place in which the thing is to be or may be done, the thing may be done on the first day following which is a business day in that place.”.

After section 109:

Insert in Part 1.2:

Reference to Commonwealth Acts

“109A. Unless the contrary intention appears, a reference in this Law to an Act by its short title is taken to be a reference to an Act of the Commonwealth having that short title.

References to amended or re-enacted Acts of the Commonwealth, this jurisdiction etc.

“109B. (1) This section applies to a reference in this Law to a short title that is or was provided by law for the citation of:

- (a) an Act of the Commonwealth or of this or another jurisdiction, as originally enacted; or
- (b) such an Act as amended.

“(2) Except so far as the contrary intention appears, the reference is taken as a reference to that Act as originally enacted and as amended from time to time.

“(3) Where the Act referred to has been repealed and re-enacted, with or without modifications:

- (a) the reference is taken as including a reference to the re-enacted Act as originally enacted and as amended from time to time; and
- (b) where:
 - (i) particular provisions of the repealed Act are referred to; and

SCHEDULE 1—continued

- (ii) provisions of the re-enacted Act correspond to those provisions;
the reference to those particular provisions is taken as including a reference to those corresponding provisions.

Every section a substantive enactment

“109C. Every section of this Law has effect as a substantive enactment, without introductory words.

Headings, schedules, marginal notes, footnotes and end notes

“109D. (1) The headings of the Chapters, Parts, Divisions and Subdivisions into which this Law is divided are taken to be part of this Law.

“(2) A Schedule to this Law is taken to be part of this Law.

“(3) Each heading to a section of this Law, and each footnote or end note to this Law, is taken not to be part of this Law.

Effect of repeal

“109E. Where a provision of this Law is repealed, the repeal does not:

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any provision so repealed, or anything duly done or suffered under any provision so repealed; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any provision so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any provision so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repeal had not taken effect.

Implied repeals etc.

“109F. A reference in section 109E to the repeal of a provision of this Law is a reference to the repeal of the originating provision concerned and includes a reference to:

- (a) such a repeal effected by implication; and
- (b) the abrogation or limitation (however effected) of the effect of the provision; and

SCHEDULE 1—continued

- (c) the exclusion (however effected) of the application of the provision to any person, subject-matter or circumstance.

Effect of expiration of provision

“109G. Where a provision of this Law expires, lapses or otherwise ceases to have effect, sections 109E and 109F apply as if the provision had been repealed.

Regard to be had to purpose or object of law

“109H. In the interpretation of a provision of this Law, a construction that would promote the purpose or object underlying the Law (whether that purpose or object is expressly stated in the Law or not) is to be preferred to a construction that would not promote that purpose or object.

Use of extrinsic material in the interpretation of this Law

“109J. (1) This section applies where, in the interpretation of a provision of this Law, any material not forming part of this Law is capable of assisting in working out the meaning of the provision.

“(2) Subject to subsection (4), consideration may be given to that material:

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

“(3) The material that may be considered under subsection (2) in the interpretation of a provision of this Law includes, but is not limited to:

- (a) all matters not forming part of the Law that are set out in the *Corporations Act 1989* or a corresponding law of a jurisdiction, or the document containing the text of the Law as printed by the Government Printer; and
- (b) any relevant report of the Advisory Committee, or of a Royal Commission, Law Reform Commission, committee of inquiry or other similar body, that was made before either House of the Parliament before the time when the originating provision was enacted; and
- (c) any relevant report of a committee of the Parliament or of

SCHEDULE 1—continued

either House of the Parliament that was made to the Parliament or that House of the Parliament before the originating provision was enacted; and

- (d) any treaty or other international agreement that is referred to in this Law; and
- (e) any explanatory memorandum relating to the Bill containing the originating provision, or any other relevant document, that was laid before, or furnished to the members of, either House of the Parliament by a Minister before the time when the originating provision was enacted; and
- (f) the speech made to a House of the Parliament by a Minister on the occasion of the moving by that Minister of a motion that the Bill containing the originating provision be read a second time in that House; and
- (g) any document (whether or not a document to which a preceding paragraph applies) that is declared by this Law to be a relevant document for the purposes of this section; and
- (h) any relevant material in the Journals of the Senate, in the Votes and Proceedings of the House of Representatives or in any official record of debates in the Parliament or either House of the Parliament.

“(4) In determining whether consideration should be given to any material in accordance with subsection (2), or in considering the weight to be given to any such material, regard is to be had, in addition to any other relevant matters, to:

- (a) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the law and the purpose or object underlying the law; and
- (b) the need to avoid prolonging legal or any other proceedings without compensating advantage.

Changes to style not to affect meaning

“109K. Where:

- (a) a provision of this Law has expressed an idea in a particular form of words; and
- (b) another provision of this Law appears to have expressed the same idea in a different form of words for the purpose of using a clearer style;

the ideas are not taken to be different merely because different forms of words were used.

SCHEDULE 1—continued

Examples

“109L. Where this Law includes an example of the operation of a provision:

- (a) the example is not taken to be exhaustive; and
- (b) if the example is inconsistent with the provision, the provision prevails.

Parts of speech and grammatical forms of words

“109M. In this Law, unless the contrary intention appears, where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

References to offices and officers

“109N. (1) A reference in this Law in general terms to a person holding or occupying a particular office or position includes a reference to any person who at any time occupies that office or position for the time being, or performs the duties of that office for the time being.

“(2) Unless the contrary intention appears, a reference in this Law to an office or officer is a reference to such office or officer in and for the Commonwealth.

References to companies etc.

“109P. Express references in this Law to companies, corporations or bodies corporate are not taken to imply that references in this Law to persons do not also include references to companies, corporations or bodies corporate.

References to Commonwealth laws

“109Q. In this Law, unless the contrary intention appears, a reference to the law of the Commonwealth or to a law of the Commonwealth does not include a reference to a law in force in a Territory in so far as the law is so in force by virtue of an Act providing for the acceptance, administration or government of that Territory.

Rules as to gender and number

“109R. In this Law, unless the contrary intention appears:

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

Production of records kept in computers etc.

“109S. Where a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Law:

SCHEDULE 1—continued

- (a) to produce the information or a document containing the information to a court, tribunal or person; or
- (b) to make a document containing the information available for inspection by a court, tribunal or person;

then, unless the court, tribunal or person otherwise directs:

- (c) the requirement is taken to oblige the person to produce or make available for inspection, as the case may be, a writing that reproduces the information in a form capable of being understood by the court, tribunal or person; and
- (d) the production of such a writing to the court, tribunal or person constitutes compliance with the requirement.

Change of name of body or office

“109T. Where:

- (a) the name of a body is changed by law (whether or not the body is incorporated); or
- (b) the name of an office is changed by law;

then, a reference in this Law to the body or office under the former name, except in relation to matters that occurred before the change took effect, is taken as a reference to the body or office under the new name.

Compliance with forms

“109U. Where this Law prescribes a form, strict compliance with the form is not required and substantial compliance is sufficient.

Content of statements of reasons for decisions

“109V. Where this Law requires a tribunal, body or person making a decision to give written reasons for the decision, whether the expression ‘reasons’, ‘grounds’ or any other expression is used, the instrument giving the reasons must also:

- (a) set out the findings on material questions of fact; and
- (b) refer to the evidence or other material on which those findings were based.

Attainment of particular age

“109W. For the purposes of this Law, the time at which a person attains a particular age expressed in years is the commencement of the relevant anniversary of the date of the birth of that person.

Service of documents

“109X. (1) For the purposes of any provision of this Law that requires or permits a document to be served on a person, whether the expression ‘serve’, ‘give’ or ‘send’ or any other expression is used, the document may be served:

SCHEDULE 1—continued

- (a) on a natural person:
 - (i) by delivering it to the person personally; or
 - (ii) by leaving it at, or by sending it by post to, the address of the place of residence or business of the person last known to the person serving the document; or
 - (b) on a body corporate other than:
 - (i) a company; or
 - (ii) a recognised company; or
 - (iii) a registered body;by leaving it at, or sending it by post to, the head office, a registered office or a principal office of the body corporate.
- “(2) Nothing in subsection (1):
- (a) affects the operation of any other provision of this Law or any other law of the Commonwealth or of this or another jurisdiction that authorises the service of a document otherwise than as provided in that subsection; or
 - (b) affects the power of a court to authorise service of a document otherwise than as provided in that subsection.

Meaning of service by post

“109Y. Where a provision of this Law authorises or requires any document to be served by post, whether the expression ‘serve’ or the expression ‘give’ or ‘send’ or any other expression is used, then:

- (a) the service is taken to be effected by properly addressing and posting (under pre-paid post) the document as a letter to the last known address of the person to be served; and
- (b) unless the contrary is proved, the service is taken to have been effected at the time at which the letter would have been delivered in the ordinary course of post.

Measurement of distance

“109Z. In the measurement of any distance for the purposes of this Law, that distance is, unless the contrary intention appears, to be measured in a straight line on a horizontal plane.

Expressions of time

“109ZA. Where in this Law any reference to time occurs, such time is, unless it is otherwise specifically stated, taken in each jurisdiction to mean the standard legal time in that jurisdiction.

Exercise of powers and duties

“109ZB. (1) Where this Law confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.

SCHEDULE 1—continued

“(2) Where this Law confers a power or imposes a duty on the holder of an office as such, then, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of the office.

“(3) Where this Law provides that a person, court or body may do a particular act or thing, and the word ‘**may**’ is used, the act or thing may be done at the discretion of the person, court or body.

“(4) Where this Law confers a power or function, or imposes a duty, on a body, whether incorporated or unincorporated, the exercise of the power or the performance of the function or duty is not affected merely because of a vacancy or vacancies in the membership of the body.

“(5) Where this Law confers a power to make, grant or issue any instrument (including rules, regulations or by-laws) the power is, unless the contrary intention appears, taken as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

“(6) Where this Law confers a power to make, grant or issue any instrument (including rules, regulations or by-laws) with respect to particular matters (however the matters are described), the power is taken to include a power to make, grant or issue such an instrument with respect to some only of those matters or with respect to a particular class or particular classes of those matters and to make different provision with respect to different matters or different classes of matters.

“(7) Where this Law confers a power to make, grant or issue any instrument (including rules, regulations or by-laws), the power is not taken, by implication, not to include the power to make provision for or in relation to a particular aspect of a matter by reason only that provision is made by the Law in relation to another aspect of that matter or in relation to another matter.

“(8) Subject to subsection (9), where this Law confers upon any person or authority a power to make appointments to any office or place, the power is, unless the contrary intention appears, taken to include a power to appoint a person to act in the office or place until:

- (a) a person is appointed to the office or place; or
- (b) the expiration of 12 months after the office or place was created or became vacant, as the case requires;

whichever first happens, and also to include a power to remove or suspend any person appointed, and to appoint another person temporarily in the place of any person so suspended or in place of any sick or absent holder of such office or place.

SCHEDULE 1—continued

“(9) Where the power of such a person or authority to make any such appointment is only exercisable upon the recommendation or subject to the approval or consent of some other person or authority, the power to make an appointment to act in an office or place or the power of removal is, unless the contrary intention appears, only exercisable upon the recommendation or subject to the approval or consent of that other person or authority.

“(10) Where this Law confers a power to make, grant or issue an instrument (including rules, regulations or by-laws) prescribing penalties not exceeding a specified amount or imprisonment for a specified period, that limitation on the penalties that may be prescribed does not prevent the instrument from requiring the making of a statutory declaration.

Power to determine includes authority to administer oath

“109ZC. Any court, Judge, justice of the peace, officer, commissioner, arbitrator, or other person authorised by law, or by consent of parties, to hear and determine any matter, has authority to receive evidence and examine witnesses and to administer an oath to all witnesses legally called before them respectively.

Delegations

“109ZD. Where this Law confers power to delegate a function or power, then, unless the contrary intention appears, the power of delegation is not limited to delegating the function or power to a specified person but includes a power to delegate the function or power to any person from time to time holding, occupying, or performing the duties of, a specified office or position.

Effect of delegation

“109ZE. Where this Law confers power on a person or body (in this section called the ‘authority’) to delegate a function or power:

- (a) the delegation may be made either generally or as otherwise provided by the instrument of delegation; and
- (b) the powers that may be delegated do not include that power to delegate; and
- (c) a function or power so delegated, when performed or exercised by the delegate, is, for the purposes of this Law, taken to have been performed or exercised by the authority; and
- (d) a delegation by the authority does not prevent the performance or exercise of a function or power by the authority; and
- (e) if the authority is not a person, section 109ZF applies as if it were.

SCHEDULE 1—continued

Exercise of certain powers and functions by a delegate

“109ZF. Where, under this Law, the exercise of a power or function by a person is dependent upon the opinion, belief or state of mind of that person in relation to a matter and that power or function has been delegated in pursuance of this Law or any Act of the Commonwealth, of a State or of a Territory, that power or function may be exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter.”.

Part 1.3:

Repeal the Part, substitute:

“Division 9—Interpreting the regulations

Expressions have the same meaning as in this Law

“110. (1) Subject to subsection (2), an expression has in the regulations the same meaning as it has in this Law.

“(2) Where a provision of the regulations has effect for the purposes of a particular provision of this Law, an expression has in that provision of the regulations the same meaning as it has in that provision of this Law.

“(3) Subject to subsection (2), this Part applies in relation to the regulations as if the provisions of the regulations were provisions of this Law.

“(4) This section has effect except so far as the contrary intention appears in the regulations.

Severing invalid provisions

“110A. (1) The regulations are to be interpreted subject to this Law.

“(2) It is intended that where, but for this section, a provision of the regulations would have been interpreted as being inconsistent with this Law, the provision is nevertheless to be valid in so far as it is not so inconsistent.

“Division 10—Interpreting other subordinate instruments

Expressions have the same meaning as in this Law

“110B. (1) An expression has in an instrument made, granted or issued under this Law the same meaning as it has in this Law.

“(2) This Part applies in relation to an instrument made, granted or issued under this Law as if the instrument’s provisions were provisions of this Law.

SCHEDULE 1—continued

“(3) This section has effect in relation to an instrument except so far as the contrary intention appears in the instrument.

Severing invalid provisions

“110C. (1) An instrument made, granted or issued under this Law is to be interpreted:

- (a) subject to this Law; and
- (b) so as not to exceed the powers under which it was made, granted or issued.

“(2) It is intended that where, but for this section, such an instrument would have been interpreted as exceeding the powers under which it was made, granted or issued, it is nevertheless to be valid in so far as it does not exceed those powers.

“Division 11—Application of certain provisions

Chapters 1 to 6 and 9

“110D. Chapters 1 to 6, inclusive, and 9, apply, according to their tenor, in relation to:

- (a) natural persons, whether resident in this jurisdiction or in Australia or not and whether Australian citizens or not; and
- (b) all bodies corporate and unincorporated bodies, whether formed or carrying on business in this jurisdiction or in Australia or not; and
- (c) acts and omissions outside this jurisdiction, whether in Australia or not.

Application of this Law in coastal sea

“110E. This Law has effect in and in relation to the coastal sea of this jurisdiction as if that coastal sea were part of this jurisdiction.

“PART 1.3—APPLICATION ORDERS

Power to make

“111A. (1) The Minister may make written orders, to be known as application orders, specifying matters that this Law requires or permits to be specified by or in application orders.

“(2) An order under this section must not be inconsistent with this Law.

Orders under this Part and corresponding laws

“111B. (1) The object of this section is to make it easier to find out how the Corporations Law of each jurisdiction operates so far as concerns matters that, because of differences in the circumstances of

SCHEDULE 1—continued

the various jurisdictions, are dealt with by application orders under section 111A of that Law.

“(2) An order under section 111A of this Law may be included in the same document as an order that is, or as 2 or more orders each of which is, an order under section 111A of the Corporations Law of another jurisdiction.

“(3) Where, under subsection (2), 2 or more orders are included in the same document, the text of the respective orders:

- (a) may be integrated and arranged so as to present more clearly and simply the matters that are specified by or in the orders for the purposes of corresponding provisions of the laws of the jurisdictions concerned; and
- (b) in particular, may be arranged so as to allow the reader to compare more easily the matter specified for the purposes of a provision of one law with the matter specified for the purposes of the corresponding provision of another law.

“(4) Where:

- (a) under subsection (3), the text of 2 or more orders (in this subsection called the ‘**principal orders**’) has been integrated and arranged as mentioned in that subsection; and
 - (b) under subsection (2), 2 or more orders each of which amends any of the principal orders are included in the same document;
- the text of the amending orders may be integrated and arranged so that the arrangement of the amendments corresponds to the arrangement of the text of the principal orders.

“(5) Nothing in this section prejudices the validity of a document that purports to set out, in any form, an order under section 111A.

Specifying a matter by reference to another instrument

“111C. (1) Subject to subsection 111A (2), an application order may specify a matter by applying, adopting or incorporating, with or without modifications:

- (a) the provisions of:
 - (i) an Act of this jurisdiction; or
 - (ii) regulations under such an Act;as in force at a particular time or as in force from time to time; or
- (b) matter contained in any other instrument or writing as in force or existing when the order takes effect.

“(2) Except as otherwise expressly provided in this Law, an application order must not specify a matter by applying, adopting or

SCHEDULE 1—continued

incorporating matter contained in an instrument or other writing as in force or existing from time to time.

Notification in the *Gazette*

“111D. As soon as practicable after an application order is made, the Minister must cause to be published in the *Gazette* a notice of the order having been made, and of the place or places where copies of the order can be bought.

When order takes effect

“111E. An application order takes effect from:

- (a) a specified day; or
- (b) a specified time on a specified day; or
- (c) the day, or day and time, of commencement of a specified Commonwealth Act or of a specified provision of a Commonwealth Act; or
- (d) otherwise—the day on which notice of the order having been made is published under subsection 111D (1).

Interpretation of application orders

“111F. (1) Subject to subsection (2), an expression has in an application order the same meaning as it has in this Law.

“(2) Where a provision of an application order has effect for the purposes of a particular provision of this Law or the regulations, an expression has in that provision of the order the same meaning as it has in that provision of this Law or the regulations.

“(3) Subject to subsection (2), Part 1.2 applies in relation to an application order as if the order’s provisions were provisions of this Law.

“(4) This section has effect in relation to an order except so far as the contrary intention appears in the order.

Severing invalid provisions

“111G. (1) An application order is to be interpreted:

- (a) subject to this Law; and
- (b) so as not to exceed the powers conferred by this Part.

“(2) It is intended that where, but for this section, an application order would have been interpreted as exceeding the powers conferred by this Part, the order is nevertheless to be valid in so far as it does not exceed those powers.”.

SCHEDULE 1—continued

Amendments of Chapter 2

Section 112:

Repeal the section, substitute:

Outsize partnerships and associations

“112. (1) An outsize partnership or association must not be formed unless it is incorporated or formed under:

- (a) a law of the Commonwealth or of this or another jurisdiction;
or
- (b) letters patent.

“(2) A person must not participate in the formation of an outsize partnership or association unless it is incorporated or formed under:

- (a) a law of the Commonwealth or of this or another jurisdiction;
or
- (b) letters patent.

“(3) For the purposes of this section, a partnership or association is outsize if, and only if, it:

- (a) has for one or more of its objects the acquisition of gain by the partnership or association or any of its members; and
- (b) consists of more than:
 - (i) if the partnership or association is formed to carry on a profession or calling of a kind specified in an application order—the number of persons specified in the application order in relation to that kind of profession or calling; or
 - (ii) in any other case—20 persons.”.

Section 113:

Repeal the section.

Subsection 118 (2):

Omit the subsection, substitute:

“(2) The application must:

- (a) state that it is desired to incorporate the company under the Corporations Law of this jurisdiction; and
- (b) contain the prescribed information and matters; and
- (c) be accompanied by:
 - (i) in any case—the prescribed documents (if any); and
 - (ii) unless subsection (3) applies—the memorandum, and the articles (if any), of the proposed company.”.

SCHEDULE 1—continued

Paragraph 120 (1) (b):

Omit “or Part 4.1”, substitute “, Part 4.1 or a law corresponding to this Part or Part 4.1”.

Paragraph 121 (2) (a):

Insert “of the Corporations Law of this jurisdiction” after “Division”.

Paragraph 122 (a):

Omit “this Act (other than section 155)”, substitute “this Law”.

Heading to Division 2 of Part 2.2:

Omit the heading, substitute:

“Division 2—Registration of existing companies”.

Section 126:

Repeal the section, substitute:

Existing companies taken to be registered under this Division

“126. (1) This section applies to each body corporate that was, immediately before the commencement of this Division, incorporated, or taken to be incorporated, under a previous law of this jurisdiction corresponding to this Chapter.

“(2) At the commencement of this Division, the body corporate is taken to be registered as a company under this Division.”.

Section 127:

Repeal the section.

Section 128:

Repeal the section.

Section 129:

Repeal the section, substitute:

Effect of body corporate being taken to be registered under this Division

“129. (1) This section applies to each body corporate (in this section called the ‘company’) that is taken to be registered as a company under this Division.

“(2) The Commission must, as soon as practicable after the commencement of this Division, allot to the company a registration number distinct from the registration number of each body corporate

SCHEDULE 1—continued

(other than the company) already registered under this Part, Part 4.1 or a law corresponding to this Part or Part 4.1.

“(2A) If:

- (a) before the commencement of this Division, the Commission allotted to the company a number purporting to be a registration number; and
- (b) as at that commencement, that number is distinct from each number that purports to be a registration number and that the Commission has allotted to a body corporate (other than the company);

the number referred to in paragraph (a) is taken to have been allotted to the company under subsection (2) at that commencement.

“(3) The company is taken to be registered as a company of whichever of the following classes:

- (a) a company limited by shares;
- (b) a company limited by guarantee;
- (c) a company limited both by shares and by guarantee;
- (d) an unlimited company;
- (e) in the case of a mining company—a no liability company;

most nearly corresponds to the class in which the company was included under the corresponding previous law immediately before the commencement of this Division.

“(4) The company is taken to be registered:

- (a) if it was a proprietary company under the corresponding previous law—as a proprietary company; or
- (b) in any other case—as a public company.”.

Subsection 130 (1):

Omit the subsection, substitute the following subsection:

“(1) This section applies to each body corporate that is taken to be registered as a company under this Division.”.

Subsection 130 (2):

Omit “The provisions that, at the time immediately before the company’s registration day, formed part of the company’s memorandum, and any provisions that were at that time deemed by virtue of a law of that State or Territory to form part of that memorandum, shall be deemed to be,” substitute “The provisions that, at the time immediately before the commencement of this Division, formed part of the company’s memorandum, and any provisions that were at that time taken by a law of this jurisdiction to form part of that memorandum, are taken to be,”.

SCHEDULE 1—continued

Subsection 130 (3):

Omit “deemed by virtue of such a law to form part of those articles, shall be deemed to be,”, substitute “taken by such a law to form part of those articles, are taken to be,”.

Section 131:

Omit “Act” (wherever occurring), substitute “Law”.

Paragraphs 131 (1) (c) and (2) (a):

Insert “previous” before “law”.

Subsection 132 (1):

Insert “previous” before “law”.

Subsection 132 (2):

Omit “Act” (wherever occurring), substitute “Law”.

Subsection 132 (3):

(a) Omit “Act”, substitute “Law”.

(b) Omit “when the company was not a company”, substitute “before the company’s registration day”.

Heading to Division 3 of Part 2.2:

Omit “*foreign companies*”, substitute “*non-companies*”.

Subsection 133 (1):

Omit “foreign company”, substitute “non-company”.

Subsection 133 (2):

Omit “Subject to Division 6, the”, substitute “The”.

Section 134:

Omit “foreign company” (wherever occurring), substitute “non-company”.

Section 135:

Omit “foreign company”, substitute “non-company”.

Subsection 136 (1):

Omit “foreign company”, substitute “non-company”.

Paragraph 136 (1) (f):

Omit “foreign company”, substitute “non-company”.

Paragraph 136 (2) (a):

After “4.1” insert “or a corresponding law”.

SCHEDULE 1—continued

Paragraph 136 (2) (b):

Omit “State or Territory”, substitute “jurisdiction”.

Subsection 136 (3):

Omit “foreign company”, substitute “non-company”.

Subsection 137 (2):

Omit “or Part 4.1”, substitute “, Part 4.1 or a law corresponding to this Part or Part 4.1”.

Section 138:

Repeal the section, substitute:

Registered body

“138. Where a registered body becomes registered under this Division or a corresponding law, the Commission must remove the body’s name from the register kept for the purposes of Division 1 or 2, as the case requires, of Part 4.1 and of each law corresponding to that Division, but may keep any or all of the documents that were lodged or registered under that Division and relate to the body.”.

Subsection 139 (1):

Omit “foreign company”, substitute “non-company”.

Subsection 139 (2):

Omit all the words before “had”, substitute “Such provisions of the non-company’s constitution as this Law would, if the non-company”.

Subsection 140 (1):

Omit “foreign company”, substitute “non-company”.

Paragraph 140 (1) (b):

Omit “Act”, substitute “Law”.

Division 4 of Part 2.2:

Repeal the Division, substitute:

“Division 4—Registering recognised companies as companies

Recognised company may apply for registration

“142. (1) A recognised company may lodge an application to be registered as a company under this Division.

“(2) The Commission must grant an application under this Division if, and only if:

- (a) the Commission is satisfied that section 143 does not disentitle the applicant from being registered under this Division; and

SCHEDULE 1—continued

(b) the application was made in accordance with section 144.

Externally-administered body corporate not to be registered

“143. A recognised company is not entitled to be registered under this Division if:

- (a) it is an externally-administered body corporate; or
 - (b) an application has been made to a court (in Australia or elsewhere):
 - (i) to wind up the recognised company; or
 - (ii) for the approval of a compromise or arrangement between the recognised company and another person;
- and has not been dealt with.

Form and content of application

“144. (1) An application by a recognised company under section 142 must be in writing in the prescribed form and must be accompanied by:

- (a) a certificate issued to the recognised company, not earlier than one month before the date when the application is lodged, under the provisions of the Corporations Law of the recognised company's place of origin that correspond to Division 4A; and
- (b) evidence acceptable to the Commission that section 143 does not disentitle it from being registered under this Division; and
- (c) such other documents and information (if any) as are prescribed or as the Commission requires by written notice given to the recognised company.

“(2) Where:

- (a) a document is required by or under subsection (1) to be lodged; and
- (b) the document has previously been lodged with the NCSC or the Commission; and
- (c) the Commission now has the document;

the Commission may dispense with the requirement.

Registration of applicant as a company

“145. (1) This section has effect where the Commission grants an application under this Division.

“(2) The Commission must register the applicant as a company by registering the application and must allot to the company a registration number distinct from the registration number of each body corporate (other than the company) already registered under this Part, Part 4.1 or a law corresponding to this Part or Part 4.1.

SCHEDULE 1—continued

“(3) The Commission must register the applicant as a company of whichever of the following classes:

- (a) a company limited by shares;
- (b) a company limited by guarantee;
- (c) a company limited both by shares and by guarantee;
- (d) an unlimited company;
- (e) in the case of a mining company—a no liability company;

corresponds to the class in which the applicant is included under the law of its place of origin.

“(4) The Commission must register the applicant:

- (a) if the applicant was registered as a proprietary company in its place of origin—as a proprietary company; or
- (b) if the applicant was registered as a public company in its place of origin—as a public company.

Constitution of Division 4 company

“146. (1) This section applies where a recognised company is registered as a company under this Division.

“(2) Such provisions of the recognised company’s constitution as this Law would, if the recognised company had originally been incorporated under Division 1 on its registration day, have required its memorandum to include are taken to be the company’s registered memorandum and bind the company and its members accordingly.

“(3) The other provisions of the constitution are taken to be the company’s registered articles and bind the company and its members accordingly.

“(4) Where any of the documents making up a recognised company’s constitution is or are in a language other than English:

- (a) a reference in this section to the constitution is a reference to the translation of the document or documents concerned into the English language that was lodged with the application for registration under this Division, irrespective of the correctness of the translation; but
- (b) nothing in this subsection affects any liability of the recognised company or its members existing immediately before the registration of the recognised company under this Division.

“Division 4A—Transfer of company’s incorporation to another jurisdiction

Certificate authorising application for transfer of incorporation

“147. (1) A company may apply to the Commission for a certificate authorising it to apply for registration as a company under the Corporations Law of another jurisdiction.

SCHEDULE 1—continued

“(2) An application under subsection (1) must be in the prescribed form and must be accompanied by:

- (a) a declaration in writing signed by the directors of the company or, if the company has more than 2 directors, a majority of the directors, to the effect that they have made an inquiry into the affairs of the company and that at a meeting of directors have formed an opinion that the company will be able to pay its debts as they fall due; and
- (b) a report in the prescribed form as to affairs of the company, made up to the latest practicable date before the making of the application, showing the assets and liabilities of the company.

“(3) On application under subsection (1), the Commission must issue a certificate if and only if:

- (a) the company has passed a special resolution approving the application for the certificate; and
- (b) the company has given to its creditors, in a manner approved by the Commission, notice of its intention to apply for such a certificate; and
- (c) the Commission is not aware of any failure of the company to comply with any applicable requirement of this Law; and
- (d) the Commission is not aware of any other reason why the certificate should not be granted; and
- (e) both the Minister, and the Minister for this jurisdiction, have consented to the issuing of the certificate.

“(4) A certificate may be issued under subsection (3) subject to such conditions as are specified in the certificate.

“(5) With such modifications as are necessary, subsections 172 (6) to (10) (inclusive) and section 173 apply to and in respect of the proposal, passing and lodging, and the cancellation or confirmation by the Court, of a special resolution relating to an application for a certificate under this section as if it were a special resolution under section 172.

Effect of registration of company under Corporations Law of another jurisdiction

“147A. Where, under the provisions of the Corporations Law of another jurisdiction that correspond to Division 4, the Commission registers a company as a company under that Corporations Law, the company ceases to be incorporated under this Law from the time at which it is taken, under the provision of that Corporations Law that corresponds to section 150, to be a company duly incorporated under that Corporations Law.”

SCHEDULE 1—continued

Subsection 148 (1):

Omit “2,”.

Paragraph 148 (2) (a):

Insert “of the Corporations Law of this jurisdiction” after “Division”.

Section 149:

Omit “company under Division 2, 3 or 4”, substitute “Division 3 company or Division 4 company”.

Paragraph 149 (a):

Omit “Act (other than section 155)”, substitute “Law”.

After section 149:

Insert:

Effect of certificate issued under previous law

“149A. A certificate purporting to be issued, under a corresponding previous law, by the authority responsible for administering that law stating that a specified body corporate has been registered as a company under that or another corresponding previous law is conclusive evidence:

(a) that:

- (i) all the requirements of the law concerned in respect of registration of the body corporate under that law; and
- (ii) all matters precedent and incidental to the registration of the body corporate under that law;

have been complied with; and

- (b) that the body corporate referred to in the certificate was duly registered as a company under that law and was taken to be a company duly incorporated under that law.”.

Subsection 150 (1):

Insert “or taken to be registered” after “registered” (first occurring).

Subsection 150 (2):

Omit “by force of this subsection,”.

Subsection 150 (3):

Omit the subsection, substitute:

“(3) The body is taken to be a company duly incorporated under this Law.”.

Subsections 150 (4) and (5):

Omit the subsections.

SCHEDULE 1—continued

Paragraphs 152 (2) (a) and (b) and (3) (b):

Before “law” insert “previous”.

After subsection 152 (3):

Insert:

“(3A) A Division 4 company that, immediately before its registration day:

- (a) kept a register in accordance with a law corresponding to a provision referred to in paragraph (1) (a); or
- (b) kept books for the purpose of complying with a law corresponding to section 258;

is taken to have complied with paragraph (1) (a) or (c) in relation to that register or those books, as the case may be.

“(3B) Without limiting the generality of paragraph (1) (b), a Division 4 company that, immediately before its registration day:

- (a) kept a register as mentioned in paragraph (3A) (a); and
- (b) was required by a law corresponding to a provision of this Law to include particular information in that register;

must so include the information within 14 days after that day.”.

Division 6 of Part 2.2:

Repeal the Division.

Division 7 of Part 2.2:

Repeal the Division.

Subsection 161 (1):

Omit “Australia” (wherever occurring), substitute “this jurisdiction”.

Paragraph 161 (2) (a):

Omit “Act”, substitute “Law”.

Section 163:

Repeal the section.

Paragraph 164 (3) (b):

Before “law” insert “previous”.

Paragraphs 165 (1) (d) and (e):

Before “law” insert “previous”.

Subsection 165 (2):

Before “law” (first occurring) insert “previous”.

SCHEDULE 1—continued

After section 166:

Insert the following section in Division 1 of Part 2.3:

Recognition of companies from other jurisdictions

“166A. (1) A recognised company has in this jurisdiction the same legal personality, capacity, powers and status as if it were a company.

“(2) Without limiting the generality of subsection (1), a recognised company has power to hold land in this jurisdiction.

“(3) Subsection (1) does not impose on a recognised company an obligation that it would not have if that subsection had not been enacted.”.

Subparagraph 167 (1) (a) (ii):

Before “law” (first occurring) insert “previous”.

Subsection 174 (1) (definition of “translation day”):

Omit the definition, substitute:

“‘translation day’, in relation to a company, means the prescribed day.”.

Subsection 174 (2):

Omit the subsection, substitute:

“(2) Where, throughout the period beginning immediately before a Division 2 company’s translation day and ending immediately before its registration day, the company’s memorandum:

- (a) prohibited the alteration of an entrenched provision; or
- (b) provided as mentioned in a previous law corresponding to subsection 172 (3) in respect of a special resolution altering or adding to an entrenched provision;

then, so long as it continues so to prohibit, or so to provide, the company’s memorandum is taken:

- (c) also to prohibit the omission of the entrenched provision; or
- (d) also to provide to the same effect in respect of a special resolution omitting the entrenched provision;

as the case may be.”.

Paragraph 179 (3) (g):

Add at the end “or”.

Paragraph 179 (3) (h):

Omit “or”.

SCHEDULE 1—continued

Paragraph 179 (3) (j):

Omit the paragraph.

Subsection 180 (2):

Omit “according to the law of the Capital Territory”.

Paragraph 181 (6) (b):

Insert “previous” before “law”.

Paragraph 185 (7) (a):

Omit “the company law of a State or Territory”, substitute “a corresponding previous law”.

Subparagraph 185 (7) (b) (vii):

Add at the end “or”.

Subparagraph 185 (7) (b) (viii):

Omit “or”, substitute “and”.

Subparagraph 185 (7) (b) (ix):

Omit the subparagraph.

Subsections 195 (8), (9), (10), (12) and (15):

Omit “Act”, substitute “Law”.

Paragraph 195 (15) (c):

Before “law” insert “previous”.

Paragraph 205 (6) (a):

Insert “or the corresponding provision of that Act as it applies as a law of this jurisdiction” after “*Crimes Act 1914*”.

Subsection 213 (12):

Omit the subsection.

Subsection 213 (13):

Renumber as subsection 213 (11).

Amendments of Chapter 3

Paragraph 218 (1) (b):

Omit “2,”.

After section 218:

Insert:

SCHEDULE 1—continued

Registered office of Division 2 company

“218A. (1) Subject to this Part, the registered office of a Division 2 company is taken to be at the place that, immediately before the commencement of Division 2 of Part 2.2, was taken by a previous law of this jurisdiction corresponding to subsection 220 (2) to be the situation of the company’s registered office for the purposes of a previous law of this jurisdiction corresponding to subsection 220 (1).

“(2) Section 217 and subsections 218 (4) and 220 (2) apply in relation to a Division 2 company as if a reference in them to a provision of this Law included a reference to a previous law of this jurisdiction corresponding to that provision of this Law.”.

Subsection 220 (3):

Omit the subsection.

Subsections 224 (2), (3), (4), (5), (6) and (7):

After “corresponding” (wherever occurring) insert “previous”.

Subsection 226 (2):

After “corresponding” insert “previous”.

Subsections 229 (1) and (2):

Omit the subsections, substitute:

“(1) An insolvent under administration must not, without the leave of the Court, manage a corporation.”.

Paragraphs 229 (3) (a) and (b):

Omit the paragraphs, substitute:

“(a) on indictment of an offence against an Australian law, or any other law, in connection with the promotion, formation or management of a body corporate or corporation; or

(b) of serious fraud; or”.

Paragraph 229 (3) (c):

Omit “a corresponding law”, substitute “a previous law corresponding to any of those provisions”.

Subsection 229 (3):

Omit all the words after “Court,”, substitute “manage a corporation”.

After subsection 229 (3):

Insert:

“(3A) Section 91A defines what, for the purposes of this section, constitutes managing a corporation.”.

SCHEDULE 1—continued

Subsection 229 (8):

Omit “law”, substitute “previous law of this jurisdiction”.

Subparagraph 230 (1) (a) (i):

(a) Omit “relevant body corporate”, substitute “body corporate”.

(b) Omit “company”, substitute “body corporate”.

Subparagraph 230 (1) (b) (i):

Omit “relevant bodies corporate”, substitute “bodies corporate”.

Subparagraph 230 (1) (c) (ii):

Omit “relevant body corporate” (wherever occurring), substitute “body corporate”.

Paragraph 230 (1) (d):

Omit “relevant body corporate”, substitute “body corporate”.

Subsection 230 (1):

Omit “relevant body corporate” (last occurring), substitute “corporation”.

Subsection 230 (3):

Omit the subsection, substitute:

“(3) A person who is subject to a section 230 order (whether made before or after the commencement of this section) must not manage a corporation.

“(3A) Section 91A defines what, for the purposes of this section, constitutes managing a corporation.”.

Subsection 230 (4):

Omit the subsection, substitute:

“(4) In this section, a reference to a period in which a person has been or was a relevant officer of a body corporate includes a reference to such a period that elapsed, or part of which elapsed, before the commencement of this Part.”.

Subsection 230 (6):

Insert:

“ ‘body corporate’ includes an unincorporated registrable body;”.

Subsection 230 (6) (definition of “relevant body corporate”):

Omit the definition.

SCHEDULE 1—continued

Subsection 230 (6) (definition of “relevant enactment”):

Omit the definition, substitute:

“‘relevant enactment’ means this Law or a previous law corresponding to provisions of this Law;”.

Subsection 232 (1) (definition of “officer”):

Omit “body corporate” (wherever occurring), substitute “corporation”.

Subsection 232 (1) (definition of “relevant body corporate”):

Omit the definition.

Subsection 232 (2):

Omit “relevant body corporate”, substitute “corporation”.

Paragraph 232 (3) (a):

Omit “company” (twice occurring), substitute “body corporate”.

Subsection 232 (4):

Omit “relevant body corporate”, substitute “corporation”.

After subsection 232 (4):

Insert:

“(4A) A reference in subsection (2) or (4) to the exercise of powers, or the discharge of duties, of an officer of a corporation is a reference to the exercise of those powers, or the discharge of those duties:

- (a) in any case—in this jurisdiction; or
- (b) if the body is a local corporation—outside this jurisdiction; or
- (c) otherwise—outside this jurisdiction but in connection with:
 - (i) the corporation carrying on business in this jurisdiction; or
 - (ii) an act that the corporation does, or proposes to do, in this jurisdiction; or
 - (iii) a decision by the corporation whether or not to do, or to refrain from doing, an act in this jurisdiction.”.

Subsection 232 (5):

- (a) Omit “relevant body corporate” (wherever occurring), substitute “corporation”.
- (b) Omit “shall not”, substitute “must not, in relevant circumstances,”.
- (c) Omit “body corporate” (last occurring), substitute “corporation”.

SCHEDULE 1—continued

Subsection 232 (6):

- (a) Omit “relevant body corporate shall not”, substitute “corporation must not, in relevant circumstances.”.
- (b) Omit “body corporate” (last occurring), substitute “corporation”.

After subsection 232 (6):

Insert:

“(6A) A reference in subsection (5) or (6), in relation to a corporation, to doing an act in relevant circumstances is a reference to doing the act:

- (a) if the body is a local corporation—in this jurisdiction or elsewhere; or
- (b) otherwise—in this jurisdiction.”.

Subsection 232 (7):

Omit “body corporate” (wherever occurring), substitute “corporation”.

Subsection 232 (8):

Omit “body corporate” (wherever occurring), substitute “corporation”.

Subsection 232 (11):

Omit “body corporate”, substitute “corporation”.

Subparagraphs 233 (1) (a) (i) and (ii):

Omit the subparagraphs, substitute:

- “(i) in the case of a company—whether within or outside Australia;
or
- (ii) in the case of a registered foreign company—within Australia;
or
- (iii) otherwise—within this jurisdiction; and”.

Subsection 233 (3) (definition of “relevant body corporate”):

Omit the definition, substitute:

“‘relevant body corporate’ means:

- (a) a company; or
- (b) a registrable body other than a registrable local body.”.

Subsection 234 (12):

Omit “Australia”, substitute “this jurisdiction”.

Subsections 235 (4) and (5):

After “corresponding” insert “previous”.

SCHEDULE 1—continued

Subsection 236 (8):

After “corresponding” insert “previous”.

Subsection 237 (19) (paragraph (a) of the definition of “exempt benefit”):

Omit “this Act had not been enacted”, substitute “this Law had not been in force”.

After section 242 (7):

Insert:

“(7A) Paragraph (7) (a) does not apply to a company that has, before the commencement of this section, lodged a return with the NCSC for the purposes of a previous law corresponding to that paragraph.”.

Subsection 242 (9):

- (a) Before “corresponding” insert “previous”.
- (b) Omit “Act”, substitute “Law”.

Paragraph 243 (2) (a):

Omit “or is made under a law”, substitute “made under a previous law”.

Paragraph 243 (2) (b):

Omit “or is served under a law”, substitute “served under a previous law”.

Paragraph 246 (8) (a):

Omit the paragraph, substitute:

“(a) a reference in this section to a requisition includes a reference to a requisition deposited before the commencement of this Law in accordance with a previous law in force at that time that corresponds to this section; and”.

Paragraph 246 (8) (b):

Before “law” insert “previous”.

Paragraph 260 (1) (b):

Omit “Commission Act”, substitute “ASC Law”.

Subsection 261 (1) (definition of “company”):

After “body” insert “other than a registrable local body”.

SCHEDULE 1—continued

Subsection 261 (1) (paragraphs (a) and (b) of the definition of “property”):

Omit the paragraphs, substitute:

- “(a) in the case of a registrable Australian body—within this jurisdiction; or
- (b) in the case of a foreign company—within Australia or an external Territory; or
- (c) otherwise—within or outside Australia;”.

Subsection 261 (4):

After “Commission”, insert “(in this jurisdiction or elsewhere)”.

Subsection 263 (3):

- (a) Omit “registrable body” (wherever occurring), substitute “body”.
- (b) Omit “were a company”, substitute “were a Division 3 company”.

Subsection 263 (4):

Omit “registrable body” (wherever occurring), substitute “body”.

Subsection 265 (4):

Omit the subsection, substitute:

“(4) Where:

- (a) a notice in respect of a charge on property of a company is lodged under section 263 or 264 (whether during or after the period within which the notice was required to be lodged); and
- (b) the notice is not accompanied by a certificate to the effect that all documents accompanying the notice have been duly stamped as required by any applicable law relating to stamp duty;

the Commission must cause to be entered in the Register the time and date when the notice was lodged and the particulars referred to in paragraphs (2) (a), (b), (c) and (d), but must cause the word ‘provisional’ to be entered in the Register next to the entry specifying that time and date.”.

Paragraph 265 (5) (b):

- (a) Insert “or such longer period as is prescribed” after “30 days”.
- (b) Omit “evidence satisfactory to the Commission that the document has been duly stamped”, substitute “a certificate to the effect set out in paragraph (4) (b)”.

Subsection 265 (5):

Omit “evidence” (last occurring), substitute “a certificate”.

SCHEDULE 1—continued

After section 265:

Insert:

Standard time for the purposes of section 265

“265A. (1) The Commission may, by *Gazette* notice, declare a specified standard time to be the standard time for the purposes of section 265 of the Corporations Law.

“(2) Where a notice is in force under subsection (1) of this section and each corresponding law, a reference in subsection 265 (2) or (4), paragraph 265 (6) (a) or (7) (c), or subsection 265 (10), (12) or (14), to entering the time when a particular event happened is a reference to entering that time as expressed in terms of the standard time specified in the notice.”.

Subsection 271 (1):

After “corresponding” (wherever occurring) insert “previous”.

Paragraphs 273 (1) (a), (b) and (c):

Omit the paragraphs, substitute:

- “(a) the charge need not be registered under a specified law of this jurisdiction; and
- (b) no provision of a specified law of this jurisdiction relating to priorities applies to or in relation to the charge; and
- (c) a failure to register a charge under a specified law of this jurisdiction does not affect the validity, or limit the effect, of the charge.”.

Paragraph 273 (2) (a):

Omit “prescribed law of a State or Territory”, substitute “specified law of this jurisdiction”.

Paragraph 273 (2) (e):

Omit “prescribed provisions (if any) of a law of that State or Territory”, substitute “specified provisions (if any) of a law of this jurisdiction”.

Subsection 273 (2):

Omit “prescribed” (last occurring), substitute “specified”.

Paragraph 273 (3) (a):

Omit “prescribed law of a State or Territory”, substitute “specified law of this jurisdiction”.

SCHEDULE 1—continued

Paragraph 273 (3) (e):

Omit “prescribed provisions (if any) of a law of that State or Territory”, substitute “specified provisions (if any) of a law of this jurisdiction”.

Subsection 273 (3):

Omit “prescribed” (last occurring), substitute “specified”.

Subsection 273 (4):

Omit “a State or Territory”, substitute “this jurisdiction”.

Section 273:

Add at the end:

“(6) In this section:
‘specified’ means specified in an application order.”.

Subsection 275 (1):

Omit the subsection, substitute:

“(1) This section applies where a body corporate is taken to be registered as a company under Division 2 of Part 2.2.”.

Paragraph 275 (2) (b):

Omit “Act”, substitute “Law”.

Paragraphs 275 (2) (c) and (d):

Before “law” insert “previous”.

Subsection 275 (3):

Omit “Act”, substitute “Law”.

Subsection 275 (4):

Omit the subsection, substitute:

“(4) Subsection (5) applies to each charge on property of the company that, immediately before the company’s registration day, was registered under a previous law corresponding to this Division.

“(5) At the commencement of the company’s registration day:

- (a) there are taken to be entered in the Register the time and date, and the particulars, entered in relation to that charge in the Register kept under that corresponding previous law; and
- (b) the time and date, and the particulars, are taken to have been entered in the Register in accordance with subsection 265 (2).”.

Section 276:

After “law” insert “, or a previous law,”.

SCHEDULE 1—continued

Section 283:

Repeal the section.

Section 286:

Repeal the section, substitute:

Interpreting accounting standards

“286. (1) An expression has in an accounting standard the same meaning as it has in this Part.

“(2) Part 1.2 applies in relation to an accounting standard as if the accounting standard’s provisions were provisions of this Part.

“(3) This section has effect except so far as the contrary intention appears in an accounting standard.

Severing invalid provisions

“286A. (1) An accounting standard is to be interpreted subject to this Law.

“(2) It is intended that where, but for this section, an accounting standard would have been interpreted as being inconsistent with this Law, the accounting standard is nevertheless to be valid in so far as it is not so inconsistent.

Evidence of text of accounting standard

“286B. A document that purports:

- (a) to be issued or published by or on behalf of the Board or the Commission; and
- (b) to set out the text of:
 - (i) a specified instrument as in force at a specified time under section 32 of the *Corporations Act 1989*; or
 - (ii) a specified provision of such an instrument;

or a copy of such a document, is, in proceedings under the Corporations Law of this jurisdiction, *prima facie* evidence that:

- (c) the specified instrument was in force at that time under that section; and
- (d) the text set out in the document is the text referred to in paragraph (b).”.

Section 288:

Repeal the section, substitute:

SCHEDULE 1—continued

Application of accounting standards approved under a corresponding previous law

“288. (1) This section applies in relation to an accounting standard (in this section called the ‘**approved standard**’) that was at the commencement of this Part an approved accounting standard within the meaning of a previous law of this jurisdiction corresponding to this Part.

“(2) As from that commencement, the approved standard has effect, with such modifications as the circumstances require, as if it were an accounting standard as defined in section 9.

“(3) In so far as it has effect because of subsection (2), the approved standard applies to a financial year of a body corporate if, and only if, it would apply in relation to that financial year for the purposes of the previous law referred to in subsection (1) if that law still applied and the body were a company within the meaning of that law.

“(4) Subsection (3) has effect despite section 285 but subject to an accounting standard as defined in section 9.

“(5) Subsection 8 (3) does not apply in relation to a reference in this section to a provision of this Law.”.

Subsection 291 (1):

Before “law” insert “previous”.

Paragraph 300 (1) (b):

Before “law” insert “previous”.

Subsection 300 (2):

Before “law” (wherever occurring) insert “previous”.

Paragraph 304 (1) (b) and section 307:

After “another company” insert “or of a recognised company”.

Subparagraphs 307 (c) (i) and (ii):

After “corresponding” insert “previous”.

Subsection 308 (5):

After “corresponding” insert “previous”.

Subsection 314 (1):

Before “law” insert “previous”.

Paragraph 314 (2) (b):

Omit the paragraph, substitute:

“(b) there were specified in it, instead of the specified requirements

SCHEDULE 1—continued

of the previous law, the corresponding requirements of this Law.”.

Subsection 317 (1):

After “corresponding” (wherever occurring) insert “previous”.

Section 322:

Repeal the section, substitute:

Continued application to Division 2 company of requirements of corresponding previous law

“322. (1) Where:

- (a) a body corporate is taken to be registered as a company under Division 2 of Part 2.2; and
- (b) as at the start of the company’s registration day, a person (being the company or anyone else) had not fully complied, in relation to the company in relation to a financial year of the company that ended before that day, with the requirements of a previous law corresponding to a provision of this Part (other than sections 289 and 290) or Part 3.7;

subsections (2) and (3) of this section apply, subject to this Law, on and after that day.

“(2) The person must comply with those requirements as if, in the previous law referred to in paragraph (1) (b):

- (a) a reference to a particular law corresponding to a provision of this Law included a reference to that provision; and
- (b) a reference to the NCSC were, or included, as the case requires, a reference to the Commission.

“(3) If, at a time, or throughout a period beginning, on or after that day, the person contravenes those requirements, this Law applies as if the person had, at that time or throughout that period, as the case may be, contravened the provision referred to in paragraph (1) (b).

“(4) The regulations may modify or vary, and may grant exemptions from compliance with, requirements with which this section requires a person to comply.”.

Paragraph 325 (1) (a):

Omit the paragraph, substitute:

- “(a) at the date of the annual general meeting, no member of the company is a person other than:
 - (i) a natural person; or
 - (ii) an exempt proprietary company that is an unlimited company; or

SCHEDULE 1—continued

- (iii) a body corporate that, for the purposes of the Corporations Law of another jurisdiction, is an exempt proprietary company and an unlimited company; and”.

Paragraph 325 (2) (b):

Omit the paragraph, substitute:

- “(b) between the day of the company’s incorporation and the day referred to in paragraph (a), no member of the company is a person other than:
 - (i) a natural person; or
 - (ii) an exempt proprietary company that is an unlimited company; or
 - (iii) a body corporate that, for the purposes of the Corporations Law of another jurisdiction, is an exempt proprietary company and an unlimited company.”.

Subparagraph 325 (5) (b) (ii):

Omit the subparagraph, substitute:

- “(ii) a body corporate that, for the purposes of the Corporations Law of another jurisdiction, is an exempt proprietary company and an unlimited company;”.

Section 336:

Repeal the section.

Paragraph 338 (a):

Omit “Act”, substitute “Law”.

Section 338:

Omit “Act” (second occurring), substitute “Law (other than section 1354)”

Paragraphs 339 (2) (a) and (b):

Omit the paragraphs, substitute:

- “(a) a body corporate is taken to be registered as a company under Division 2 of Part 2.2; and
- (b) as at the start of the company’s registration day, the company had not yet lodged with the NCSC, as required by a previous law corresponding to this Part, a return relating to a financial year of the company ending before that day;”.

Amendments of Chapter 4

Heading to Division 1 of Part 4.1:

Omit “corporations”, substitute “bodies”.

SCHEDULE 1—continued

Section 340:

Repeal the section, substitute:

When a registrable Australian body may carry on business in this jurisdiction

“340. A registrable Australian body must not carry on business in this jurisdiction unless:

- (a) it is incorporated in this jurisdiction; or
- (b) it is unincorporated but is formed, or has its head office or principal place of business, in this jurisdiction; or
- (c) it is registered under this Division or a corresponding law; or
- (d) it has applied to be so registered and the application has not been dealt with.”.

Section 341:

Omit “Subject to this Part, where a registrable Australian corporation lodges for registration under this Division:”, substitute “Subject to section 102A and this Part, where a registrable Australian body lodges an application for registration under this Division that is in the prescribed form and is accompanied by:”.

Paragraph 341 (d):

- (a) Before “in relation to” insert “unless the body is a registrable local body—”.
- (b) Omit “corporation” (wherever occurring), substitute “body”.

Subparagraph 341 (e) (i):

Omit “Act”, substitute “Law or a corresponding law”.

Paragraphs 341 (g) and (h):

Omit the paragraphs, substitute:

- “(g) grant the application and register the body under this Division by entering the body’s name in a register kept for the purposes of this Division and of each corresponding law; and
- (h) allot to the body a registration number distinct from the registration number of each body corporate (other than the body) already registered under Part 2.2, this Part or a law corresponding to Part 2.2 or to this Part.”.

After section 342 (1):

Insert:

“(1A) For the purposes of this section, a body carries on business if, and only if, the body carries on business in this jurisdiction or elsewhere.”.

SCHEDULE 1—continued

Subsection 342 (1):

Omit “interstate”.

Subsection 342 (2):

Omit “interstate”.

Subsection 342 (3):

Omit “interstate”.

Paragraph 342 (9) (a):

Omit “interstate”.

Section 342:

- (a) Omit “corporation” (wherever occurring), substitute “body”.
- (b) Omit “corporation’s” (wherever occurring), substitute “body’s”.

Section 343:

Repeal the section, substitute:

When a foreign company may carry on business in this jurisdiction

“343. A foreign company must not carry on business in this jurisdiction unless:

- (a) it is registered under this Division or a corresponding law; or
- (b) it has applied to be so registered and the application has not been dealt with.”.

Section 344:

Omit “Subject to this Part, where a foreign company lodges for registration under this Division:”, substitute “Subject to section 102A and this Part, where a foreign company lodges an application for registration under this Division that is in the prescribed form and is accompanied by:”.

Paragraphs 344 (h) and (j):

Omit the paragraphs, substitute:

- “(h) grant the application and register the foreign company under this Division by entering the foreign company’s name in a register kept for the purposes of this Division and of each corresponding law; and
- (j) allot to the foreign company a registration number distinct from the registration number of each body corporate (other than the foreign company) already registered under Part 2.2, this Part or a law corresponding to Part 2.2 or to this Part.”.

SCHEDULE 1—continued

Subsection 349 (8):

After “(7)”, insert “or a corresponding law”.

Subsection 358 (2):

Omit the subsection, substitute:

“(2) A registered body must not use a name in this jurisdiction unless:

- (a) the body is registered under that name under Division 1 or 2 or a corresponding law; or
- (b) the name is registered in respect of the body under the law of this jurisdiction relating to business names.”.

After subsection 359 (1):

Insert:

“(2A) A registered body must ensure that its registered office under this section and its registered offices under the laws corresponding to this section are all at the same place.”.

After subsection 359 (3):

Insert:

“(4A) Where:

- (a) a registered body has a registered office under a law corresponding to this section; and
- (b) the situation of that office changes;

the situation of the body’s registered office under this section is taken to change to the new situation of the office referred to in paragraph (a).”.

Subsection 360 (2):

After “(1)”, insert “or a corresponding law”.

Subparagraph 361 (1) (d) (i):

Omit “a local”, substitute “an Australian”.

Subparagraph 361 (1) (e) (i):

Omit “Act”, substitute “Law or a corresponding law”.

Subsection 362 (1):

Omit the subsection, substitute:

“(1A) A reference in this section to issuing, signing or publishing is a reference to issuing, signing or publishing, as the case may be, in this jurisdiction.

SCHEDULE 1—continued

“(1) This section applies to a registrable body other than a registrable local body.”.

Subsection 362 (9):

Omit “its registered office and of every office and place”, substitute “every office and place (including its registered office) that is in this jurisdiction.”.

Subsection 362 (10):

After “place”, insert “(including its registered office) that is in this jurisdiction.”.

Section 363:

Add at the end:

“(6) Subject to subsection 8 (4), subsection 8 (3) applies in relation to a reference in this section.”.

Section 364:

Repeal the section, substitute:

Power to hold land

“364. A registered body has power to hold land in this jurisdiction.”.

Section 365:

Repeal the section, substitute:

“Division 4—Transitional

Bodies registered under previous foreign companies law of this jurisdiction

“365A. This Division (except section 365F) applies to each registrable body that was, immediately before the commencement of this Part (in this Division called the ‘commencement’), registered under a previous law of this jurisdiction relating to foreign companies within the meaning of that law.

Deemed registration under Division 1 or 2

“365B. (1) If the body is a registrable Australian body, the Commission is taken to have registered it under Division 1 at the commencement.

“(2) If the body is a foreign company, the Commission is taken to have registered it under Division 2 at the commencement.

“(3) The Commission need not issue a certificate under subsection 360 (1) merely because of the effect of this section.

SCHEDULE 1—continued

Registered office under previous law

“365C. Subject to this Part, the body’s registered office under section 359 is taken to be at the place that, immediately before the commencement, was taken by a previous law of this jurisdiction corresponding to subsection 363 (2) to be the situation of the body’s registered office for the purposes of a previous law of this jurisdiction corresponding to subsection 363 (1).

Transition to single registered office in Australia

“365D. (1) This section applies if the body has under a law or laws corresponding to section 359 a registered office that is, or registered offices that are, because of a law or laws corresponding to section 365C, at a place or places different from the place of the body’s registered office under section 359.

“(2) The body must ensure that, within 6 months after the commencement:

- (a) all of the offices referred to in subsection (1) are at the same place; and
- (b) the body has, in relation to a change in the situation of any of those offices that happens, or is taken by subsection 359 (4A) or a corresponding law to happen, and is necessary for the body to comply with this section, complied with subsection 359 (3) or a corresponding law, as the case requires.

“(3) If the body contravenes subsection (2), the Commission may give to the body a notice stating that, as from the end of 6 days after the day on which the notice is given, the body’s registered office under section 359 of the Corporations Law will be at a specified place (being a place that is taken because of subsection (6) of this section to be a registered office of the body under section 359 of this Law).

“(4) If the Commission gives a notice under subsection (3), then:

- (a) unless the body’s registered office under section 359 is already at the specified place, that office changes to that place at the end of 6 days after the day on which the notice is given; and
- (b) the Commission must keep a copy of the notice.

“(5) A copy of a notice that is kept under subsection (4) is taken to be a notice lodged by the body under subsection 359 (3) on the day when the first-mentioned notice was served under subsection (3).

“(6) Until the body complies with subsection (2) or the end of 6 days after the day on which the Commission gives a notice under subsection (3), each place that, apart from this subsection, would be taken by subsection 363 (2) or a corresponding law to be the situation of the body’s registered office for the purposes of subsection 363 (1) or a corresponding law is taken for all purposes (including subsection

SCHEDULE 1—continued

363 (1)) to be the situation of a registered office of the body under section 359.

Application of sections 359 and 363

“365E. Subsections 359 (1) and (4) and 363 (1) and (2) apply in relation to the body as if a reference in them to a provision of this Law included a reference to a previous law of this jurisdiction corresponding to that provision of this Law.

Application of section 363 in relation to certain bodies

“365F. (1) This section applies where a registrable body is registered under a law corresponding to Division 1 or 2 but is not registered under that Division.

“(2) Subsection 363 (2) does not apply in relation to the body.

“(3) Instead, each place that is taken by a law corresponding to subsection 363 (2) to be the situation of the body’s registered office for the purposes of a law corresponding to subsection 363 (1) is taken to be the situation of a registered office of the body for the purposes of subsection 363 (1).”.

After paragraph 367 (1) (a):

Insert:

“(aa) is included on the national business names register in respect of a person other than the body corporate; or”.

Subsection 367 (2):

(a) Insert “or (aa)” after “(1) (a)”.

(b) Insert “or included on the national business names register,” after “registered,”.

Paragraph 367 (2) (b):

Omit the paragraph, substitute:

“or (b) the use in one or both of those names of any word, abbreviation or symbol as required by section 368; or

(ba) the use in one or both of those names of:

(i) an abbreviation or symbol referred to in section 371 instead of the equivalent word referred to in the section concerned; or

(ii) a word referred to in section 371 instead of the equivalent abbreviation or symbol referred to in the section concerned; or”.

SCHEDULE 1—continued

Subsections 367 (3) and (4):

Omit the subsections, substitute:

“(3) A name that would not otherwise be available to a body corporate is available to the body corporate if it is reserved or registered in respect of the body corporate.

“(4) A name that would not otherwise be available to a body corporate is available to the body corporate if the Minister has consented in writing to the name being available to the body corporate.

“(4A) Subsection (4) does not apply to a name that is not available to a body corporate because it is included on the national business names register in respect of another body corporate.”.

Section 369:

Omit “corporation” (wherever occurring), substitute “person”.

Subsection 370 (2):

Omit “Division 2”.

After section 372:

Insert:

Certain names taken to be registered at commencement of Law

“372A. (1) Subject to this Part, where a body corporate is taken to be registered as a company under Division 2 of Part 2.2, the body corporate’s name is taken to be registered in respect of the body corporate.

“(2) Subject to this Part, where a registrable Australian body is taken to be registered under Division 1 of Part 4.1, the body’s name is taken to be registered in respect of the body.

“(3) Subject to this Part, where a foreign company is taken to be registered under Division 2 of Part 4.1, the foreign company’s name is taken to be registered in respect of the foreign company.”.

Subsection 374 (1):

Omit the subsection, substitute:

“(1) A body corporate (other than a body corporate that is registered under Division 2 of Part 4.1) may lodge an application to reserve a specified name as the name by which it is proposed that the body be registered as a company under Division 3 of Part 2.2.”.

Subsections 374 (3) and (4)

Omit the subsections, substitute:

“(4) Subject to this Part, where, at the commencement of this Law:
(a) a registrable Australian body (not being a body to which

SCHEDULE 1—continued

subsection 372A (2) applies) was registered or incorporated by a particular name under the law of its place of origin; or

- (b) a foreign company (not being a foreign company to which subsection 372A (3) applies) was registered or incorporated by a particular name under the law of its place of origin;

then, so long as the registrable Australian body or foreign company continues to be registered or incorporated by that name under that law, the name is taken, except for the purposes of subsection 367 (1), to be reserved under this section in respect of the registrable Australian body or foreign company, as the case may be.”.

Paragraph 374 (5) (b):

Omit “2, 3 or 4”, substitute “3”.

Subsections 376 (4) and (5):

Omit the subsections.

Subsection 383 (11):

Omit the subsection, substitute:

“(11) Where:

- (a) a body corporate is taken to be registered as a company under Division 2 of Part 2.2 of the Corporations Law of this jurisdiction; and
- (b) a licence under a previous law of this jurisdiction corresponding to this section was in force in respect of that body corporate immediately before its registration day;

the licence continues in force, subject to this section, as if it had been issued by the Commission under this section.”.

After section 383:

Insert in Part 4.2:

Names reserved within 2 months before commencement

“383A. Where, within 2 months before the commencement of this Part, a name was reserved under a corresponding previous law in respect of a body corporate, the name is taken to be reserved under this Part in respect of that body corporate for so much of the period of 2 months after the name was reserved as occurs after that commencement.”.

Subsection 399 (1) (definition of “body corporate”):

Omit the definition.

Subsection 399 (1) (definition of “investment company”):

Omit “body corporate”, substitute “corporation”.

SCHEDULE 1—continued

Subsection 399 (1) (definition of “net tangible assets”):

Omit “body corporate”, substitute “corporation”.

Subsection 399 (3):

Omit the subsection, substitute:

“(3) The Commission may, by order published in the *Gazette*, declare to be an investment company a corporation that:

(a) is:

(i) a company; or

(ii) a registrable Australian body that is, or is required to be, registered under Division 1 of Part 4.1; or

(iii) a foreign company that is, or is required to be, registered as a foreign company under Division 2 of Part 4.1; and

(b) is engaged primarily in the business of investment in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control.”.

Subsections 399 (4) and (5):

Omit “body corporate” (wherever occurring), substitute “corporation”.

Subsection 399 (6):

(a) Omit “body corporate”, substitute “corporation”.

(b) Omit “body” (second and third occurring), substitute “corporation”.

Section 399:

Add at the end:

“(7) Where, immediately before the commencement of this Part, an order made under a previous law corresponding to subsection (3) was in force in relation to a corporation of a kind described in paragraph (3) (a):

(a) the order continues in force, subject to this Part, as if it had been made by the Commission under subsection (3); and

(b) subsections (5) and (6) apply in relation to the order as if the specification in the order of any provisions of the previous corresponding law that applied to the investment company were the specification of the provisions of this Law to which the specified provisions correspond.”.

Section 401:

Omit “body corporate” (wherever occurring), substitute “corporation”.

SCHEDULE 1—continued

Subsection 402 (3):

Omit “body corporate” (wherever occurring), substitute “corporation”.

Paragraph 404 (1) (b):

Omit “body corporate”, substitute “corporation”.

Subsection 404 (2):

Omit “body corporate” (wherever occurring), substitute “corporation”.

Section 404:

Add at the end:

“(3) Where, immediately before the commencement of this section, an order made under a previous law corresponding to subsection (2) was in force in relation to a corporation, the order continues in force as if it had been made by the Commission under subsection (2).”.

Subsection 406 (2):

Omit “body corporate” (wherever occurring), substitute “corporation”.

Amendments of Chapter 5

Subsection 411 (1):

After “places” insert “(in this jurisdiction or elsewhere)”.

After subsection 411 (3):

Insert:

“(3A) In considering whether to make an order under subsection (1) or (1A) for a meeting to be held in another jurisdiction, the Court must have regard to where the creditors or members, or the creditors or members included in the class concerned, as the case requires, reside.”.

Subsection 411 (8):

Omit the subsection, substitute:

“(8) Paragraph (7) (d) does not apply in relation to a body corporate authorised by or under a law of this jurisdiction to administer the compromise or arrangement concerned.

“(8A) Subsection (7) does not disqualify a person from administering a compromise or arrangement under an appointment validly made before the commencement of this section.”.

SCHEDULE 1—continued

After section 415:

Insert the following section in Part 5.1:

Enforcement of orders made in other jurisdictions

“415A. (1) Where:

- (a) the Federal Court makes an order under subsection 411 (1) or (1A) of the Corporations Law of another jurisdiction; or
- (b) the Supreme Court of another jurisdiction makes an order under subsection 411 (1) or (1A) of the Corporations Law of any jurisdiction; or
- (c) the Supreme Court of this jurisdiction makes an order under subsection 411 (1) or (1A) of the Corporations Law of another jurisdiction;

the order has effect, and may be enforced in all respects, in this jurisdiction as if it were an order made under subsection 411 (1) or (1A) of this Law, in relation to a Part 5.1 body, by:

- (d) if paragraph (a) applies—the Federal Court; or
- (e) if paragraph (b) or (c) applies—the Supreme Court of this jurisdiction.

“(2) A compromise or arrangement that is binding on the creditors, or a class of creditors, of a body corporate because of subsection 411 (4) of the Corporations Law of another jurisdiction is also binding on the creditors of the body, or the creditors in that class, whose debts are recoverable by action in a court of this jurisdiction.”.

Section 416 (definition of “corporation”):

Omit the definition.

Section 416 (paragraphs (a), (b) and (c) of the definition of “property”):

Omit the paragraphs, substitute:

- “(a) in the case of a company—within or outside Australia; or
- (b) in the case of a registered foreign company—within Australia or an external Territory; or
- (c) otherwise—within this jurisdiction;”.

Subsection 418 (3):

Omit “an Act or a law of a State or Territory”, substitute “a law of the Commonwealth, of a State or of a Territory”.

Section 428:

Insert “within or outside this jurisdiction or” after “whether”.

SCHEDULE 1—continued

Subsection 433 (1):

Omit the subsection, substitute:

“(1) In this section:

‘registered body’ does not include a registrable local body.”.

Subsection 433 (2):

Omit “corporation” (wherever occurring), substitute “company or registered body”.

Subsection 433 (4):

Omit “foreign company” (twice occurring), substitute “registered body”.

Subsection 433 (5):

Omit “of the corporation”.

Subsections 444 (1) and (2):

Omit “an Australian court”, substitute “a court of this jurisdiction”.

Section 459:

Repeal the section.

Paragraph 461 (h):

Omit “Commission Act”, substitute “ASC Law”.

Subsection 462 (1):

Omit the subsection.

Section 463:

Omit “459,”.

Subsection 464 (1):

Omit “Commission Act”, substitute “ASC Law”.

Subsection 472 (3):

Omit the subsection, substitute:

“(3) A liquidator appointed provisionally has or may exercise such functions and powers:

- (a) as are conferred on him or her by this Law or by rules of the Court that appointed him or her; or
- (b) as the Court specifies in the order appointing him or her.”.

Subsection 500 (1):

Omit “the company”, substitute “a company”.

SCHEDULE 1—continued

Subsection 500 (2):

Omit “the winding up”, substitute “a creditors’ voluntary winding up of a company”.

Section 501:

Omit “Act”, substitute “Law”.

Subsection 507 (7):

Omit “of the Capital Territory”, substitute “of this jurisdiction”.

Paragraph 556 (1) (j):

Omit “Commission Act”, substitute “ASC Law”.

Subsection 557 (1):

Omit “Commission Act”, substitute “ASC Law”.

Subsection 576 (1):

Omit all the words from and including “any outstanding property” to and including “its liquidator,”, substitute “in this jurisdiction or elsewhere outstanding property of the company,”.

Subsection 576 (2):

Omit “Act”, substitute “Law”.

Section 578:

Omit “or the Commonwealth”, substitute “or the Crown in any right”.

Subsection 581 (1):

Omit the subsection, substitute:

“(1) All courts having jurisdiction in matters arising under the Corporations Law of this jurisdiction, the Judges of those courts and the officers of, or under the control of, those courts must severally act in aid of, and be auxiliary to:

(a) each other; and

(b) all courts having jurisdiction in matters arising under corresponding laws, the Judges of those courts and the officers of, or under the control of, those courts;

in all external administration matters.”.

Subsection 582 (1):

Omit “Act or any other Australian law”, substitute “Law or any other law”.

SCHEDULE 1—continued

Subsection 582 (3):

Omit “incorporated outside Australia”.

Subsection 582 (4):

Omit the subsection.

Section 583:

Repeal the section, substitute:

Winding up Part 5.7 bodies

“583. Subject to this Part, a Part 5.7 body may be wound up under this Chapter and this Chapter applies accordingly to a Part 5.7 body with such adaptations as are necessary, including the following adaptations:

- (a) the principal place of business of a Part 5.7 body in Australia is taken, for all the purposes of the winding up, to be the registered office of the Part 5.7 body;
- (b) a Part 5.7 body is not to be wound up voluntarily under this Chapter;
- (c) the circumstances in which a Part 5.7 body may be wound up are as follows:
 - (i) if the Part 5.7 body is unable to pay its debts, has been dissolved, has ceased to carry on business in Australia or has a place of business in Australia only for the purpose of winding up its affairs;
 - (ii) if the Court is of opinion that it is just and equitable that the Part 5.7 body should be wound up;
 - (iii) if the Commission has stated in a report prepared under Division 1 of Part 3 of the ASC Law that, in its opinion:
 - (A) the Part 5.7 body cannot pay its debts and should be wound up; or
 - (B) it is in the interests of the public, of the members, or of the creditors, that the Part 5.7 body should be wound up.”.

Section 584:

Repeal the section.

Subsection 588 (1):

Omit the subsection, substitute:

“(1) This section applies where, after the dissolution of a registrable body, there remains in this jurisdiction outstanding property of the body.”.

SCHEDULE 1—continued

Paragraph 588 (2) (a):

Omit “excluded”, substitute “external”.

After Part 5.7:

Insert:

“PART 5.7A—RECIPROCITY WITH OTHER JURISDICTIONS

Enforcement of winding up orders made in other jurisdictions

“588A. This section applies where:

- (a) the Federal Court makes under Chapter 5 of the Corporations Law of another jurisdiction; or
- (b) the Supreme Court of another jurisdiction makes under Chapter 5 of the Corporations Law of any jurisdiction; or
- (c) the Supreme Court of this jurisdiction makes under Chapter 5 of the Corporations Law of another jurisdiction;

an order for or in connection with the winding up of a body that is a company or Part 5.7 body within the meaning of that Chapter of that Law.

“(2) The order has effect, and may be enforced in all respects, in this jurisdiction as if it were an order made under this Chapter, in relation to a company or Part 5.7 body, as the case may be, by:

- (a) if paragraph (1) (a) applies—the Federal Court; or
- (b) if paragraph (1) (b) or (c) applies—the Supreme Court of this jurisdiction.

Functions and powers in this jurisdiction of liquidators from other jurisdictions

“588B. The liquidator of a body that is a recognised company and is being wound up under Chapter 5 of the Corporations Law of another jurisdiction may, for the purposes of winding up the body’s affairs in this jurisdiction, perform or exercise any function or power under this Chapter of a kind that a liquidator of a company may perform or exercise under this Chapter.

Outstanding property of defunct recognised company

“588C. Where, after the dissolution of a body that was a company or Part 5.7 body within the meaning of Chapter 5 of the Corporations Law of another jurisdiction, there remains in this jurisdiction outstanding property of the body, the estate and interest in the property, at law or in equity, of the body or its liquidator at the time of dissolution, together with all claims, rights and remedies that the body or its liquidator then had in respect of the property, vests in the person entitled to the property under the law of the body’s place of origin.”.

SCHEDULE 1—continued

Paragraph 589 (2) (a):

Omit “Commission Act”, substitute “ASC Law”.

Paragraph 589 (2) (b):

Omit “law, or of a previous law, of a State or Territory”, substitute “previous law of this or any other jurisdiction”.

Subparagraph 589 (6) (a) (ii):

- (a) Omit “Act”, substitute “Law”.
- (b) Insert “previous” before “law”.

Subparagraph 589 (6) (a) (iii):

Omit “Act”, substitute “Law”.

Subsection 599 (1):

Omit “company”, substitute “relevant body”.

Paragraph 599 (3) (b):

Omit “companies”, substitute “relevant bodies”.

Subparagraph 599 (3) (c) (i):

Omit “companies”, substitute “relevant bodies”.

Subparagraph 599 (3) (c) (ii):

- (a) Omit “companies” (first occurring), substitute “relevant bodies”.
- (b) Omit “companies” (second occurring), substitute “bodies”.

Paragraph 599 (3) (c):

Omit “company” (twice occurring), substitute “body”.

Subsections 599 (4) and (5):

Omit the subsections, substitute:

“(4) A person who is subject to a section 599 order (whether made before or after the commencement of this section) must not manage a corporation.

“(5) Section 91A defines what, for the purposes of this section, constitutes managing a corporation.”.

Paragraphs 600 (1) (a) and (b):

Omit the paragraphs, substitute:

- “(b) a relevant body is a section 600 body at a particular time if, and only if, within the period of 7 years ending at that time, a liquidator of the body has, under:
 - (i) subsection 533 (1); or

SCHEDULE 1—continued

(ii) a previous law corresponding to subsection 533 (1); reported, or lodged a report with respect to, a matter relating to the ability of the body to pay its unsecured creditors; and”.

Paragraph 600 (1) (c):

- (a) Omit “company” (first occurring), substitute “relevant body”.
- (b) Omit “relevant company”, substitute “section 600 body”.
- (c) Omit “company” (third and last occurring), substitute “body”.

Subsection 600 (2):

- (a) Omit “companies” (first occurring), substitute “relevant bodies”.
- (b) Omit “relevant companies”, substitute “section 600 bodies”.

Paragraph 600 (4) (a):

- (a) Omit “companies” (first occurring), substitute “relevant bodies”.
- (b) Omit “relevant companies”, substitute “section 600 bodies”.

Paragraph 600 (4) (b):

Omit “companies” (wherever occurring), substitute “bodies”.

Subsection 600 (5):

Omit the subsection, substitute:

“(5) A person who is subject to a section 600 notice (whether served before or after the commencement of this section) must not, without the leave of the Court, manage a corporation.

“(6) Section 91A defines what, for the purposes of this section, constitutes managing a corporation.”.

Section 601:

Repeal the section, substitute:

Winding up started before commencement of this Chapter

“601. The provisions of this Law with respect to winding up do not apply to any body corporate the winding up of which was started before the commencement of this Chapter and:

- (a) any such company is to be wound up in the same manner, and with the same incidents, as if this Law had not been enacted; and
- (b) for the purposes of the winding up, the previous law of this jurisdiction corresponding to this Chapter is taken to remain in force.”.

SCHEDULE 1—continued

Amendments of Chapter 6

Section 603 (definitions of “appropriate dealer”, “home stock exchange”, “marketable parcel”, “notifiable securities exchange”, “odd lot”, “recorded” and “relevant official meeting”):

Omit “company” (wherever occurring) and “company’s” (wherever occurring), substitute “body” and “body’s”, respectively.

Section 603 (definition of “listed company”):

Omit the definition, substitute:

“‘**listed body**’ means a body corporate that has a share capital and is included in the official list of a stock exchange;

‘**listed company**’ means a company that is a listed body;”.

Section 603 (definition of “listing rules”):

Omit “unincorporate” (wherever occurring), substitute “unincorporated”.

Section 603 (definition of “takeover announcement”):

Omit the definition, substitute:

“‘**takeover announcement**’ means an announcement that relates to shares in a listed company and is made in accordance with Division 1 of Part 6.4;”.

Section 603 (definition of “takeover scheme”):

Omit the definition, substitute:

“‘**takeover scheme**’ means offers that relate to shares in a company and, because of section 634, are taken to be made under a takeover scheme;”.

Section 612:

Omit “company” (wherever occurring), substitute “body”.

Paragraphs 613 (1) (b) and (f):

Omit “company” (wherever occurring), substitute “body corporate”.

Section 614:

Repeal the section.

Subsection 615 (1):

Omit “that is a corporation”.

Subsections 615 (2) and (3):

Omit the subsections.

SCHEDULE 1—continued

Subsection 615 (4):

Omit “, (2) or (3)”.

Subsection 618 (2) (subparagraphs (a) (i) and (ii) of the definition of “VA2”):

Before “law” insert “previous”.

Paragraph 619 (1) (b):

Omit “proprietary company that”, substitute “company that is a proprietary company and”.

Subsection 619 (1):

Omit “another company”, substitute “another body corporate”.

Paragraphs 622 (1) (b), (2) (c) and (3) (a) and sections 625, 626 and 627:

Before “law” (wherever occurring) insert “previous”.

Section 629:

Omit “another company”, substitute “another body corporate”.

Paragraph 629 (a):

Omit “company is a listed company”, substitute “body corporate is incorporated in Australia and is a listed body”.

Paragraph 629 (b):

Omit “company”, substitute “body corporate”.

Subsection 642 (6):

Omit “section 15AB of the *Acts Interpretation Act 1901*”, substitute “section 109J”.

Paragraph 644 (3) (a):

Omit “Act”, substitute “Law”.

Subsection 663 (7):

Omit the subsection, substitute:

“(7) A notice under subsection (3) or (4) relating to offers to acquire shares in a company must be published:

(a) in this jurisdiction; and

(b) if shares in the company are listed for quotation on a stock market conducted in another jurisdiction, or on 2 or more such stock markets—in each jurisdiction in which that stock market, or any of those stock markets, is conducted;

in a newspaper circulating generally in the jurisdiction concerned.”.

SCHEDULE 1—continued

Paragraph 675 (2) (b):

Omit “on a stock exchange in accordance with this section”, substitute “, in accordance with subsection (1), on a stock exchange that conducts a stock market in this jurisdiction”.

Paragraph 682 (1) (a):

Omit the paragraph, substitute the following paragraph:

“(a) an appropriate dealer makes a takeover announcement; and”.

Paragraph 684 (3) (c):

Omit “a court”, substitute “an Australian court”.

Subparagraph 684 (5) (b) (ii):

Omit “a court”, substitute “an Australian court”.

Section 702:

Add at the end:

“(12) Where, at the commencement of this section, a company holds property in trust for a person under a previous law of this jurisdiction corresponding to section 701:

- (a) the company must continue to hold the property in trust for the person until requested by the person to transfer it to, or in accordance with the directions of, the person; and
- (b) the definition of ‘unclaimed property’ in subsection (1) of this section applies in relation to the property as if the reference in that definition to section 701 included a reference to that previous law and a reference to this subsection.”.

Subsection 709 (1):

Omit “that is a corporation”.

Subsection 709 (2):

Omit the subsection.

Subsections 709 (3) and (4):

Omit “or (2)”.

Paragraph 710 (1) (a):

Omit “that is a corporation”.

Subsection 710 (2):

Omit the subsection.

Subsections 710 (3) and (4):

Omit “or (2)” (first occurring).

SCHEDULE 1—continued

Paragraph 710 (3) (c) and subsection 710 (4):

Omit “or (2) (a), as the case may be”.

Subsection 711 (1):

Omit “that is a corporation”.

Subsection 711 (2):

Omit the subsection.

Subsections 711 (3) and (4):

Omit “or (2)”.

Paragraphs 715 (1) (a) and (b):

After “corresponding” insert “previous”.

Subsections 718 (1), (2) and (4) and 719 (1) and (3), section 720, subsections 721 (1) and 722 (1) and (2), section 723, subsection 724 (1) and section 725:

Omit “that is a corporation”.

Subsection 718 (2):

Omit “such”.

Subsection 724 (1):

After “corresponding” insert “previous”.

Subparagraphs 724 (2) (b) (i) and (ii):

After “corresponding” insert “previous”.

Section 725:

Before “law” insert “previous”.

Subsection 730 (1):

Omit “, to the extent that the Constitution permits,”.

Paragraphs 732 (a), (b), (c) and (d):

Omit the paragraphs, substitute the following paragraphs:

“(a) the shareholders and directors of a company did not know the identity of a person who proposed to acquire a substantial interest in the company; or

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

(c) the shareholders and directors of a company were not supplied

SCHEDULE 1—continued

with enough information for them to assess the merits of a proposal under which a person would acquire a substantial interest in the company; or

- (d) the shareholders of a company did not all have reasonable and equal opportunities to participate in any benefits, or to become entitled to participate in any benefits, accruing, whether directly or indirectly and whether immediately or in the future, to any shareholder or to any associate of a shareholder, in connection with the acquisition, or proposed acquisition, by any person of a substantial interest in the company.”.

Paragraphs 740 (1) (a) and (b):

Omit “that is a corporation”.

Subparagraph 740 (1) (c) (i):

After “body corporate” insert “or a related body corporate”.

Subparagraph 740 (1) (c) (ii):

After “in the body corporate” insert “or in a related body corporate”.

Subsection 740 (2):

Omit the subsection.

Subsection 740 (3):

Omit “paragraphs (1) (a) and (2) (a)”, substitute “paragraph (1) (a)”.

Subsections 746 (3) and (5):

Omit the subsections.

Section 752:

Repeal the section.

Section 753:

Omit “State or Territory Acquisition of Shares law”, substitute “previous law of this jurisdiction corresponding to this Chapter”.

Paragraph 753 (b):

Omit “Act”, substitute “Law”.

Section 754:

Omit “State or Territory Acquisition of Shares law”, substitute “previous law of this jurisdiction corresponding to this Chapter”.

Paragraph 754 (b):

Omit “Act”, substitute “Law”.

SCHEDULE 1—continued

Section 755:

Repeal the section.

Paragraph 756 (1) (a):

Omit “provision of a State or Territory Acquisition of Shares law”, substitute “previous law of this jurisdiction”.

Paragraph 758 (b):

Omit “law” (first occurring), substitute “previous law of this jurisdiction”.

Section 759:

Omit “law”, substitute “previous law of this jurisdiction”.

Amendments of Chapter 7

Section 767:

Repeal the section, substitute:

Conducting unauthorised stock markets

“767. A person must not:

- (a) establish or conduct; or
- (b) assist in establishing or conducting; or
- (c) hold out that the person conducts;

an unauthorised stock market.”.

Section 768:

Repeal the section.

Subsections 769 (1) and 770 (1):

Omit “that proposes to establish or conduct a stock market”.

Subsection 769 (2):

Omit “The”, substitute “Subject to section 102A, the”.

Paragraph 769 (2) (a):

Omit the paragraph.

Subsection 769 (3):

Before “law” insert “previous”.

Subsection 770 (2):

Omit “The”, substitute “Subject to section 102A, the”.

Paragraph 770 (2) (a):

Omit the paragraph.

SCHEDULE 1—continued

Subsection 771 (3):

Before “law” insert “previous”.

Subsection 774 (3):

Omit “the notice is not given”, substitute “no notice is lodged under subsection (1)”.

Subsection 774 (5):

After “Commission” insert “under subsection (4)”.

Subsection 774 (6):

After “disallowed” insert “under subsection (5)”.

Paragraph 774 (7) (a):

Before “law” insert “previous”.

Before subsection 775 (1):

Insert:

“(1A) A reference in this section to trading in securities on a stock market is a reference to trading in securities on a stock market, whether in this jurisdiction or elsewhere.”.

Subsection 775 (5):

Omit “such a request is made”, substitute “a request is made under subsection (4)”.

Subsection 775 (7):

Before “law” (wherever occurring) insert “previous”.

Subsection 777 (2):

Omit “corporation” (wherever occurring), substitute “body corporate”.

Section 778:

Repeal the section, substitute:

Gaming and wagering laws not applicable to certain option contracts

“778. Nothing in a law of this jurisdiction about gaming and wagering prevents the entering into of, or affects the validity or enforceability of, an option contract entered into on:

- (a) a stock market of a securities exchange; or
- (b) an exempt stock market.”.

Subsection 779 (3):

Before “law” insert “previous”.

SCHEDULE 1—continued

Section 780:

Repeal the section, substitute:

Dealers

“780. A person must not:

- (a) carry on a securities business; or
- (b) hold out that the person carries on a securities business;

unless the person holds a dealers licence or is an exempt dealer.”.

Section 781:

Repeal the section, substitute:

Investment advisers

“781. A person must not:

- (a) carry on an investment advice business; or
- (b) hold out that the person is an investment adviser;

unless the person is a licensee or an exempt investment adviser.”.

Subsections 782 (3), 783 (5) and 784 (5):

Omit “law”, substitute “previous law of this jurisdiction”.

Subsection 785 (1):

Before “836”, insert “102A,”.

After section 786:

Insert:

Security given under previous law

“786A. (1) This section applies where, immediately before the commencement of this Part:

- (a) a licence granted under a previous law of this jurisdiction corresponding to section 783 or 784 was in force; and
- (b) the licensee maintained a security, under a condition to which the licence was subject in accordance with a previous law of this jurisdiction corresponding to paragraph 786 (2) (d), with the local authority within the meaning of that previous law.

“(2) After that commencement, the security has effect, with such modifications as are prescribed or the circumstances require, as if:

- (a) it were a security lodged and maintained under a condition to which the licence is subject in accordance with paragraph 786 (2) (d); and
- (b) the Commission were substituted for the local authority as a party to the security; and

SCHEDULE 1—continued

- (c) a reference in the security to the local authority were a reference to the Commission.

“(3) Without limiting subsection 786 (9), regulations for the purposes of that subsection may provide for the security to be applied in connection with an act done, an omission or event occurring, or a matter arising, before that commencement.”.

Section 787:

Repeal the section, substitute:

Licensee to notify breach of licence condition

“787. (1) Within 1 day after the happening of an event constituting a contravention of a condition of a licence, the licensee must lodge a written notice setting out particulars of the event.

“(2) It is a defence to a charge arising under subsection (1) if it is proved that:

- (a) when the licensee was required to lodge the notice, the licensee was unaware of a fact or occurrence that gave rise to the requirement; and
- (b) in a case where the licensee has since become aware of that fact or occurrence—the licensee lodged the notice as soon as practicable after becoming so aware.”.

Section 788:

Repeal the section, substitute:

Giving information and statements to Commission

“788. (1) The holder of a dealers licence must lodge such written information or statements in relation to the securities business carried on by the licensee as the Commission from time to time directs.

“(2) If the Commission requires the holder of a dealers licence to cause a statement specified in a direction given under subsection (1) to be audited by a registered company auditor before it is lodged, the licensee must comply with the requirement.

“(3) The Commission may extend the period for compliance with a direction given under subsection (1).”.

Section 790:

Omit “It is a condition of a licence that the licensee shall,”, substitute “The holder of a licence must,”.

Subsection 791 (1):

Omit “It is a condition of a licence that the licensee shall lodge,”, substitute “The holder of a licence must lodge,”.

SCHEDULE 1—continued

Section 792:

Repeal the section, substitute:

Time for lodging annual statement

“792. (1) A person required by subsection 791 (1) to lodge a statement must lodge the statement:

- (a) if the licence is a dealers licence—during the period within which a profit and loss account and balance sheet referred to in section 860 are required to be lodged; or
- (b) otherwise—within 1 month immediately before the anniversary of the date on which the licence was granted.

“(2) A person required by subsection 791(2) to lodge a statement must lodge the statement within 1 month after ceasing to be a licensee.

“(3) A person who fails to lodge a statement required by section 791 within the period specified in subsection (1) or (2), as the case requires, contravenes this section.”.

Subsection 793 (2):

Before “law” (wherever occurring) insert “previous”.

Section 795:

Repeal the section, substitute:

Agreements with unlicensed persons

“795. (1) Subdivision B applies where, during a period when a person (in this section and Subdivision B called the ‘non-licensee’) is unlicensed, the non-licensee and a client of the non-licensee enter into an agreement that:

- (a) constitutes, or relates to, a dealing or proposed dealing in securities; or
- (b) relates to advising the client about securities, or giving the client securities reports.

“(2) Subdivision B applies to an agreement mentioned in subsection (1) whether or not anyone else is a party to the agreement.

“(3) A person is unlicensed during a period when the person:

- (a) in contravention of section 780, carries on, or holds out that the person carries on, a securities business; or
- (b) in contravention of section 781, carries on an investment advice business or holds out that the person is an investment adviser.”.

Section 796:

Repeal the section.

SCHEDULE 1—continued

Section 797:

Repeal the section.

Section 803:

Omit “an Australian court”, substitute “a court”.

Subsection 810 (1):

Omit the subsection, substitute:

“(1) A licensee must establish a register of the persons who hold proper authorities from the licensee and must keep it in accordance with this section.”.

Section 810:

Add at the end:

“(8) Where a licensee whom subsection (1) requires to establish a register already keeps one under this section or a corresponding previous law, the licensee need not establish a new register but must keep the existing one in accordance with this section.”.

Section 811:

Repeal the section, substitute:

Licensee to notify Commission of location and contents of register

“811. (1) In this section:

‘register’, in relation to a licensee, means a register that the licensee keeps for the purposes of section 810.

“(2) Within 14 days after establishing a register, the licensee must lodge written notice of where the register is kept.

“(3) As soon as practicable after changing the place where a register is kept, the licensee must 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 must, 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) The licensee must lodge a written notice, within the period provided by subsection (6):

- (a) setting out the information that the register is required to contain by paragraph 810 (3) (b), (c), (d) or (e); and

SCHEDULE 1—continued

(b) stating that the information has been, or is to be, entered in the register.

“(6) A notice under subsection (5) must be lodged within the period within which subsection 810 (5) requires the information to be entered in the register.

“(7) Within 2 business days after a person ceases to hold a proper authority from a licensee, the licensee must, 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.”.

Section 812:

Repeal the section, substitute:

Inspection and copying of register

“812. (1) In this section:

‘register’ in relation to a licensee, means a register that the licensee keeps for the purposes of section 810.

“(2) A licensee must ensure that a register is open for inspection without charge.

“(3) Where a person requests a licensee in writing to give to the person a copy of the whole, or of a specified part, of a register, the licensee must 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.”.

After subsection 815 (4):

Insert:

“(4A) Subsection 8 (3) does not apply in relation to a reference in subsection (2), (3) or (4) of this section to a provision of this section.”.

Subsections 815 (7) and (8):

Omit the subsections, substitute:

“(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 a relevant agreement; 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

SCHEDULE 1—continued

person in connection with a securities business or investment advice business carried on by the first-mentioned person.

“(8) In addition, and without prejudice, to the effect it has of its own force, subsection (6) has by force of this subsection the effect it would have if:

- (a) the reference in it to information being given in accordance with this section were a reference to information being given in accordance with section 815 of the Corporations Law of this jurisdiction; and
- (b) a reference in it to a court were a reference to a court of an external Territory or of a country outside Australia and the external Territories; and
- (c) paragraphs (6) (d) and (e) were omitted.”.

Subsection 818 (1):

Omit “an Australian court”, substitute “a court”.

Paragraph 818 (1) (a):

- (a) Insert “whether within or outside this jurisdiction,” before “a person”.
- (b) Omit “eligible securities”.

Paragraph 819 (1) (a):

Insert “, whether within or outside this jurisdiction” after “representative” (third occurring).

Subparagraphs 819 (1) (a) (i) and (ii):

Omit “eligible securities”.

Paragraph 819 (1) (b):

After “act” insert “, whether within or outside this jurisdiction,”.

Subsection 819 (2):

After “then” insert “, for the purposes of a proceeding in a court”.

After subsection 819 (3):

Insert:

“(3A) Subsection (3) does not apply unless:

- (a) the conduct was engaged in, the proposed conduct would have been engaged in, or the representation was made, in this jurisdiction; or
- (b) the act referred to in paragraph (1) (b) was done, or would have been done, as the case may be, in this jurisdiction; or

SCHEDULE 1—continued

- (c) some or all of the loss or damage was suffered in this jurisdiction.”.

Paragraph 819 (4) (b):

Omit “an Australian court”, substitute “a court”.

Section 820 (1):

- (a) Omit “an Australian court”, substitute “a court”.
(b) Insert “, whether within or outside this jurisdiction,” after “particular conduct”.

Subsection 820 (2):

Omit “an Australian court”, substitute “a court”.

Section 823:

Repeal the section.

Subsection 840 (1):

- (a) Omit “a law corresponding to that subsection”, substitute “a corresponding previous law of this or any other jurisdiction”.
(b) Before “law” (last occurring) insert “previous”.

Subsection 840 (2):

Omit “Act”, substitute “Law”.

Subsection 842 (1):

Omit the subsection, substitute the following subsection:

“(1) 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 the capacity of personal representative of a dead dealer.”.

Subsection 843 (1):

Omit the subsection.

Subsection 844 (1):

Omit the subsection.

Subsections 845 (1), (2), (3) and (4):

Omit “eligible” (wherever occurring).

SCHEDULE 1—continued

Subsection 846 (1):

Omit “eligible”.

Subsection 847 (1):

Omit “eligible” (wherever occurring).

Subsection 847 (6):

Before “law” (wherever occurring), insert “previous”.

Paragraph 853 (a):

Omit “eligible”.

After paragraph 854 (a):

Insert:

“(ba) a reference to a licensee is a reference to a person who holds a dealers licence; and”.

Subsection 855 (1):

Omit the subsection, substitute:

“(1) This Part applies in relation to a licensee in relation to his, her or its securities business, whether carried on in this jurisdiction or elsewhere.”.

Subsection 855 (2):

Omit “A condition existing by virtue of this”, substitute “This”.

Subsection 856 (2):

Omit “It is a condition of the licence that the dealer shall:”, substitute “The dealer must:”.

Subsection 856 (12):

Omit “It is a condition of the licence that where”, substitute “Where”.

Subsection 856 (13):

Omit “a condition existing by virtue of”.

Subsection 856 (14):

Omit “It is a condition of the licence that, where”, substitute “Where”.

Subsection 857 (1):

Omit the subsection, substitute:

“(1) A licensee must, within 1 month after beginning to hold the licence, appoint as auditor or auditors to audit the licensee’s accounts:

SCHEDULE 1—continued

- (a) a person or persons; or
- (b) a firm or firms; or
- (c) a person or persons and a firm or firms;

other than a person who, or a firm that, is ineligible by virtue of this section to act as auditor of the licensee.”.

Subsection 857 (13):

Omit “It is a condition of a licence that, where”, substitute “Where”.

Subsection 857 (16):

Omit “It is a condition of a licence that, within 14 days after a vacancy occurs in the office of an auditor of the licence”, substitute “Within 14 days after a vacancy occurs in the office of an auditor of a licensee”.

Subsection 857 (18):

Omit “It is a condition of a licence that the licensee shall”, substitute “A licensee must”.

Subsection 858 (1):

Omit “It is a condition of a licence that the licensee:”, substitute “A licensee:”.

Paragraph 858 (4) (a):

Omit “an Australian court”, substitute “a court of this jurisdiction”.

Section 859:

Omit “and it is a condition of the licence that the holder shall pay those fees and expenses”.

Subsection 860 (2):

Omit “It is a condition of a licence that the licensee shall”, substitute “A licensee must”.

Subsection 860 (5):

Omit “it is a condition of the licence that the licensee shall”, substitute “the licensee must”.

Subsection 861 (2):

Omit “872”, substitute “856, 866, 867, 868, 869, 870, 871, 872 or 873, or Part 7.7”.

Subsection 862 (2):

Omit “872”, substitute “856, 866, 867, 868, 869, 870, 871, 872 or 873, or Part 7.7”.

SCHEDULE 1—continued

Section 865:

Repeal the section, substitute:

Interpretation

“865. In this Part, unless the contrary intention appears:

- (a) a reference to a licence is a reference to a dealers licence; and
- (b) a reference to a licensee is a reference to a person who holds a dealers licence; and
- (c) a reference to a book, security, trust account or business of or in relation to a dealer who carries on business in partnership is a reference to such a book, security, trust account or business of or in relation to the partnership.

Application of Part

“865A. This Part (other than section 872) applies in relation to a licensee in relation to his, her or its securities business, whether carried on in this jurisdiction or elsewhere.”.

Subsection 866 (1):

Omit “It is a condition of a licence that the licensee shall”, substitute “A licensee must”.

Subsection 866 (2):

Omit “a condition existing by virtue of section 867 provides for”, substitute “section 867 requires”.

Section 866:

Add at the end:

“(3) A person who contravenes subsection (1) is guilty of an offence.

“(4) A person who, with intent to defraud, contravenes subsection (1) is guilty of an offence.”.

Subsection 867 (1):

Omit “It is a condition of a licence that the licensee shall”, substitute “A licensee must”.

Subsection 867 (2):

Omit “A licensee need not comply with a condition existing by virtue of subsection (1)”, substitute “Subsection (1) does not apply”.

Section 867:

Add at the end:

“(3) A person who contravenes subsection (1) is guilty of an offence.

“(4) A person who, with intent to defraud, contravenes subsection (1) is guilty of an offence.”.

SCHEDULE 1—continued

Section 868:

Repeal the section, substitute:

When money to be paid into trust account

“868. (1) Where section 867 requires a licensee to pay money into a trust account, the licensee must pay the money into a trust account on or before the next day after the licensee receives it on which it can be so paid.

“(2) A person who contravenes subsection (1) is guilty of an offence.

“(3) A person who, with intent to defraud, contravenes subsection (1) is guilty of an offence.”.

Subsection 869 (1):

Omit “It is a condition of a licence that the licensee shall”, substitute “A licensee must”.

Paragraph 869 (1) (e):

Omit “law”, substitute “any law of the Commonwealth or of this or any other jurisdiction”.

Subsection 869 (2):

Omit “a condition existing by virtue of”.

Section 869:

Add at the end:

“(3) A person who contravenes subsection (1) is guilty of an offence.

“(4) A person who, with intent to defraud, contravenes subsection (1) is guilty of an offence.”.

Subsection 870 (2):

Omit “a condition of the licence existing by virtue of”.

Subsection 870 (3):

Omit “It is a condition of a licence that, if”, substitute “If”.

Section 871:

Repeal the section, substitute:

Trust money not available in respect of dealer’s own debts

“871. (1) Subject to this Part, money in a trust account of the holder of a licence is not available for the payment of a debt or liability of the licensee.

“(2) Subject to this Part, money in a trust account of the holder of a licence (including a licence within the meaning of a law corresponding

SCHEDULE 1—continued

to this section) is not liable to be attached, or taken in execution, under the order or process of a court at the instance of a person suing in respect of such a debt or liability.”.

Subsection 872 (1):

Omit the subsection, substitute:

“(1) This section applies where a person (in this section called the ‘client’) lends money to a dealer in connection with a securities business carried on by the dealer.”.

Subsections 873 (2), (3) and (4):

Omit “it is a condition of the licence that the dealer shall”, substitute “the dealer must”.

Subsection 873 (5):

Omit “It is a condition of the licence that the dealer shall”, substitute “A dealer must”.

Subsection 873 (6):

Omit “a condition existing by virtue of subsection (5), it is a condition of the licence that”, substitute “subsection (5)”.

Subparagraph 874 (1) (a) (ii):

Omit the subparagraph, substitute:

“(ii) an account maintained by the person under subsection 872 (2); whether the account is maintained in this jurisdiction or elsewhere; or”.

Paragraph 874 (1) (b):

Insert “by this Part,” after “provided for”.

Subparagraph 874 (1) (c) (i):

Omit “a condition of the licence existing by virtue of”.

Subsection 874 (3):

Omit “of the person”, substitute “that the person holds or maintains in Australia (whether in this jurisdiction or not)”.

Subsection 879 (1):

Insert:

“ ‘securities’ means securities of:

(a) a public company; or

(b) a body corporate or other person included in the official list of a securities exchange.”.

SCHEDULE 1—continued

Subsection 880 (2):

Omit the subsection.

Section 886:

Omit “eligible”.

Subsection 889 (2):

Omit “it is a condition of the licence that”.

Subsection 889 (3):

Omit “It is a condition of the licence that, if:”, substitute “If:”.

Subsection 889 (4):

Omit “provided for by the condition existing by virtue of”, substitute “required by”.

Subsection 889 (7):

Omit “the condition existing by virtue of”.

Subsection 890 (1):

Omit “It is a condition of a licence that the deposit to be lodged and kept for the purposes of a condition of the licence existing by virtue of”, substitute “The deposit to be lodged and kept for the purposes of”.

Subsection 890 (2):

Omit “a condition existing by virtue of”.

Subsection 890 (3):

Omit “It is a condition of a licence that, if by virtue of a condition of the licence existing by virtue of subsection (1)”, substitute “If, because of subsection (1),”.

Subsection 891 (1):

Omit “a condition existing by virtue of”.

Subsection 891 (4):

Omit “a condition existing by virtue of”.

Subsection 891 (5):

Omit “a condition existing by virtue of”.

Subsection 891 (6):

Omit “It is a condition of a licence that where”, substitute “Where”.

SCHEDULE 1—continued

Subsection 892 (1):

After “corresponding” insert “previous”.

Subsection 895 (3):

Before “law” insert “previous”.

Subsection 899 (2):

Before “Law” (wherever occurring) insert “previous”.

Subsections 901 (6) and (7):

After “corresponding” insert “previous”.

Section 902:

Repeal the section, substitute:

Contributions to fund

“902. (1) A person is not to be admitted to:

- (a) membership of a securities exchange; or
- (b) a partnership in a member firm recognised by a securities exchange;

unless the person has paid to the securities exchange, as a contribution to its fidelity fund, such amount, being not less than \$500, as is determined by the securities exchange in relation to that person or in relation to a class of persons that includes that person.

“(2) A person who is a member of a securities exchange must, on or before 31 March in each year, pay to the securities exchange, as a contribution to its fidelity fund, such amount, being not less than \$100, as is determined by the securities exchange in relation to that person or in relation to a class of persons that includes that person.

“(3) This section has effect subject to section 919.”.

Section 904:

Repeal the section, substitute:

Levy in addition to annual contributions

“904. (1) If at any time the amount of a fidelity fund is insufficient to pay all amounts that, at that time, are required to be paid under section 898, the securities exchange may determine that a levy of a specified amount must be paid by each member of the exchange who is liable to make annual payments of the contribution referred to in subsection 902 (2).

“(2) The amount of the levy must be paid within the time and in the manner specified by the securities exchange either generally or in relation to a particular case.

SCHEDULE 1—continued

“(3) A person is not required to pay by way of levy under this section more than \$5,000 in total or more than \$1,000 in any period of 12 months.

“(4) An amount of levy paid under this section must be paid into the securities exchange’s fidelity fund.

“(5) This section has effect subject to section 919.”.

Subsection 907 (9):

Before “law” insert “previous”.

Subsection 908 (5):

Before “law” insert “previous”.

Subsection 910 (4):

Before “law” insert “previous”.

Section 919:

Repeal the section, substitute:

Contribution or levy not payable unless imposed by an Act

“919. A person need not pay a contribution under subsection 902 (1) or (2) or a levy under section 904 unless a provision of an Act of this jurisdiction imposes the contribution or levy.”.

Subsection 920 (1) (definition of “Fund provisions”):

Omit the definition, substitute:

“ ‘Fund provisions’ means all of the following:

- (a) the provisions of this Part;
- (b) the provisions of Part 7.10 of the Corporations Law of each jurisdiction other than this jurisdiction;”.

Subsection 920 (3):

Omit “Australia”, substitute “this jurisdiction, whether in Australia or not”.

Subsections 920 (4) and (5):

Omit the subsections, substitute:

“(5) A reference in this Part to a business being carried on in this jurisdiction includes a reference to the business being carried on both in this jurisdiction and outside it, whether in Australia or not.”.

SCHEDULE 1—continued

Subsection 922 (1):

Omit “corporation” (wherever occurring), substitute “body corporate”.

Subsection 922 (2):

Omit the subsection.

Section 924:

Repeal the section.

Sections 925 and 926:

Repeal the sections, substitute:

Functions and powers

“926. SEGC shall perform the functions, and may exercise the powers, that are conferred, or expressed to be conferred, on it by or under this Part.”.

Paragraph 928 (7) (a) and subsections 933 (6) and 936 (2):

After “corresponding” insert “previous”.

Subsection 929 (1):

Omit the subsection, substitute:

“(1) SEGC must keep the Fund and the Board must administer it on SEGC’s behalf.”.

Subsection 933 (6):

After “corresponding” insert “previous”.

Subsection 936 (2):

After “corresponding” insert “previous”.

Subsection 938 (1) (definition of “appropriate participating exchange”):

Omit the definition.

Subsection 938 (1):

Insert:

“‘reportable transaction’ means a sale or purchase of securities by a person or partnership, where, as at the time when the agreement for the sale or purchase is made:

- (a) the sale or purchase is a reportable transaction as defined in subsection 920 (1); and
- (b) the person or partnership is a member organisation of a participating exchange and carries on in this jurisdiction a securities business.”.

SCHEDULE 1—continued

After subsection 938 (3):

Insert:

“(3A) A levy under subsection (2) is payable at a rate or rates determined in writing by SEGC for the purposes of the levy.

“(3B) SEGC may determine under subsection (2) different rates of levy in respect of:

- (a) transactions in different kinds of securities; or
- (b) transactions by dealers included in different classes of dealers.”.

Subsection 938 (4):

Insert “or (3A)” after “(3)”.

After subsection 938 (4):

Insert:

“(4A) Despite subsection (3), where an amount of a levy imposed under section 938 of the Corporations Law of another jurisdiction was payable in respect of a transaction and has been paid, an amount of levy imposed under this section is not payable in respect of the transaction.”.

Paragraph 938 (5) (a):

Omit the paragraph, substitute:

“(a) pay the amount of the levy to a participating exchange of which the dealer is a member organisation; and”.

Subsection 938 (6):

Omit “reportable”.

Subsections 938 (7) and (8):

Omit the subsections, substitute:

“(7) A securities exchange must, within the period and in the manner specified in writing by SEGC, pay to SEGC an amount equal to the amount of levy paid to the securities exchange under subsection (5).”.

Subsection 938 (9):

Omit “(8)”, substitute “(7)”.

Section 940:

Repeal the section, substitute:

SCHEDULE 1—continued

Levy on participating exchanges

“940. (1) Where the amount in the Fund is less than the minimum amount, SEGC may, whether or not it also makes a determination under subsection 938 (2), determine in writing:

(a) if there are 2 or more participating exchanges that are securities exchanges:

(i) that a specified participating exchange that is a securities exchange must pay a levy of a specified amount; or

(ii) that each of 2 or more specified participating exchanges that are securities exchanges must pay a levy of an amount specified in relation to that exchange; or

(b) otherwise—that the Exchange must pay a levy of a specified amount.

“(2) A levy payable under this section by a securities exchange must be paid within the period and in the manner determined in writing by SEGC for the purposes of the levy.

“(3) Where a levy is payable under this section, SEGC must give to each participating exchange a notice setting out the name of the participating exchange that must pay the levy and the amount of the levy.

“(4) For the purpose of paying the whole or a part of a levy under this section, a participating exchange may borrow money on such terms as the board of the participating exchange thinks fit.

“(5) An amount paid to SEGC under this section must be paid into the Fund.

“(6) This section has effect subject to section 942.”.

Subsection 941 (1):

Omit “who or that carry on businesses of dealing in securities shall”, substitute “must”.

Subsection 941 (2):

Omit all the words before “is payable”, substitute “Where a determination is made under subsection (1), a levy”.

Paragraph 941 (2) (a):

Omit the paragraph, substitute:

“(a) carries on in this jurisdiction a securities business; and”.

Subsections 941 (3), (4), (5) and (6):

Omit the subsections, substitute:

“(3) A levy payable under this section is payable at a rate or rates determined in writing by the participating exchange for the purposes of the levy.

SCHEDULE 1—continued

“(4) A participating exchange may determine under subsection (2) different rates of levy in respect of different classes of its members or member organisations.

“(5) The amount of a levy imposed by a participating exchange under this section must be paid to the participating exchange within the period and in the manner specified in writing by the participating exchange either generally or in relation to:

- (a) particular members; or
- (b) particular classes of members; or
- (c) particular member organisations; or
- (d) particular classes of member organisations;

of the participating exchange.

“(6) Despite subsections (1), (2), (3) and (5), where:

- (a) a participating exchange makes a determination that members, or member organisations, of the exchange must pay a levy for payment towards a levy payable under section 940; and
- (b) because of the determination, an amount of levy is payable under subsection 941 (2) of the Corporations Law of another jurisdiction by a member, or member organisation, of the exchange; and
- (c) the amount of levy is paid;

the member or member organisation need not pay an amount of levy under subsection (2) of this section because of such a determination made by the exchange in relation to the levy payable under section 940.

“(7) A participating exchange must pay an amount equal to an amount paid to it by way of levy under this section in payment of the levy imposed under section 940.

“(8) Subsection 8 (1) does not apply in relation to a reference in this section to this section or to a provision of it.

“(9) This section has effect subject to section 942.”.

Section 942:

Repeal the section, substitute:

Levy not payable unless imposed by an Act

“942. A person or partnership need not pay a levy under section 938, 940 or 941 unless the levy is imposed by a provision of an Act of this jurisdiction.”.

Subsection 945 (7) (definition of “securities industry”):

Omit the definition.

SCHEDULE 1—continued

Section 948:

Omit “eligible” (wherever occurring).

Subsection 949 (5):

Omit “eligible”.

Subsection 950 (2):

Omit “eligible”.

Subsection 951 (3):

Omit “eligible”.

Subsection 952 (3):

Omit “eligible”.

Subparagraphs 953 (a) (i) and (ii):

Omit “eligible”.

Paragraphs 954 (1) (a) and (b):

Omit “eligible”.

Paragraph 954 (1) (c) and subsection 954 (2):

Omit “a business of dealing in securities”, substitute “in this jurisdiction a securities business”.

Paragraphs 954 (2) (a) and (b):

Omit “eligible”.

After subsection 954 (2):

Insert:

“(2A) Where:

- (a) subsection 949 (1), 950 (1), 951 (1) or 952 (1) of the Corporations Law of another jurisdiction entitles a person to make a claim in respect of a transaction; and
- (b) SEGC allows the claim;

SEGC must not allow a claim that the corresponding subsection of the Corporations Law of this jurisdiction entitles a person to make in respect of the transaction.”.

Subsection 954 (3):

Omit “and (2)”, substitute “, (2) and (2A)”.

After section 961:

Insert:

SCHEDULE 1—continued

Nexus between dealer and this jurisdiction

“961A. Neither of sections 957 and 958 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) the dealer was carrying on a securities business in this jurisdiction on that day (whether on his, her or its own account or in partnership); or
- (b) if the dealer was not so carrying on such a business—the last securities business that the dealer carried on (whether on his, her or its own account or in partnership) before that day was carried on in this jurisdiction.

Preventing double recovery

“961B. If:

- (a) section 957 or 958 of the Corporations Law of another jurisdiction entitles a person to make a claim in respect of a loss; and
- (b) SEGC allows the claim;

SEGC must not allow a claim that the corresponding section of the Corporations Law of this jurisdiction entitles the person to make in respect of that loss.”.

Subsection 962 (2):

Omit “Australia”, substitute “this jurisdiction, whether in Australia or not”.

After section 966:

Insert:

No claim unless nexus between dealer and this jurisdiction

“966A. This Division does not, because of a person (in this section called the ‘dealer’) having become insolvent on a particular day, entitle a person to make a claim in respect of property unless the dealer was on that day a member of a participating exchange and:

- (a) the dealer was carrying on a securities business in this jurisdiction on that day (whether on his, her or its own account or in partnership); or
- (b) if the dealer was not so carrying on such a business—the last securities business that the dealer carried on (whether on his, her or its own account or in partnership) before that day was carried on in this jurisdiction.”.

Subsection 977 (1):

Before “requires” insert “of the Corporations Law of this jurisdiction”.

SCHEDULE 1—continued

Section 977 (2):

Omit “relating to arbitration that is in force in the State or Territory where the arbitration is to take place”, substitute “of this jurisdiction relating to arbitration”.

Subsections 977 (4), (5) and (6):

Omit “law”, substitute “previous law of this jurisdiction”.

Subsections 988 (1), 990 (1) and 990 (2) and section 992:

Omit “law”, substitute “previous law of this jurisdiction”.

Subsection 988 (3):

- (a) Omit “corresponding law”, substitute “previous law of this jurisdiction corresponding to a provision of this Part”.
- (b) Omit “the provision of this Part to which that corresponding law corresponds”, substitute “that provision of this Part”.

Subsections 988 (5) and (6) and 993 (1) and (2):

- (a) Omit “corresponding law”, substitute “previous law of this jurisdiction corresponding to a provision of this Part”.
- (b) Omit “the provision of this Part to which that law corresponds”, substitute “that provision of this Part”.

Subsection 989 (1):

After “corresponding” (twice occurring) insert “previous”.

Subsection 989 (2):

Before “commencement” insert “the”.

Division 1 of Part 7.11:

Repeal the Division.

Subsection 995 (1):

Omit the subsection.

Subsection 997 (1):

Omit “corporation” (wherever occurring), substitute “body corporate”.

Subsections 997 (2) and (3):

Omit the subsections.

Subsection 997 (4):

Omit “corporation” (wherever occurring), substitute “body corporate”.

SCHEDULE 1—continued

Subsections 997 (5) and (6):

Omit the subsections.

Subsection 997 (7):

Omit “corporation” (wherever occurring), substitute “body corporate”.

Subsections 997 (8) and (9):

Omit the subsections.

Subsection 998 (1):

Omit “eligible” (wherever occurring).

Subsection 998 (2):

Omit the subsection.

Subsection 998 (3):

Omit “eligible”.

Subsection 998 (4):

Omit the subsection.

Subsection 998 (5):

Omit “subsections (1) and (2)”, substitute “subsection (1)”.

Subsection 998 (6):

Omit “or (2)”.

Subsection 998 (8):

Omit “or (4)”.

Section 999:

Repeal the section, substitute:

False or misleading statements in relation to securities

“999. A person must not make a statement, or disseminate information, that is false in a material particular or materially misleading and:

- (a) is likely to induce the sale or purchase of securities by other persons; or
- (b) is likely to have the effect of increasing, reducing, maintaining or stabilising the market price of securities;

if, when the person makes the statement or disseminates the information:

- (c) the person does not care whether the statement or information is true or false; or

SCHEDULE 1—continued

(d) the person knows or ought reasonably to have known that the statement or information is false in a material particular or materially misleading.”.

Subsection 1000 (1):

Omit “eligible”.

Subsection 1000 (2):

Omit the subsection.

Subsection 1000 (3):

(a) Omit “or (2)”.

(b) Omit “or (2) (d)”.

Subsection 1001 (1):

Omit “corporation” (wherever occurring), substitute “body corporate”.

Subsection 1001 (2):

Omit the subsection.

Subsection 1002 (1):

Omit “corporation” (wherever occurring), substitute “body corporate”.

Subsection 1002 (2):

Omit “that is a corporation”.

Division 1 of Part 7.12:

Repeal the Division.

Paragraphs 1017 (a) and (b):

Add at the end “or”.

Paragraph 1017 (c):

Omit “securities; or”, substitute “securities.”.

Paragraph 1017 (d):

Omit the paragraph.

Subparagraphs 1018 (5) (a) (i) and (ii):

After “corresponding” (wherever occurring) insert “previous”.

SCHEDULE 1—continued

Subsection 1020A (1):

Omit the subsection, substitute:

“(1) Subject to section 102A and to subsection (2) of this section, where a registrable prospectus is lodged together with a written application for the registration of the prospectus, the Commission must register the prospectus as soon as possible and in any event within the prescribed period.”.

Subsection 1025 (4):

Omit the subsection.

Paragraph 1030 (1) (b):

Omit “this or any other Act”, substitute “this Law, any other law of this jurisdiction”.

Subsections 1047 (1) and (2):

Omit the subsections, substitute:

“(1) A company that issues debentures (whether in this jurisdiction or elsewhere) must keep in Australia a register of holders of debentures, whether issued in this jurisdiction or elsewhere.

“(2) A registered Australian body (other than a registrable local body) that issues debentures:

(a) in this jurisdiction; or

(b) whether in this jurisdiction or elsewhere, pursuant to an application in which an address in this jurisdiction was specified as the address of the applicant for the debentures;

must keep in Australia a register of the holders of those debentures.

“(2A) A registered foreign company that issues debentures (whether in this jurisdiction or elsewhere):

(a) pursuant to an application in which an address in Australia or an external Territory was specified as the address of the applicant for debentures; or

(b) pursuant to an application made on a form of application attached to, or accompanied by, a prospectus a copy of which has been lodged;

must keep in Australia a register of the holders of those debentures.”.

Subsection 1048 (1):

Omit the subsection, substitute:

“(1) A corporation that is required by section 1047 to keep a register of holders of debentures may keep a branch register of holders of debentures in any place inside or outside Australia.”.

SCHEDULE 1—continued

Section 1049:

Omit “corporation” (wherever occurring), substitute “company”.

Section 1050:

Omit “of a corporation” (wherever occurring).

Subsections 1051 (1), (2) and (4):

Omit “corporation” (wherever occurring), substitute “company”.

Paragraph 1052 (1) (a):

Insert “, in this jurisdiction,” after “a corporation that”.

Paragraph 1052 (1) (b):

Omit “body corporate that”, substitute “corporation that, in this jurisdiction or elsewhere,”.

Paragraph 1052 (7) (a):

Omit “1 September 1966”, substitute “the date specified in an application order”.

Subsection 1054 (1):

Insert “, in this jurisdiction,” after “shall not”.

Subsection 1054 (2):

Omit “A body corporate shall not”, substitute “A corporation must not, in this jurisdiction or elsewhere,”.

Subsections 1064 (1), (2), (3), (4), (5) and (6):

Omit the subsections, substitute:

“(1) A person, other than a public corporation, must not make available, offer for subscription or purchase, or issue an invitation to subscribe for or buy, any prescribed interest.”.

Subsection 1065 (1):

(a) Omit “made available by a corporation”.

(b) After “deed” insert “for the purposes of this Division or a corresponding law”.

Subsection 1065 (3):

(a) Omit “made available by a corporation”.

(b) Omit “or a corresponding law”, substitute “, a corresponding law or a previous corresponding law”.

Paragraph 1066 (1) (a):

Omit “law”, substitute “previous law of this jurisdiction”.

SCHEDULE 1—continued

Paragraph 1066 (1) (b):

Omit “law”, substitute “previous law of this jurisdiction”.

Section 1067:

Repeal the section, substitute:

Approvals

“1067. (1) A person may apply in writing to the Commission for the grant of its approval to a deed.

“(2) On an application under subsection (1), the Commission must grant its approval to the deed unless it is of the opinion that the deed does not comply with the requirements of this Division and of the regulations.

“(3) A person may apply in writing to the Commission for the grant of its approval to a person acting as trustee or representative for the purposes of a deed.

“(4) On an application under subsection (2), the Commission may, subject to such terms and conditions as it thinks fit, grant its approval to the person acting as trustee or representative for the purposes of the deed.

“(5) The Commission may at any time, because of a breach of a term or condition subject to which the approval was granted or for any other reason, revoke an approval granted under this section or a corresponding previous law.

“(6) This section has effect subject to section 102A.”.

Subsection 1068 (1):

Omit “a deed”, substitute “an approved deed”.

Subparagraph 1068 (1) (b) (iii):

After “corresponding” insert “previous”.

Subsection 1069 (5):

Omit “law”, substitute “previous law of this jurisdiction”.

Paragraph 1069 (6) (a):

Omit “law”, substitute “previous law of this jurisdiction”.

Paragraph 1069 (8) (a):

Omit “by a corporation”.

Paragraph 1069 (8) (c):

Omit “law”, substitute “previous law of this jurisdiction”.

SCHEDULE 1—continued

Subsection 1069 (8):

Omit “law” (last occurring), substitute “previous law of this jurisdiction, as the case may be”.

Paragraph 1069 (9) (a):

After “every” insert “approved”.

Paragraph 1069 (10) (a):

Omit “a deed”, substitute “an approved deed”.

Subsection 1070 (1):

- (a) After “each deed” insert “that is or has at any time been an approved deed and”.
- (b) Before “under the deed” insert “(whether made available in this jurisdiction or elsewhere)”.

Subsection 1073 (1):

Omit “made available by a corporation”.

After section 1077:

Insert:

Exempt securities

“1077A. This Division does not apply in relation to:

- (a) an invitation to subscribe for or buy securities that because of section 69A are exempt securities in relation to this jurisdiction;
or
- (b) an offer of such securities for subscription or purchase.”.

Subsection 1084 (9):

After “corresponding” (wherever occurring) insert “previous”.

Subsection 1087:

Repeal the section, substitute:

Certificate to be evidence of title

“1087.(1) A certificate issued after the commencement of this section specifying shares held by a member of a company:

- (a) must be under the common seal of the company, or, in the case of a share certificate relating to shares on a branch register, the common or official seal of the company; and
- (b) must state:
 - (i) the name of the company and its jurisdiction of incorporation; and
 - (ii) the class of the shares; and

SCHEDULE 1—continued

(iii) the nominal value of the shares and the extent to which the shares are paid up.

“(2) A certificate issued in accordance with subsection (1) or a corresponding previous law specifying shares held by a member of a company is *prima facie* evidence of the title of the member to the shares.

“(3) A failure to comply with subsection (1) does not affect the rights of a holder of shares.”.

After subsection 1091 (1):

Insert:

“(1A) An instrument of transfer is not a proper instrument of transfer for the purposes of subsection (1) unless:

- (a) in the case of a transfer of marketable securities within the meaning of Division 3 of Part 7.13—it is a sufficient transfer of the marketable securities under that Division; or
- (b) in any other case—it shows the jurisdiction of incorporation of the company concerned.”.

Subsection 1091 (4):

- (a) Omit “the law in force in a State or Territory other than the State or Territory in which the holder was registered”, substitute “a law of another jurisdiction”.
- (b) Omit “the law of the last-mentioned State or Territory”, substitute “a law of this jurisdiction”.

Paragraph 1091 (4) (b):

Omit “the last-mentioned State or Territory”, substitute “this jurisdiction”.

Subsection 1091 (5):

Omit “the law of the State or Territory in which the holder was registered”, substitute “a law of this jurisdiction”.

Subsection 1091 (7):

Omit “any State or Territory”, substitute “a jurisdiction”.

Subsection 1097 (1) (definition of “eligible body”):

Omit the definition, substitute:

“‘eligible body’ means:

- (a) a company; or
- (b) a body corporate (other than a company) that:
 - (i) is incorporated in this jurisdiction; and

SCHEDULE 1—continued

- (ii) is prescribed for the purposes of this paragraph; or
- (c) an unincorporated society, association or body, that:
 - (i) is formed or established in this jurisdiction; and
 - (ii) is included in the official list of a securities exchange; and
 - (iii) is prescribed for the purposes of this paragraph;”.

Subsection 1097 (1) (definition of “issuing body”):

Omit “eligible body that”, substitute “body (whether incorporated or not) that, or other person who,”.

After section 1108:

Insert:

Marketable securities and rights from other jurisdictions: effect of sections 1105 to 1108

“1108A. (1) Sections 1105 to 1108, inclusive, apply in relation to marketable securities, and marketable rights, within the meaning of Division 3 of Part 7.13 of the Corporations Law of another jurisdiction and, for the purposes of those sections as so applying:

- (a) subject to paragraph (b) of this subsection, an expression has the same meaning in those sections as in that Division; and
- (b) a reference in those sections to a document bearing a stamp of a particular kind is taken to be a reference to the document bearing a stamp of that kind that purports to have been stamped in this jurisdiction.

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

Subsection 1110 (1):

Omit “Act”, substitute “Law”.

Subsection 1112 (1):

Omit “shall not”, substitute “must not, in this jurisdiction or elsewhere,”.

Subsection 1112 (2):

- (a) Omit “shall not”, substitute “must not, in this jurisdiction or elsewhere,”.
- (b) Before “may” insert “relates to marketable securities or marketable rights and”.

SCHEDULE 1—continued

Subsection 1112 (3):

Omit “shall not”, substitute “must not, in this jurisdiction or elsewhere,”.

Subsection 1112 (4):

Omit “shall not”, substitute “must not, in this jurisdiction or elsewhere,”.

Subsection 1112 (5):

- (a) Omit “shall not”, substitute “must not, in this jurisdiction or elsewhere,”.
- (b) Before “may” insert “relates to marketable securities or marketable rights and”.

Subsection 1112 (6):

Omit “shall not”, substitute “must not, in this jurisdiction or elsewhere,”.

Paragraphs 1114 (1) (a), (c), (d) and (f):

Omit “eligible” (wherever occurring).

Subsection 1115 (1):

- (a) Omit “corporation that”, substitute “person who”.
- (b) Omit “corporation” (last occurring), substitute “person”.

Subsection 1115 (2):

Omit the subsection.

Subsection 1115 (3):

Omit “corporation” (wherever occurring), substitute “body corporate”.

Subsection 1115 (4):

Omit the subsection.

Paragraph 1117 (1) (b):

Omit “within Australia”, substitute “in this jurisdiction”.

Amendments of Chapter 8

Section 1123:

Repeal the section, substitute:

SCHEDULE 1—continued

Conducting unauthorised futures markets

“1123. A person must not establish or conduct, assist in establishing or conducting, or hold out that the person conducts, an unauthorised futures market.”.

Section 1123A:

Repeal the section.

Sections 1124 and 1125:

Repeal the sections.

Subsection 1126 (1):

Omit “that proposes to establish or conduct a futures market”.

Subsection 1126 (2):

Omit “Where a body applies under subsection (1),”, substitute “Subject to section 102A, where a body applies under subsection (1) of this section,”.

Paragraphs 1126 (2) (a) and (b):

Omit the paragraphs.

Subparagraph 1126 (2) (c) (i):

Omit “corporations” (twice occurring), substitute “persons”.

After subparagraph 1126 (2) (c) (iii):

Insert the following subparagraph:

“(iiiia) for the exclusion of a body corporate from membership where a responsible officer of the body corporate would be excluded from membership;”.

Subparagraph 1126 (2) (c) (x):

Omit the subparagraph.

Subsection 1126 (3):

Omit “law”, substitute “previous law of this jurisdiction”.

Subsection 1127 (3):

Omit “law”, substitute “previous law of this jurisdiction”.

SCHEDULE 1—continued

Section 1128:

Repeal the section, substitute:

When a person may provide clearing house facilities

“1128. A person must not provide, or hold out that the person provides, clearing house facilities for a futures market (other than an exempt futures market) unless:

- (a) the futures market is conducted by a futures exchange; and
- (b) the person is a body corporate; and
- (c) an approval of the person under section 1131 as a clearing house for that futures exchange is in force.”.

Sections 1129 and 1130:

Repeal the sections.

Subsection 1131 (2):

Omit “Where a body applies under subsection (1),”, substitute “Subject to section 102A, where a body applies under subsection (1) of this section,”.

Paragraph 1131 (2) (a):

Omit the paragraph.

Subsection 1131 (4):

Omit “law”, substitute “previous law of this jurisdiction”.

Subsection 1132 (2):

Omit “Where a body applies under subsection (1),”, substitute “Subject to section 102A, where a body applies under subsection (1) of this section,”.

Paragraphs 1132 (2) (a) and (b):

Omit the paragraphs.

Subparagraph 1132 (2) (d) (i):

Omit “corporations” (twice occurring), substitute “persons”.

After subparagraph 1132 (2) (d) (iii):

Insert:

“(iia) for the exclusion of a body corporate from membership where a responsible officer of the body corporate would be excluded from membership;”.

Subparagraph 1132 (2) (d) (ix):

Omit the subparagraph.

Subsection 1132 (3):

Omit “law”, substitute “previous law of this jurisdiction”.

SCHEDULE 1—continued

Paragraph 1136 (7) (a):

Before “law” insert “previous”.

Paragraphs 1138 (13) (a) and (b):

Before “law” insert “previous”.

Section 1141:

Repeal the section, substitute:

Gaming and wagering laws not applicable to certain futures contracts

“1141. Nothing in a law of this jurisdiction about gaming or wagering prevents the entering into of, or affects the validity or enforceability of, a futures contract made:

- (a) on a futures market of a futures exchange or of a recognised futures exchange; or
- (b) on an exempt futures market; or
- (c) as permitted by the business rules of a futures association, of a futures exchange or of a recognised futures exchange.”.

Section 1142:

Repeal the section, substitute:

Futures brokers

“1142. A person must not:

- (a) deal in a futures contract on another person’s behalf; or
 - (b) hold out that the person carries on a futures broking business;
- unless the first-mentioned person holds a futures brokers licence or is an exempt broker.”.

Section 1143:

Repeal the section, substitute:

Futures advisers

“1143. A person must not:

- (a) carry on a futures advice business; or
 - (b) hold out that the person is a futures adviser;
- unless the person is a licensee or an exempt futures adviser.”.

Subsection 1144 (1):

Omit “body corporate”, substitute “person”.

Subsection 1144 (3):

Omit “law”, substitute “previous law of this jurisdiction”.

SCHEDULE 1—continued

After section 1144:

Insert:

Grant of licence to natural person

“1144A. (1) This section applies where a natural person applies for a licence.

“(2) The Commission must grant the licence if:

- (a) the application was made in accordance with section 1144; and
- (b) the person is not an insolvent under administration; and
- (c) if the application is for a futures brokers licence—the person is a member of a futures organisation; and
- (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; and
- (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 must refuse the application.

“(4) In determining whether or not it has reason to believe as mentioned in paragraph (2) (e) or (f), the Commission must have regard to any conviction of the person, during the 10 years ending on the day of the application, of serious fraud.”.

Subsection 1145 (1):

Omit the subsection, substitute:

“(1) This section applies where a body corporate applies for a licence.”.

Paragraph 1145 (2) (b):

Omit the paragraph.

Subsection 1145 (5):

Omit the subsection.

After section 1145:

Insert:

Effect of certain provisions

“1145A. (1) Sections 1144A and 1145 apply subject to sections 102A, 1199A, 1200 and 1202 and the regulations.

“(2) Nothing in subsection 1144A (4) or 1145 (4) limits the matters to which the Commission may have regard:

SCHEDULE 1—continued

- (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.”.

Section 1146:

Repeal the section, substitute:

Licences under corresponding previous laws

“1146. Where, as at the commencement of this Division, a person held a futures brokers licence or futures advisers licence in force under a previous law of this jurisdiction corresponding to this Division, the licence has effect as if it were a futures brokers licence or futures advisers licence, as the case may be, granted under this Part.”.

Paragraph 1155 (3) (b):

Omit the paragraph, substitute:

“(b) if the licensee is a body corporate—the name of each director, and of each secretary, of the licensee;”.

Paragraph 1156 (a):

Omit “a corporation that is”.

Paragraph 1156 (b):

Omit the paragraph, substitute:

“(b) the holder of a futures advisers licence ceases to act as, or to hold out that the holder is, a futures adviser; or”.

Paragraph 1156 (c):

Omit “held by a corporation”.

Subsection 1157 (1):

Omit “corporation that”, substitute “person who”.

Subsection 1157 (2):

Omit “corporation” (twice occurring), substitute “person”.

Subsection 1158 (2):

Before “law” insert “previous”.

Section 1160:

Omit “subsection 1142 (1) or (2)”, substitute “section 1142”.

Section 1161:

- (a) Omit “corporation”, substitute “person”.
- (b) Omit “itself out to be”, substitute “out that the person is”.

SCHEDULE 1—continued

Section 1162:

Repeal the section.

Section 1163:

Repeal the section.

Section 1169:

Omit “an Australian court”, substitute “a court”.

Paragraph 1172 (a):

Omit “is a corporation and”.

Paragraph 1173 (a):

Omit “is a corporation,”.

Paragraph 1173 (b):

Omit “is a corporation and”.

Subsection 1176 (1):

Omit “that is a corporation”.

Section 1176:

Add at the end:

“(8) Where a licensee whom subsection (1) requires to establish a register already keeps one under this section or a corresponding previous law, the licensee need not establish a new register but must keep the existing one in accordance with this section.”.

Subsection 1177 (1):

Omit “is a corporation and”.

Subsections 1178 (1) and (2):

Omit “that is a corporation”.

Paragraph 1181 (1) (a):

Omit “that is a corporation”.

After subsection 1181 (4):

Insert:

“(4A) Subsection 8 (3) does not apply in relation to a reference in subsection (2), (3) or (4) of this section to a provision of this section.”.

SCHEDULE 1—continued

Subsection 1181 (7):

Omit all the words from and including “in connection with” to the end of the subsection, substitute “in connection with a futures broking business or futures advice business carried on by the first-mentioned person.”.

Subsection 1181 (8):

Omit the subsection, substitute:

“(8) In addition, and without prejudice, to the effect it has of its own force, subsection (6) has by force of this subsection the effect it would have if:

- (a) the reference in it to information being given in accordance with this section were a reference to information being given in accordance with section 1181 of the Corporations Law of this jurisdiction; and
- (b) a reference in it to a court were a reference to a court of an external Territory or of a country outside Australia and the external Territories; and
- (c) paragraphs (6) (d) and (e) were omitted.”.

Subsection 1182 (1):

Omit “that is a corporation”.

Subsection 1184 (1):

Omit “an Australian court”, substitute “a court”.

Paragraph 1184 (1) (a):

- (a) Before “a person” insert “in this jurisdiction or elsewhere,”.
- (b) Omit “eligible futures”.

Paragraph 1185 (1) (a):

After “representative” (third occurring) insert “, in this jurisdiction or elsewhere,”.

Subparagraphs 1185 (1) (a) (i) and (ii):

Omit “eligible futures”.

Paragraph 1185 (1) (b):

After “act” insert “, in this jurisdiction or elsewhere,”.

Subsection 1185 (2):

After “then” insert “, for the purposes of a proceeding in a court”.

SCHEDULE 1—continued

After subsection 1185 (3):

Insert:

“(3A) Subsection (3) does not apply unless:

- (a) the conduct was engaged in, the proposed conduct would have been engaged in, or the representation was made, in this jurisdiction; or
- (b) the act referred to in paragraph (1) (b) was done, or would have been done, as the case may be, in this jurisdiction; or
- (c) some or all of the loss or damage was suffered in this jurisdiction.”.

Paragraph 1185 (4) (b):

Omit “an Australian court”, substitute “a court”.

Subsection 1186 (1):

- (a) Omit “an Australian court”, substitute “a court”.
- (b) Before “while” insert “, in this jurisdiction or elsewhere,”.

Subsection 1186 (2):

Omit “an Australian court”, substitute “a court”.

Section 1189:

Repeal the section.

Section 1190:

Repeal the section, substitute:

Power to revoke, without a hearing, licence held by natural person

“1189A. The Commission may, by written order, revoke a licence held by a natural person if the person:

- (a) becomes an insolvent under administration; or
- (b) is convicted of serious fraud; or
- (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

“1190. The Commission may, by written order, revoke a licence held by a body corporate if:

- (a) the body ceases to carry on business; or
- (b) the body becomes an externally-administered body corporate;
or
- (c) the body asks the Commission to revoke the licence; or

SCHEDULE 1—continued

(d) a director, secretary or executive officer of the body contravenes this Law because:

- (i) he or she does not hold a licence; or
- (ii) a licence he or she holds is suspended.”.

After paragraph 1191 (1) (d):

Insert:

“(ea) the licensee is a natural person and the Commission has reason to believe that he or she is not of good fame and character;”.

Paragraphs 1191 (1) (e) and (f):

Before “the Commission” (first occurring) insert “the licensee is a body corporate and”.

Paragraph 1191 (1) (g):

Omit the paragraph, substitute:

“(g) 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 1194 against such a director, secretary or executive officer;”.

Subsection 1191 (2):

Before “(j)” insert “(ea) or”.

Paragraph 1192 (1) (a):

Before “1190” insert “1189A or”.

Paragraph 1192 (1) (d):

Omit “it”, substitute “the licensee”.

Before section 1193:

Insert:

Power to make banning order where licence revoked or suspended

“1192A. Subject to section 1200, where the Commission:

- (a) revokes under section 1189A; or
- (b) revokes because of paragraph 1191 (1) (a), (b), (c), (d), (h) or (j); or
- (c) revokes because of paragraph 1191 (1) (ea); or
- (d) suspends because of paragraph 1192 (1) (a); or
- (e) suspends because of paragraph 1192 (1) (b);

SCHEDULE 1—continued

a licence held by a natural person, it may also make a banning order against the person.”.

Section 1193:

After “natural person” insert “(other than a licensee)”.

Paragraph 1198 (2) (a):

Before “1190” insert “1189A,”.

After section 1199:

Insert:

Banned person ineligible for licence

“1199A. The Commission must not grant a futures brokers licence or a futures advisers licence to a person if a 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.”.

Paragraph 1200 (1) (a):

Before “1145” insert “1144A (2) (d), (e) or (f) or”.

Paragraph 1200 (1) (d):

Before “1190” insert “1189A or”.

Paragraph 1200 (1) (e):

Before “1193” insert “1192A (a) or (d) or”.

Paragraph 1201 (1) (a):

Before “1190” insert “1189A,”.

Subsection 1203 (1):

- (a) Omit “a law corresponding to that subsection”, substitute “a previous corresponding law of this or any other jurisdiction”.
- (b) Before “law” (last occurring) insert “previous”.

Subsection 1205 (2):

Omit the subsection, substitute:

“(2) Where the Commission considers that, having regard to conduct that a person has engaged in, is engaging in, or proposes to engage in, it is in the public interest to do so, it may, by written order given to the person, prohibit the person from publishing or broadcasting statements about:

- (a) futures contracts; or
- (b) businesses carried on, or proposed to be carried on, by persons

SCHEDULE 1—continued

and involving dealing in futures contracts on behalf of other persons; or

(c) futures advice businesses or proposed futures advice businesses; unless the form and content of the statements have first been approved by the Commission.”.

Before section 1206:

Insert:

Application of sections 1206 and 1207: exempt brokers

“1205A. Neither of sections 1206 and 1207 applies in relation to an exempt broker, except in so far as the exempt broker carries on a futures broking business as a personal representative of a dead futures broker.”.

Subsection 1209 (1) (paragraphs (b) and (d) of the definition of “client”):

Before “a” insert “if the broker is a body corporate—”.

Paragraph 1209 (3) (a):

After “effected,” insert “whether in this jurisdiction or elsewhere”.

Paragraph 1209 (3) (b):

After “contracts” insert “, whether in this jurisdiction or elsewhere”.

Subsection 1209 (4):

After “effected” insert “, whether in this jurisdiction or elsewhere,”.

Subsection 1209 (18):

Before “against” insert “, under an agreement, under an Australian law or otherwise,”.

Section 1212:

Repeal the section, substitute:

Application of Part

“1212. (1) This Part applies in relation to a futures broker in relation to his, her or its business of dealing in futures contracts, whether carried on in this jurisdiction or elsewhere.

“(2) This Part does not affect the operation of Parts 3.6 and 3.7 in relation to a company that holds a futures brokers licence or in relation to a business of dealing in futures contracts that such a company carries on.”.

Paragraphs 1215 (2) (a) and (d) and (3) (a):

Add at the end “or”.

SCHEDULE 1—continued

Paragraphs 1215 (2) (c) and (3) (c):

Omit “Act”, substitute “Law”.

Paragraphs 1215 (2) (e) and (3) (f):

After “the futures broker or” insert “, if the futures broker is a body corporate,”.

Paragraph 1215 (2) (f):

Omit the paragraph, substitute the following paragraphs:

- “(f) the person is a partner or employee of the futures broker; or
- (g) in a case where the futures broker is a body corporate—the person is:
 - (i) an officer of the body; or
 - (ii) a partner, employer or employee of an officer of the body; or
 - (iii) a partner or employee of an employee of an officer of the body.”.

Paragraphs 1215 (3) (d), (e) and (f):

Add at the end “and”.

Paragraph 1215 (3) (g):

Omit the paragraph, substitute the following paragraphs:

- “(ga) no member of the firm is a partner or employee of the futures broker; and
- (g) in a case where the futures broker is a body corporate—no member of the firm is:
 - (i) an officer of the body; or
 - (ii) a partner, employer or employee of an officer of the body; or
 - (iii) a partner or employee of an employee of an officer of the body; and”.

Paragraph 1215 (3) (h):

Omit “no officer of the futures broker”, substitute “in a case where the futures broker is a body corporate—no officer of the body”.

Subsection 1218 (1):

Omit the subsection, substitute:

“(1) In this section:

‘financial year’, in relation to a futures broker, means:

- (a) if the broker is a natural person—a period of 12 months ending on 30 June in a year; or

SCHEDULE 1—continued

- (b) if the broker is a body corporate—a period that is a financial year of the body corporate because of the definition of ‘financial year’ in section 9;

‘prescribed day’, in relation to a financial year of a futures broker, means the day that is:

- (a) if the broker is a natural person—2 months; or

- (b) if the broker is a body corporate—3 months;

after the end of that financial year or, if an extension is approved under subsection (3), the day on which the extended period ends.”.

Subsection 1218 (2):

Omit “Act”, substitute “Law”.

Subsection 1218 (3):

Omit “of 3 months referred to in”, substitute “referred to in paragraph (a) or (b), as the case requires, of”.

Subsection 1219 (1):

After “from the broker or” insert “, in the case of a futures broker that is a body corporate,”.

Subsection 1219 (2):

After “of a futures broker” insert “that is a body corporate”.

Section 1223:

Omit “Act”, substitute “Law”.

Paragraph 1224 (1) (c):

Omit “Act”, substitute “Chapter”.

Subparagraphs 1224 (1) (d) (i) and (ii):

Omit the subparagraphs, substitute the following subparagraphs:

“(i) in any case—the last futures brokers licence held by the person has been revoked or suspended; or

(ii) in any case—the person no longer carries on a futures broking business; or

(iii) if the person is a natural person—the person has died, or is incapable, because of physical or mental incapacity, of managing his or her affairs;”.

Subsection 1224 (1):

Omit “of the person”, substitute “that the person holds or maintains in Australia (whether in this jurisdiction or not)”.

SCHEDULE 1—continued

Subsection 1224 (3):

Omit the subsection.

Subsection 1228 (3):

Before “law” insert “previous”.

Subsection 1229 (2):

Before “law” insert “previous”.

Subsection 1233 (7):

Before “law” insert “previous”.

Subsection 1233 (8):

Before “law” insert “previous”.

Section 1234:

Repeal the section, substitute:

Contribution to fund

“1234. (1) A person is not to be admitted to membership of a futures organisation unless:

- (a) in any case—the person has paid to the organisation, as a contribution to its fidelity fund, such amount, being not less than \$500, as the organisation determines in relation to the person or a class including the person; or
- (b) if the organisation is not a futures exchange—the person is already a member of a futures exchange.

“(2) A contributing member of a futures organisation must, on or before 31 March in each year, pay to the organisation, as a contribution to its fidelity fund, such amount, being not less than \$100, as the organisation determines in relation to the contributing member or a class including the contributing member.

“(3) This section has effect subject to section 1236.”.

Section 1235:

Repeal the section, substitute:

Levy in addition to annual contributions

“1235. (1) If at any time the amount of a fidelity fund is insufficient to pay all amounts that, at that time, are required to be paid under section 1231, the futures organisation may determine that a levy of a specified amount must be paid by specified contributing members of the organisation.

SCHEDULE 1—continued

“(2) The amount of the levy must be paid within the time, and in the manner, specified by the futures organisation either generally or in relation to a particular case.

“(3) A person or partnership need not pay by way of levy under this section more than \$5,000 in total or more than \$1,000 in any period of 12 months.

“(4) An amount of levy paid under this section must be paid into the futures organisation’s fidelity fund.

“(5) This section has effect subject to section 1236.”.

Subsections 1236 (1) and (2):

Omit the subsections, substitute:

“(1) A person or partnership need not pay a contribution under subsection 1234 (1) or (2) or a levy under section 1235 unless a provision of an Act of this jurisdiction imposes the contribution or levy.”.

Section 1238:

Omit “State or Territory”, substitute “jurisdiction”.

Subsection 1240 (5):

Before “law” insert “previous”.

Subsection 1242 (4):

Before “law” insert “previous”.

Section 1255:

Omit “an eligible corporation that”, substitute “a person who”.

Paragraphs 1255 (a), (b) and (c):

Omit “corporation”, substitute “licensee”.

Section 1256:

Repeal the section, substitute:

Prohibitions where dealing precluded

“1256. (1) A person must not, while precluded from dealing in a futures contract, deal in that futures contract.

“(2) A person who, because of having particular information, is precluded from dealing in a futures contract, must not, while so precluded, communicate the information to another person if the first-mentioned person knows, or ought reasonably to know, that the other person will make use of the information for the purpose of dealing in that futures contract.”.

SCHEDULE 1—continued

Section 1258:

Omit “An eligible”, substitute “A”.

Section 1259:

Repeal the section, substitute:

Futures market manipulation

“1259. A person must not, in this jurisdiction or elsewhere, take part in, be concerned in, or carry out, whether directly or indirectly:

- (a) a transaction (whether a dealing in a futures contract or not) that has, is intended to have, or is likely to have; or
- (b) 2 or more transactions (whether any of them is a dealing in a futures contract or not) that have, are intended to have, or are likely to have:

the effect of:

- (c) creating an artificial price for dealings in futures contracts on a futures market in this jurisdiction; or
- (d) maintaining at a level that is artificial (whether or not it was previously artificial) a price for dealings in futures contracts on a futures market in this jurisdiction.”.

Section 1260:

Repeal the section, substitute:

False trading and market rigging

“1260. (1) A person must not, in this jurisdiction or elsewhere, create, cause to be created, or do anything that is calculated to create, a false or misleading appearance:

- (a) of active dealing in futures contracts on a futures market in this jurisdiction; or
- (b) with respect to the market for, or the price for dealings in, futures contracts on a futures market in this jurisdiction.

“(2) A person must not, in this jurisdiction or elsewhere, by any fictitious or artificial transactions or devices, maintain, inflate, depress, or cause fluctuations in, the price for dealings in futures contracts on a futures market in this jurisdiction.

“(3) In determining whether a transaction is fictitious or artificial for the purposes of subsection (2), the fact that the transaction is, or was at any time, intended by the parties who entered into it to have effect according to its terms is not conclusive.”.

Section 1261:

Repeal the section, substitute:

SCHEDULE 1—continued

False or misleading statements etc.

“1261. A person contravenes this section if the person:

- (a) in this jurisdiction or elsewhere, makes a statement, or disseminates information, that is false or misleading in a material particular and is likely:
 - (i) to induce other persons to deal in futures contracts on a futures market in this jurisdiction; or
 - (ii) to have the effect of raising, lowering, maintaining or stabilising the price for dealings in futures contracts, or in a class of futures contracts, on a futures market in this jurisdiction; and
- (b) when making the statement, or disseminating the information:
 - (i) is recklessly indifferent as to whether the statement or information is true or false; or
 - (ii) knows, or ought reasonably to know, that the statement is false or misleading in a material particular.”.

Subsection 1262 (1):

- (a) Omit “Where a person (in this section called “person A”)”, substitute “A person must not”.
- (b) Omit all the words from and including “induces” to the end of the subsection, substitute “induce or attempt to induce another person to deal in a futures contract or a class of futures contracts.”.

Subsections 1262 (2), (3), (4), (5) and (6):

Omit the subsections.

Paragraph 1263 (a):

- (a) Before “a person circulates” insert “in this jurisdiction or elsewhere,”.
- (b) Omit “Australia”, substitute “this jurisdiction”.

Subsection 1264 (1):

Omit “each of the succeeding subsections has effect without prejudice to the effect of any of the others”, substitute “the person contravenes this section”.

Subsections 1264 (2), (3) and (4):

Omit the subsections.

Subsections 1266 (1), (2), (3) and (4):

Omit “an eligible”, substitute “a”.

SCHEDULE 1—continued

Subsections 1266 (4) and (7):

Omit “An eligible”, substitute “A”.

Paragraph 1266 (4) (b):

Omit “Act”, substitute “Law”.

Paragraphs 1266 (6) (a) and (8) (a):

Omit “an eligible”, substitute “a”.

Subsections 1267 (1), (4), (8) and (10):

Omit “an eligible” (wherever occurring), substitute “a”.

Subsections 1267 (2) and (5):

Omit “An eligible futures broker”, substitute “A person”.

Subsections 1267 (3) and (6):

Omit “An eligible futures adviser”, substitute “A person”.

Subsection 1267 (10):

Omit “eligible” (third, fourth, fifth and sixth occurring).

Paragraphs 1268 (1) (a) and (c):

(a) Omit “Act”, substitute “Chapter”.

(b) Omit “a Territory”, substitute “this jurisdiction”.

Subsection 1269 (1):

(a) Omit “corporation that”, substitute “person who”.

(b) Omit “corporation is”, substitute “person is”.

Subsections 1269 (3) and (4):

(a) Omit “corporation that”, substitute “body corporate that”.

(b) Omit “corporation is”, substitute “body is”.

Paragraph 1271 (1) (a):

(a) Omit “an eligible”, substitute “a”.

(b) Omit “Act”, substitute “Law”.

Paragraph 1271 (1) (b):

Omit “in Australia”, substitute “in this jurisdiction”.

Subsection 1271 (2):

Omit “Act” (twice occurring), substitute “Law or the ASC Law”.

SCHEDULE 1—continued
Amendments of Chapter 9

Subsection 1274 (5):

Omit “a proceeding in an Australian court”, substitute “any proceeding”.

Subsection 1274 (7):

- (a) Omit “a proceeding in an Australian court”, substitute “any proceeding”.
- (b) Omit “Act” (wherever occurring), substitute “Law”.

Paragraph 1274 (8) (a):

Omit “an Australian”.

Subsection 1274 (14):

Omit “an Australian”, substitute “any”.

Section 1277:

Omit “a law of a State or Territory”, substitute “another law of this jurisdiction”.

Section 1278:

Repeal the section, substitute:

Auditor or liquidator registered under corresponding previous law

“1278. For the purposes of this Law, where, immediately before the commencement of this section, a person was registered as an auditor, as a liquidator, as a liquidator of a specified body corporate, or as an official liquidator, under a previous law of this jurisdiction corresponding to this Division (whether or not the person’s registration was suspended at that commencement), the Commission is taken to have registered the person, at that commencement, under this Division as an auditor, as a liquidator, as a liquidator of that body, or as an official liquidator, as the case may be.”.

Section 1279:

Add at the end:

“(3) An application that was duly made to the NCSC, before the commencement of this section, under a previous law of this jurisdiction corresponding to subsection (1), and that the NCSC had not dealt with before that commencement, is taken to be an application duly made to the Commission under this section.”.

Subsection 1280 (1):

Omit the subsection.

SCHEDULE 1—continued

Subsection 1280 (2):

Omit “(not being an application to which subsection (1) applies)”.

Subparagraphs 1280 (2) (a) (i) and 1282 (2) (a) (i):

Omit “Accountants” (second occurring), substitute “Certified Practising Accountants”.

Subsection 1280 (6):

Omit the subsection.

Subsection 1282 (1):

Omit the subsection.

Subsection 1282 (2):

Omit “(not being an application to which subsection (1) applies)”.

Subsection 1282 (7):

Omit the subsection.

Subsection 1282 (8):

Omit “(1) or”.

After section 1284:

Insert:

Security given under previous law

“1284A. (1) This section applies where, immediately before the commencement of this section, a person maintained a security, under a previous law of this jurisdiction corresponding to section 1284, with the local authority within the meaning of that previous law.

“(2) After that commencement, the security has effect, with such modifications as are prescribed or the circumstances require, as if:

- (a) it were a security lodged and maintained in accordance with section 1284; and
- (b) the Commission were substituted for the local authority as a party to the security; and
- (c) a reference in the security to the local authority were a reference to the Commission.

“(3) Without limiting subsection 1284 (2), regulations for the purposes of that subsection may provide for the security to be applied in connection with an act done, an omission or event occurring, or a matter arising, before that commencement.”.

Paragraph 1285 (1) (e):

Before “law” (wherever occurring) insert “previous”.

SCHEDULE 1—continued

Subparagraphs 1286 (1) (a) (v) and (1) (b) (vi):

Before “law” (wherever occurring) insert “previous”.

Subsections 1288 (1), (2) and (3):

Omit the subsections, substitute:

“(1) A person who is, under subsection 1278, taken to be registered as an auditor or liquidator under this Division must lodge a statement relating to the relevant period setting out such information as is prescribed.

“(2) A statement under subsection (1) must be lodged:

- (a) within the period in which the person would have been required to lodge an equivalent statement under a corresponding provision of a previous law if this Law had not commenced; and
- (b) within one month after the end of each subsequent relevant period.

“(3) A person who is a registered company auditor or registered liquidator (other than a person to whom subsection (1) applies) must, within one month after the end of:

- (a) the period of 3 years beginning on the day on which the person’s registration begins; and
- (b) each subsequent period of 3 years;

lodge a statement in respect of that period of 3 years setting out such information as is prescribed.”.

Subsection 1288 (4):

Omit “(2)”, substitute “(1)”.

Section 1288:

Add at the end:

“(6) In this section:

‘**relevant period**’, in relation to a person who is taken to be registered as an auditor or liquidator under this Division, means:

- (a) the period starting before this Law commenced in respect of which the person would have been required to lodge a statement under corresponding to this section a previous law if this Law had not commenced; and
- (b) each subsequent period of 3 years.”.

Paragraphs 1292 (1) (a), (b) and (c), (2) (a), (b) and (c) and (3) (a), (b) and (c):

Before “law” insert “previous”.

SCHEDULE 1—continued

Section 1293:

Repeal the section, substitute:

Effect in certain cases of cancellation or suspension of registration under corresponding previous law

“1293. (1) This section applies where a registration (in this section called the ‘**corresponding registration**’) of a person under a previous law corresponding to Division 2:

- (a) is cancelled after the commencement of this section; or
- (b) was suspended before, or is suspended at or after, that commencement;

on an application made before that commencement.

“(2) If the corresponding registration is as an auditor, the person’s registration under Division 2 as an auditor:

- (a) is taken to be cancelled; or
- (b) is taken to be suspended while the corresponding registration is suspended;

as the case may be.

“(3) If the corresponding registration is as a liquidator, or as a liquidator of a specified body corporate:

- (a) the person’s registration under Division 2 as a liquidator; and
- (b) each registration (if any) of the person under Division 2 as a liquidator of a specified body corporate;

are taken to be cancelled, or to be suspended while the corresponding registration is suspended, as the case may be.

“(4) If the corresponding registration is as an official liquidator, the person’s registration under Division 2 as an official liquidator is taken to be cancelled, or to be suspended while the corresponding registration is suspended, as the case may be.

“(5) Nothing in this section prevents a person whose corresponding registration was suspended before or at the commencement of this section being taken to be registered under this Division as provided by section 1278, but nothing in that section affects the operation of this section in relation to that suspension.”.

After subsection 1308 (3):

Insert:

“(3A) A person is not liable to be proceeded against for an offence in consequence of a regulation made under section 28 of the *Corporations Act 1989* of the Commonwealth, as that regulation applies for the purposes of the Corporations Law of this jurisdiction, as well as for an offence against subsection (2) of this section.”.

SCHEDULE 1—continued

After section 1310:

Insert in Division 2 of Part 9.4:

Offences under 2 or more Corporations Laws

“1310A. Where:

- (a) an act or omission constitutes an offence under the Corporations Law of this jurisdiction and the Corporations Law of another jurisdiction; and
- (b) the offender has been punished for that offence under the law of the other jurisdiction;

the offender is not liable to be punished for the offence under the law of this jurisdiction.

Civil liability under 2 or more Corporations Laws

“1310B. In a proceeding under this Law in respect of loss or damage arising out of a contravention of this Law, it is a defence if it is proved:

- (a) that the plaintiff has recovered in respect of the loss or damage in an action brought under the Corporations Law of another jurisdiction; or
- (b) that:
 - (i) the plaintiff has brought proceedings under the Corporations Law of another jurisdiction to recover in respect of the loss or damage; and
 - (ii) judgment has been entered for the defendant in those proceedings.”.

Subsection 1313 (7):

Omit “this Act”, substitute “this Law”.

After section 1313:

Insert:

Offences committed partly in and partly out of the jurisdiction

“1313A. Where:

- (a) a person does or omits to do an act outside this jurisdiction; and
- (b) if that person had done or omitted to do that act in this jurisdiction, the person would, by reason of also having done or omitted to do an act in the jurisdiction, have been guilty of an offence against this Law;

the person is guilty of that offence.

SCHEDULE 1—continued

Reciprocity in relation to offences

“1313B. Where:

- (a) a person does or omits to do an act within this jurisdiction; and
- (b) if that person had done or omitted to do that act in another jurisdiction, the person would have been guilty of an offence against a provision of the Corporations Law of another jurisdiction;

the person is guilty of an offence against the corresponding provision of this Law.”.

Paragraph 1323 (1) (a):

- (a) Omit “the Commission Act or this Act”, substitute “the ASC Law or this Law”.
- (b) Omit “Act” (second occurring), substitute “Law”.

Paragraph 1323 (1) (b):

Omit “Act”, substitute “Law”.

Paragraph 1323 (1) (c):

Omit “Act”, substitute “Law”.

Paragraph 1323 (1) (f):

Omit “out of Australia”, substitute “out of this jurisdiction, or out of Australia.”.

Paragraph 1323 (1) (g):

Omit the paragraph, substitute:

- “(g) an order prohibiting the taking, sending or transfer by a person of securities, futures contracts or other property of the relevant person, or of an associate of the relevant person:
 - (i) from a place in this jurisdiction to a place outside this jurisdiction (including the transfer of securities from a register in this jurisdiction to a register outside this jurisdiction); or
 - (ii) from a place in Australia to a place outside Australia (including the transfer of securities from a register in Australia to a register outside Australia);”.

Paragraphs 1328 (1) (a) and (b):

Before “law” insert “previous”.

Subsection 1328 (2):

Omit “Act or in a law corresponding to such a provision”, substitute “Law or in a corresponding previous law”.

SCHEDULE 1—continued

Section 1334:

Repeal the section.

Section 1337 (definition of “Account”):

Omit the definition.

Section 1337 (paragraph (a) of the definition of “unclaimed property”):

Omit “Act”, substitute “Law”.

Section 1338:

Repeal the section.

Subsection 1341 (6):

Omit the subsection.

Paragraph 1343 (b):

Omit “Act”, substitute “Law”.

Part 9.8:

Repeal the Part.

Paragraph 1346 (2) (a):

Omit the paragraph, substitute:

“(a) a reference to a corporation includes a reference to a body corporate or society incorporated or formed, or otherwise duly constituted, whether before, at or after the commencement of this section, by or under:

- (i) a law of the Commonwealth, of a State or Territory, of an excluded Territory or of a country outside Australia and the external Territories; or
- (ii) letters patent or a royal charter; and”.

Paragraph 1349 (1) (a):

(a) Insert “, or by an authority of this jurisdiction specified in an application order,” after “NCSC”.

(b) Before “law” insert “previous”.

Paragraph 1349 (1) (c):

Before “law” insert “previous”.

Subsection 1349 (3):

Before “law” insert “previous”.

Section 1350:

Repeal the section.

SCHEDULE 1—continued

After Part 9.9:

Insert:

“PART 9.10—FEES FOR CHARGEABLE MATTERS

Fees payable

“1351. Subject to this Part, where:

- (a) the regulations prescribe a fee for a chargeable matter; and
 - (b) the fee is imposed by a provision of an Act of this jurisdiction;
- the fee must be paid to the Commonwealth for that matter.

Limits on fees payable for one matter

“1352. (1) Despite section 1351, 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.

“(2) A fee is not payable under section 1351 for a chargeable matter if a corresponding fee has been paid, under a law corresponding to section 1351, for that chargeable matter.

“(3) Without limiting subsection (2), a fee is not payable under section 1351 in connection with the making or granting of an application to which section 102A applies if a corresponding fee has been paid, under a law corresponding to section 1351, in connection with the making or granting of a corresponding application made as mentioned in subsection 102A (4).

Fee where document taken to be lodged

“1353. (1) This section applies where:

- (a) because of section 338, a company is taken 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 1351 for the lodgment.

“(2) As from that time, the fee that, because of section 338, is payable under section 1351 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

“1354. (1) This section applies where:

- (a) a fee is payable under section 1351 for the lodgment of a document; and
- (b) the document was submitted for lodgment without payment of the fee.

SCHEDULE 1—continued

“(2) The document is not taken not to have been lodged merely because of non-payment of the fee.

“(3) However, if the amount of the fee is ascertainable, the fee is 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 if the fee had been paid when the document was submitted for lodgment.

Doing of act without payment of fee

“1355. (1) Where a fee is payable under section 1351 for a matter involving the doing of an act by the Minister or the Commission, the Minister or the Commission must 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 1357 the payment of a deposit on account of the fee—the deposit has been paid.

Effect of sections 1354 and 1355

“1356. Sections 1354 and 1355 have effect despite anything in another Part of this Law.

Commission may require payment of deposit on account of fee

“1357. Where the amount of a fee payable under section 1351 for a matter involving the doing of an act by the Minister or the Commission cannot be ascertained, the Commission may, before the Minister or the Commission does the act, 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 became payable

“1358. (1) This section applies where the amount of a fee payable under section 1351 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 must 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 must 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

SCHEDULE 1—continued

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

“1359. Nothing in this Part 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 Law; or
- (b) refunding, in whole or in part, in a particular case or in particular classes of cases, fees paid under this Law.

Debts due to the Commonwealth

“1360. The Commission may recover in a court of competent jurisdiction a debt due under this Part.

This Part not to impose taxation

“1361. Nothing in this Part is to be taken to impose taxation.

Payment of fee does not give right to inspect or search

“1362. To avoid doubt, nothing in this Part, and nothing done under this Part:

- (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, but for the effect of section 1355, exist under a provision of another Part of this Law or under some other law.”.

Table A of Schedule 1:

(a) Omit the definition of “Act” in subregulation 1 (1), substitute: “**Law**” means the Corporations Law;”.

(b) Omit subregulation 1 (2), substitute:

“(2) Division 10 of Part 1.2 of the Corporations Law applies in relation to these regulations as if they were an instrument made under that Law as in force on the day when these regulations become binding on the company.”.

SCHEDULE 1—continued

Table B of Schedule 1:

- (a) Omit the definition of “Act” in subregulation 1 (1), substitute:
“‘Law’ means the Corporations Law;”.
- (b) Omit Subregulation 1 (2), substitute:
“(2) Division 10 of Part 1.2 of the Corporations Law applies in relation to these regulations as if they were an instrument made under that Law as in force on the day when these regulations become binding on the company.”.

Schedule 3:

- (a) Insert before “Section 806:”:

“Section 787:

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

Section 788:

Penalty: \$1,000.”.

- (b) Insert before “Section 872:”:

“Subsection 866 (3):

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

Subsection 866 (4):

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

Subsection 867 (3):

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

Subsection 867 (4):

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

Subsection 868 (2):

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

Subsection 868 (3):

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

Subsection 869 (3):

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

Subsection 869 (4):

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

SCHEDULE 1—continued

Subsection 870 (3):

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

(c) Insert before “Section 881:”:

“Subsection 873 (6):

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

(d) Insert before “Section 891:”:

“Subsection 889 (3):

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

SCHEDULE 2

Paragraph 7 (a)

AMENDMENTS TO CHANGE “ACT” TO “LAW”

The provisions set out in this Schedule are amended by omitting “Act” (wherever occurring) and substituting “Law”.

Subsection 6 (1)

Subsection 7 (1)

Section 9 (definition of “official liquidator”)

Section 9 (definition of “register”)

Subsection 16 (2)

Section 20

Section 53

Section 70

Subsection 72 (3)

Section 82

Subsections 89 (1) and (3)

Subsections 91 (1), (2), (3) and (4)

Section 100

Section 102

Subsection 103 (1)

Paragraph 103 (2) (b)

Section 104

Subsection 105 (1)

Section 106

Section 107

Subsection 109 (1)

Section 114

Subsection 120 (1)

Subsection 123 (1)

Subsection 124 (2)

Subsection 150 (7)

Paragraphs 152 (1) (b), (3) (b) and (4) (a)

Paragraph 162 (7) (c)

Paragraphs 165 (1) (d) and (e)

Subparagraphs 167 (3) (a) (ii), (iii) and (iv)

Subsections 171 (1), (2), (7), (8) and (10)

Subsection 172 (11)

Subsections 173 (1) and (2)

Subsections 176 (1) and (4)

Subsection 179 (2)

Subsection 180 (1)

Subsection 191 (1)

Subsection 192 (5)

Subsection 193 (3)

Subsections 205 (1) and (17)

Subsection 209 (9)

SCHEDULE 2—continued

Section 211
Subsection 212 (4)
Subsection 214 (4)
Subsection 215 (3)
Subsection 231 (4)
Subsection 240 (7)
Paragraph 241 (2) (b)
Paragraph 242 (2) (b)
Subsections 245 (1), (2) and (3)
Subsection 246 (7)
Subsections 249 (7) and (8)
Subsections 251 (1) and (3)
Subsections 253 (7) and (8)
Subsection 254 (1)
Subsections 255 (3) and (4)
Subsection 256 (1)
Subsections 260 (6) and (7)
Subsections 275 (2) and (3)
Subparagraph 289 (1) (b) (ii)
Subsections 289 (5) and (9)
Paragraph 301 (9) (c)
Section 311
Subsections 313 (1), (6), (9), (10), (11) and (12)
Paragraph 314 (2) (b)
Subsections 322 (1), (2) and (3)
Paragraph 341 (c)
Subsection 342 (12)
Paragraph 344 (c)
Section 348
Subsections 349 (3), (5) and (6)
Subsection 350 (13)
Subsection 353 (8)
Subsection 370 (1)
Subsections 383 (5), (6) and (9)
Section 384
Section 394
Subsection 411 (7)
Subsection 412 (8)
Subparagraph 423 (1) (a) (iii)
Subsection 430 (2)
Subsection 436 (16)
Paragraph 443 (3) (b)
Section 447
Subsection 448 (1)
Subsection 451 (2)
Paragraph 456 (18) (b)

SCHEDULE 2—continued

Subsection 464 (2)
Paragraph 467 (3) (b)
Paragraph 468 (2) (a)
Subsections 473 (8) and (9)
Subsection 475 (3)
Subsection 483 (2)
Section 489
Subsections 494 (3) and (4)
Subsection 495 (4)
Paragraph 506 (1) (b)
Subsection 506 (4)
Section 513
Section 522
Section 526
Subsection 534 (3)
Subparagraph 536 (1) (a) (ii)
Subsections 544 (4) and (5)
Subsection 545 (3)
Subsection 547 (3)
Subsection 551 (1)
Subsection 553 (1)
Section 555
Subsection 568 (11)
Subsection 586 (2)
Subsection 587 (1)
Subsection 588 (3)
Subsection 589 (5) (paragraph (a) of the definition of “relevant day”)
Subsection 1021 (12)
Subsection 1048 (4)
Subsection 1053 (4)
Subsection 1058 (23)
Section 1059
Section 1061
Subsection 1063 (2)
Subsections 1069 (13) and (14)
Subsection 1073 (2)
Section 1088
Subsection 1139 (4)
Subsection 1203 (2)
Paragraph 1208 (3) (b)
Subsection 1215 (13)
Subsections 1270 (1) and (4)
Subsection 1272 (1)
Subsections 1274 (1), (2), (8) and (11)
Paragraph 1279 (1) (c)
Subsection 1285 (1)

SCHEDULE 2—continued

Subsections 1286 (1) and (2)
Paragraph 1289 (2) (a)
Subsections 1300 (1), (2) and (3)
Subsection 1301 (2)
Section 1303
Subsections 1304 (1) and (2)
Subsection 1305 (1)
Subsections 1306 (1), (3), (4) and (5)
Subsections 1308 (2), (4), (6) and (7)
Subsection 1309 (5)
Section 1310
Section 1311
Section 1312
Paragraphs 1314 (3) (d) and (4) (a)
Subsection 1314 (6) (definition of “provision”)
Subsection 1314 (7)
Subsections 1315 (1) and (2)
Section 1316
Subsection 1317 (1)
Section 1317B
Paragraphs 1317C (a) and (b)
Paragraph 1318 (4) (d)
Section 1319
Subsections 1322 (1), (2), (3) and (4)
Subsections 1324 (1) and (2)
Subsection 1325 (1)
Section 1327
Subsections 1328 (1) and (2)
Section 1330
Section 1331
Section 1332
Section 1333
Section 1335
Subsections 1336 (1) and (3)
Section 1347
Section 1348
Subsections 1349 (1) and (3)
Schedule 1:
Table A:
Subregulation 1 (3)
Regulation 2
Regulation 3
Subregulation 5 (1)
Subregulation 7 (1)
Regulation 39

SCHEDULE 2—continued

Subregulation 60 (2)

Regulation 65

Subregulation 66 (1)

Regulation 98

Table B:

Subregulation 1 (3)

Regulation 2

Regulation 3

Subregulation 5 (1)

Subregulation 7 (1)

Subregulation 8 (1)

Regulation 10

Regulation 23

Subregulation 44 (2)

Regulation 49

Subregulation 50 (1)

Subregulation 81 (1)

Regulation 82

SCHEDULE 3

Subsection 9 (1)

SUBSTANTIVE AMENDMENTS OF THE CORPORATIONS LAW

Section 9 (definition of “machine-copy”):

Omit “from surface contact with the document or by the use of photo-sensitive material other than transparent photographic film”.

Section 9 (definition of “retirement village scheme”):

Omit “in Australia”, substitute “whether in Australia or elsewhere”.

Section 79:

Omit “A person”, substitute “Subject to section 1006, a person”.

After subsection 87 (1):

Insert:

“(1A) A reference, in relation to a person (in this subsection called the ‘**representative**’), to a proper authority from a futures licensee (in this subsection called the ‘**principal**’) includes a reference to a document that, immediately before the commencement of Division 3 of Part 8.3, was a proper authority from that principal in relation to that representative under a previous law that corresponds to subsection (1).”.

After subsection 88 (1):

Insert:

“(1A) A reference, in relation to a person (in this subsection called the ‘**representative**’), to a proper authority from a securities licensee (in this subsection called the ‘**principal**’) includes a reference to a document that, immediately before the commencement of Division 3 of Part 7.3, was a proper authority from that principal in relation to that representative under a previous law that corresponds to subsection (1).”.

Subsection 91 (2):

Insert “in force or” before “made” (last occurring).

Subsection 91 (3):

Insert “in force or” before “made” (last occurring).

Subsection 91 (4):

Insert “in force or” before “served” (last occurring).

Paragraph 237 (4) (a):

Omit “required by subsection (1) to be disclosed”, substitute “to be disclosed for the purposes of subsection (2)”.

SCHEDULE 3—continued

Paragraph 244 (1) (a):

- (a) Omit “from the public”.
- (b) Omit “to the public”.

Subsections 289 (11) and (12):

Omit the subsections.

Subsection 335 (3):

- (a) Omit “may”, substitute “must”.
- (b) Omit “if” (second occurring), substitute “when”.

Section 335:

Add at the end:

“(4) A company that is required to comply with subsection (3) in relation to a partly completed annual return is to be taken not to comply with subsection (1) in relation to the financial year concerned unless and until it complies with subsection (3) in relation to that return.

“(5) A company need not comply with subsection (3) in relation to a partly completed annual return if it instead completes and lodges, in accordance with this Part (other than that subsection) an annual return in a form in relation to which approval is in force under subsection (6) in relation to the case.

“(6) The Commission may, for the purposes of subsection (5), 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).”.

Paragraph 348 (b):

Omit “unless the local agent satisfies the court or tribunal hearing the matter that the local agent should not be so liable”, substitute “if the court or tribunal hearing the matter is satisfied that the local agent should be so liable”.

Section 349:

Add at the end:

“(9) A registered foreign company in relation to which a notice is in force under subsection (7) must, at least once in every calendar year, lodge with the Commission a return in the prescribed form made up to the date of its annual general meeting.

“(10) The return must be lodged within 1 month after the date to which it is made up, or within such further period as the Commission, in special circumstances, allows.”.

SCHEDULE 3—continued

Section 411:

After subsection (1), insert:

“(1A) Where:

- (a) a compromise or arrangement is proposed:
 - (i) between 30 or more Part 5.1 bodies that are wholly-owned subsidiaries of a holding company and the creditors or a class of the creditors of each of those subsidiaries; and
 - (ii) between the holding company and the creditors or a class of the creditors of the holding company; and
- (b) the proposed compromise or arrangement in relation to each subsidiary includes a term that orders will be sought under section 413 transferring the whole of the undertaking and of the property and liabilities of the subsidiary to the holding company; and
- (c) the Court is satisfied, on the application in a summary way:
 - (i) of the holding company or of a creditor of the holding company; or
 - (ii) if the holding company is being wound up—of the liquidator;

that the number of meetings that would be required between creditors in order to consider the proposed compromises or arrangements would be so great as to result in a significant impediment to the timely and effective consideration by those creditors of the terms of the compromises or arrangements;

the Court may order a meeting or meetings, on a consolidated basis, of the creditors of the holding company and of each of the subsidiaries or of such class or classes of those creditors as the Court determines and, where the Court makes such an order, the Court may approve the explanatory statement required by paragraph 412 (1) (a) to accompany notices of the meeting or meetings.

“(1B) Where:

- (a) there are fewer than 30 wholly-owned subsidiaries of the holding company but the matters referred to in paragraphs (1A) (b) and (c) are satisfied; and
- (b) the Court considers that circumstances exist that would justify its doing so;

the Court may make an order under subsection (1A) in relation to the proposed compromise or arrangement.

“(1C) Where an order is made under subsection (1A) in relation to a proposed compromise or arrangement, the succeeding provisions of this Part apply to the compromise or arrangement as if:

SCHEDULE 3—continued

- (a) references in this Part to a company included references to all of the Part 5.1 bodies to which the order relates; and
- (b) references in this Part to creditors of a company included references to the creditors of all the Part 5.1 bodies to which the order relates; and
- (c) references in this Part to a class of the creditors of a company were references to the relevant class of creditors of all of the Part 5.1 bodies to which the order relates.”.

Subsections 411 (2) and (4):

Insert “or (1A)” after “subsection (1)”.

Subsection 411 (13):

- (a) Insert “or (1A)” after “subsection (1)” (first occurring).
- (b) Insert “or (1A), as the case may be” after “subsection (1)” (last occurring).

Subparagraph 590 (1) (c) (i):

Insert “fraudulently” before “concealed”.

Subparagraph 590 (1) (c) (v):

Insert “fraudulently” before “pawned”.

Paragraph 590 (1) (d):

Insert “fraudulently” before “makes”.

Subsections 590 (2), (3) and (4):

Omit the subsections.

Subsection 591 (1):

Omit “subsection”, substitute “section”.

Section 591:

Add at the end:

“(3) A person who has been convicted of an offence under section 289 constituted by a particular act or omission is not liable to be prosecuted for, or convicted of, an offence under this section constituted by the same act or omission.

“(4) A person who has been convicted of an offence under section 289 constituted by a particular course of conduct (including a course of omissions) during a period is not liable to be prosecuted for, or convicted of, an offence under this section constituted by the same course of conduct during the same period or any part of it.”.

Section 748:

Repeal the section.

SCHEDULE 3—continued

Subsection 996 (1):

Omit the subsection, substitute:

“(1) A person must not authorise or cause the issue of a prospectus in relation to securities of a corporation:

- (a) in which there is a material statement that is false or misleading;
or
- (b) from which there is a material omission.”.

Paragraph 996 (2) (a):

Omit the paragraph.

Subsection 1006 (1):

Omit the subsection, substitute:

“(1) This section applies for the purposes of an action under section 1005 in respect of conduct being the issue of a prospectus in relation to securities of a corporation:

- (a) in which there is a material statement that is false or misleading;
or
- (b) from which there is a material omission.”.

Subsection 1006 (2):

Omit “Subject to this section, the action may be brought against all or any of the following persons:”, substitute “The reference in subsection 1005 (1) to any person involved in the contravention includes a reference to all or any of the following persons:”.

Paragraph 1006 (2) (j):

Omit the paragraph.

Subsection 1006 (3):

Omit “For the purposes of paragraph (2) (j), a”, substitute “A”.

Section 1007:

Insert “, or a person who authorised or caused the issue of the prospectus,” after “subsection 1006 (2)”.

Subsection 1009 (2):

Omit “(f),”.

Section 1009:

Add at the end:

“(4) A person referred to in paragraph 1006 (2) (g) or (h) is not liable in an action under section 1005 in respect of a false or misleading statement if it is proved:

SCHEDULE 3—continued

- (a) that, after the prospectus was lodged and before any allotment, issue or sale under the prospectus, the person, on becoming aware of the false or misleading statement, withdrew the person's consent in writing and gave reasonable public notice of the withdrawal and of the reasons for the withdrawal; or
- (b) that the person was competent to make the statement and, after making such inquiries (if any) as were reasonable, had reasonable grounds to believe, and did until the time of the allotment, issue or sale of the securities believe, that the statement was true and not misleading.”.

Subsection 1010 (1):

Omit “, or a person referred to in paragraph 1006 (2) (h) who has authorised or caused the issue of,”.

Section 1010:

Add at the end:

“(3) A person who has authorised or caused the issue of part only of a prospectus is not liable in an action under section 1005 in respect of a false or misleading statement in, or an omission from, the prospectus if it is proved that:

- (a) the statement was not included in, or the matter was not omitted from, that part of the prospectus; or
- (b) in the case of a statement—the statement was not included in, or substantially in, the form and context that the person had agreed to.

“(4) For the purposes of subsection (3), a person is not taken to have authorised or caused the issue of part only of a prospectus unless the prospectus includes an express statement that the person authorised or caused the issue of that part only.”.

Subsection 1011 (1):

Omit “or a person referred to in paragraph 1006 (2) (d), (f) or (j)”, substitute “, a person referred to in paragraph 1006 (2) (d) or (f) or a person who authorised or caused the issue of the prospectus”.

Subsections 1018 (3) and (4):

Omit the subsections.

Subsection 1018 (5):

Omit “an offer or invitation relating to securities in a class of securities of a corporation that are listed for quotation on a stock market of a securities exchange”, substitute “an offer for purchase of, or an invitation to buy, issued securities that are in a class of listed securities of a corporation”.

SCHEDULE 3—continued

Section 1018:

Add at the end:

“(7) In this section:

‘**issued securities**’ means securities issued before, at or after the commencement of this section;

‘**listed securities**’ means securities listed for quotation on a stock market of a stock exchange.

“(8) Subsections (2) and (5) do not apply in relation to:

- (a) an offer to which section 1030 relates; or
- (b) an invitation that, because of subsection 1030 (7), is taken to be such an offer.”.

Subsection 1022 (2):

Omit the subsection, substitute:

“(2) The information to be included by virtue of this section is such of the information mentioned in subsection (1) as is known to:

- (a) any person referred to in any of paragraphs 1006 (2) (b) to (h), inclusive; or
- (b) any person who authorised or caused the issue of the prospectus; or such of the information so mentioned as it would be reasonable for such a person to obtain by making inquiries.”.

Subsection 1024 (3):

Add at the end “or a person who authorised or caused the issue of the prospectus”.

Subsection 1024 (4):

Omit the subsection, substitute:

“(4) A person (other than the person who lodged the prospectus) who:

- (a) is referred to in subsection 1006 (2); or
 - (b) authorised or caused the issue of the prospectus;
- and is aware of the change or new matter, must give notice of the change or new matter to the person who lodged the prospectus.”.

Section 1034:

Repeal the section, substitute:

Transitional

“1034. (1) Where a copy of a prospectus in relation to securities of a corporation was registered by the NCSC within 6 months before the commencement of this Part for the purposes of a corresponding previous

SCHEDULE 3—continued

law of this jurisdiction, the copy is taken to be a prospectus in relation to those securities:

- (a) lodged with the Commission on the commencement of this Part for the purposes of this Part; and
- (b) in the case of a registrable prospectus—registered by the Commission on the commencement of this Part.

“(2) Where the NCSC has exercised its power under a previous law of this jurisdiction that corresponds to section 1084 to extend the period during which securities may be allotted or issued pursuant to a prospectus, subsection (1) applies in relation to the prospectus as if the reference to 6 months were a reference to the period so extended.

“(3) Nothing in this section operates to alter the date of issue of the prospectus for the purposes of this Law.

“(4) The regulations may make provision about the application, to a prospectus to which subsection (1) applies, of:

- (a) the provisions of this Law (other than the applied provisions); and
- (b) the provisions of previous corresponding laws of this jurisdiction.

“(5) The regulations that may be made under subsection (4) include, but are not limited to, regulations providing that a specified provision of this Law or a corresponding previous law of this jurisdiction applies, in relation to prospectuses, subject to modifications specified in those regulations.

“(6) In this section:

‘applied provisions’ means the provisions of this Law that are expressed to apply to prospectuses issued before the commencement of this Part.”.

Section 1044:

Repeal the section, substitute:

Application of Division

“1044. Sections 1045 and 1052 to 1060 (inclusive) do not apply in relation to:

- (a) an excluded issue of securities; or
- (b) an excluded offer of securities for subscription or purchase; or
- (c) an excluded invitation to subscribe for or buy securities.”.

SCHEDULE 3—continued

Subsection 1063 (1):

Omit the subsection, substitute:

“(1) This Division does not apply in relation to:

- (a) an excluded issue of prescribed interests; or
- (b) an excluded offer of prescribed interests for subscription or purchase; or
- (c) an excluded invitation to subscribe for or buy prescribed interests.”.

Section 1064:

Add at the end:

“(8) This section does not apply in relation to a prescribed interest that:

- (a) is an interest in a partnership agreement; and
- (b) was subscribed for or first purchased in this jurisdiction before the relevant day.

“(9) In subsection (8):

‘relevant day’, in relation to a jurisdiction, means:

- (a) in the case of New South Wales, Victoria or Queensland—1 January 1972; or
- (b) in the case of Western Australia—15 October 1972; or
- (c) in the case of South Australia—5 October 1972; or
- (d) in the case of Tasmania—1 January 1963; or
- (e) in the case of the Northern Territory—1 July 1986; or
- (f) in the case of the Capital Territory—1 July 1982.”.

Section 1068:

Add at the end:

“(3) A reference in this section to an instrument amending a deed includes a reference to such an instrument made before the commencement of this section, unless a copy of the deed as amended by that instrument has already been lodged under a previous law corresponding to this section.”.

Section 1078:

Add at the end:

“(4) Subsection (1) does not apply in relation to a prescribed invitation or a prescribed offer.”.

SCHEDULE 3—continued

Subsection 1079 (1):

Omit “not being an invitation or offer to a person whose ordinary business is the buying or selling of securities, whether as principal or agent,”.

After subsection 1079 (3):

Insert:

“(3A) Subsection (1) does not apply in respect of an invitation or offer that is an excluded invitation or an excluded offer.”.

After subparagraph 1274 (2) (a) (i):

Insert:

“(ia) a document lodged under a provision of Chapter 7 (other than Part 7.12 or 7.13) or Chapter 8;”.

After subsection 1274 (4):

Insert:

“(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 what purports to be the contents of the document or certificate; or
- (b) the Commission causes to be displayed for the person 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
- (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 a writing or document that sets out what purports to be the contents of:
 - (i) the whole of the document or certificate; or
 - (ii) 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) (i) applies—a copy of the document or certificate; or

SCHEDULE 3—continued

- (e) if subparagraph (c) (ii) applies—an extract from the document or certificate setting out that part of it.

“(4C) Where:

- (a) the requirement referred to in paragraph (4B) (a) includes a requirement that the copy or extract be certified; and
(b) pursuant to that requirement, the Commission gives a writing or document as mentioned in paragraph (4B) (c);

then:

- (c) the Commission may certify that the writing or document sets out the contents of the whole or part of the document or certificate, as the case requires; and
(d) the writing or document is, in a proceeding in a court, admissible as *prima facie* evidence of the information contained in it.”.

Section 1274:

Add at the end:

“(15) Where information about a person is included on a register kept by the Commission, the Commission may at any time, in writing, require that person to give the Commission specified information about the person, being information of the kind included on that register.

“(16) The person must provide the information within such reasonable period, and in such form, as are specified by the Commission.

“(17) Without limiting the generality of subsection (1), the Commission may use a register, or information obtained from a register, kept by the NCSC or by an authority of this jurisdiction, as the basis of a register to be kept by the Commission.

“(18) References in this Law to documents lodged, made or otherwise dealt with under a provision of this Law include references to documents lodged, made or otherwise dealt with under a corresponding provision of a previous law, to the extent that such documents have been incorporated in a register kept by the Commission.”.

After section 1274:

Insert:

Obtaining information from certain registers

“1274A. (1) In this section:

‘**data processor**’ means a mechanical, electronic or other device for the processing of data;

‘**register**’ means a register kept by the Commission under this Law;

‘**search**’ includes inspect.

SCHEDULE 3—continued

“(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.”.

After subsection 1323 (1):

Insert:

“(2A) A reference in paragraph (1) (g) or (h) to property of a person includes a reference to property that the person holds otherwise than as sole beneficial owner, for example:

- (a) as trustee for, as nominee for, or otherwise on behalf of or on account of, another person; or
- (b) in a fiduciary capacity.

“(2B) Subsection (2A) is to avoid doubt, is not to limit the generality of anything in subsection (1) and is not to affect by implication the interpretation of any other provision of this Law.”.

After section 1336:

Insert in Part 9.6:

Proceedings by or against NCSC to be proceedings by or against Commission

“1336A. (1) Where, before the commencement of this Law, a proceeding under a law of this jurisdiction had been commenced by or against the NCSC, the proceeding may be continued by or against the Commission.

“(2) Where, but for this Law, a proceeding under a law of this jurisdiction could have been commenced by or against the NCSC, the proceeding may be commenced by or against the Commission.”.

SCHEDULE 4

Subsection 9 (1)

TECHNICAL AMENDMENTS OF THE CORPORATIONS LAW

Section 9 (paragraph (a) of the definition of “financial year”):

Omit “shorter than”, substitute “shorter than”.

Paragraph 66 (3) (b):

Omit “issued”, substitute “issued”.

Paragraph 66 (3) (f):

Omit “corporation it is”, substitute “corporation—it is”.

Paragraph 151 (3) (b):

Omit the paragraph, substitute:

“(b) there were omitted from paragraph 245 (5) (b) ‘or (2)’.”.

Paragraph 161 (2) (a):

Omit “162 (1)”, substitute “162 (2)”.

Paragraph 161 (2) (d):

Omit “162 (1)”, substitute “162 (2)”.

Subsection 167 (4):

Omit “to”.

Subsection 167 (5):

Omit “(10)”, substitute “(13)”.

Paragraph 170 (2) (b):

Omit “(7)”, substitute “(6)”.

Paragraph 171 (8) (a):

Omit “the resolution, order or document is registered”, substitute “the registration of the resolution, order or document”.

Subsection 199 (7):

Omit “and office”, substitute “an office”.

Subsection 227 (5):

Omit “(1)”, substitute “(3)”.

Subsection 231 (1):

Omit “as soon a”, substitute “as soon as”.

SCHEDULE 4—continued

Subsection 231 (2):

- (a) Omit “company” (second occurring), substitute “corporation”.
- (b) Omit “first-mentioned”.

Paragraph 235 (4) (a):

Omit “in”, substitute “is”.

Paragraph 236 (1) (b):

Omit “given”, substitute “giving”.

Paragraph 237 (6) (b):

Omit “including”, substitute “excluding”.

Paragraph 265 (5) (a):

Omit “notice is”, substitute “notice in”.

Paragraph 274 (a):

Omit “referred on”, substitute “referred to”.

Subsection 282 (1):

Omit “the” (first occurring).

Paragraph 304 (1) (b):

Omit “(7), (8), (9) and (10)”, substitute “(8), (9), (10) and (11)”.

Paragraph 305 (1) (b):

Omit “(7), (8), (9) and (10)”, substitute “(8), (9), (10) and (11)”.

Subsections 313 (9) and (10), paragraph 313 (12) (a), subsection 313 (13) and paragraph 313 (14) (a):

Omit “(1)” (wherever occurring), substitute “(2)”.

Subsections 315 (3), (4) and (6):

Omit “(1)”, substitute “(2)”.

Subsections 317 (3) and (4):

Omit “(1)”, substitute “(2)”.

Subsection 325 (6):

Omit “Division”, substitute “Part”.

Subsection 326 (10):

Omit “Division”, substitute “Part”.

Subsection 327 (11):

Omit “(1)”, substitute “(10)”.

SCHEDULE 4—continued

Subsections 327 (14) and (15):

Omit “Division”, substitute “Part”.

Subsection 328 (3):

Omit “(1)”, substitute “(10)”.

Subsection 350 (11):

Omit “(9)”, substitute “(10)”.

Subsection 363 (4):

Omit “company”, substitute “body”.

Subsection 397 (1):

Omit “promoters”, substitute “promoters”.

Paragraph 400 (3) (a):

Omit “36”, substitute “30”.

Subsection 411 (10):

Omit “171 (5)”, substitute “171 (8)”.

Subsection 436 (7):

Insert “it” after “which”.

Subsection 573 (5):

Omit “subsection (5)”, substitute “subsection (6)”.

Subsection 589 (5) (subparagraphs (c) (i) and (ii) of the definition of “relevant day”):

Omit “589”.

Subsection 598 (2):

Omit “an” (first occurring), substitute “on”.

Section 603 (definition of “ordinary course of trading”):

Omit “698 (7)”, substitute “698 (5)”.

Section 604:

Omit “698 (7)”, substitute “698 (5)”.

Subsection 746 (6):

Insert “of” after “respect”.

Subsection 899 (2):

Omit “8.7”, substitute “8.6”.

SCHEDULE 4—continued

Subsection 1030 (6):

Omit “paragraph 1029 (1) (a)”, substitute “subsection 1021 (13)”.

Subsection 1058 (6):

Omit “holding corporation”, substitute “holding company”.

Paragraph 1081 (a):

Omit “inviting”, substitute “issuing”.

Paragraph 1294 (1) (a):

Omit “of” (first occurring), substitute “or”.

Subsection 1313 (1):

Omit “has, committed”, substitute “has committed”.

Subsection 1314 (6) (definition of “provision”):

Omit “subsection or”, substitute “subsection of”.

Subsection 1325 (4):

Omit “3”, substitute “6”.

Schedule 1, Table A, subregulation 94 (4):

Omit “among the”, substitute “among”.

Schedule 1, Table B, subregulation 79 (2):

Omit “in”, substitute “is”.

Schedule 3:

Omit:

“Section 597:

Penalty: \$10,000 or imprisonment for 2 years, or both.” (first occurring).

SCHEDULE 5

Subsection 9 (1)

AMENDMENTS RELATING TO BUY-BACKS

Section 9:

Insert:

“ **‘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 in Australia or an external Territory—that ultimate holding company;

‘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 body corporate, means:

- (a) an employee of the body corporate or of a related body corporate; or
- (b) without limiting the generality of paragraph (a), a director of the body corporate or of a related body corporate who holds a salaried employment or office in the body corporate or in a related body corporate;

‘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; or
- (b) a takeover announcement within the meaning of Chapter 6;”.

Subparagraph 191 (2) (e) (ii):

Omit “or” (last occurring).

After paragraph 191 (2) (e):

Insert:

“(ea) as provided by subsection 206PD (2); or”.

Subparagraph 205 (1) (b) (ii):

Insert “acquire or” before “purport”.

Paragraph 205 (9) (b):

Omit all the words after “benefit of”, substitute:

“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

SCHEDULE 5—continued

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.”.

Paragraph 205 (10) (j):

Omit “and”.

Subsection 205 (10):

Add at the end:

“; 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).”.

After paragraph 206 (1) (a):

Insert:

“(ba) the validity of a contract or transaction is not affected by a contravention of paragraph 205 (1) (b) constituted by:

(i) a buy-back, within the meaning of Division 4B, of ordinary shares; or

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

Paragraph 206 (1) (b):

Omit “a contravention”, substitute “any other contravention”.

After Division 4 of Part 2.4:

Insert:

“Division 4A—Unacceptable Self-acquisition Schemes

Interpretation

“206AAA. (1) In this Division, unless the contrary intention appears: ‘agreement’ means an agreement, arrangement or understanding:

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

SCHEDULE 5—continued

- (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; or
- (b) a proposed agreement; or
- (c) an agreement as varied or as proposed to be varied; or
- (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; and
- (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; and
- (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 Division to a person carrying out a scheme includes a reference to the person carrying out the scheme together with any other person or persons.

SCHEDULE 5—continued

Self-acquisition scheme

“206AAB. (1) A reference in this Division, 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;
- (e) otherwise obtaining, securing, or retaining, a relevant interest in a share in itself.

“(2) Division 5 of Part 1.2 has effect for the purposes of this section as if without limiting the generality of anything in that Division, a reference in subsection 36 (1) 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 205 (1) (a), even if subsection 205 (10) permits the giving by the company of the financial assistance.

“(4) A transaction permitted by section 206CA or 206CB:

- (a) is not to be taken to be a connected transaction in relation to; and
- (b) is to be disregarded in determining what constitutes; a self-acquisition scheme relating to the company.

SCHEDULE 5—continued

Relevant matters affecting self-acquisition scheme

“206AAC. (1) For the purposes of this Division, 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:
 - (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

“206AAD. (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; and
- (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

SCHEDULE 5—continued

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 is to be in writing.

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

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

SCHEDULE 5—continued

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

Commission may make interim orders

“206AAE. (1) Subject to this section, where the Commission makes a declaration under section 206AAD, 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 must 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 must not contravene an order under subsection (1).
Penalty: \$2,500 or imprisonment for 6 months, or both.

SCHEDULE 5—continued

“(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 206AAG 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

“206AAF. (1) Where the Commission makes a declaration under section 206AAD, the Court may, on an application by the company or on an application made under section 206AAG 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

“206AAG. (1) This section applies where the Commission makes a declaration under section 206AAD.

“(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; or
- (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;

SCHEDULE 5—continued

- (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 1318 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.

SCHEDULE 5—continued

“(8) Section 744 applies in relation to an order under this section in the same way as it applies in relation to an order under section 736.

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

Effect of Division

“206AAH. Nothing in this Division limits the generality, or affects the operation, of:

- (a) section 205 or 206; or
- (b) a provision of Chapter 6.

“Division 4B—Permitted Buy-backs of Shares

“Subdivision A—How this Division Works

Outline of structure

“206AA. (1) Subdivision C creates exceptions to the section 205 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.

SCHEDULE 5—continued

“Subdivision B—Interpretation

Effect of Subdivision

“206BA. This Subdivision has effect for the purposes of this Division, except so far as the contrary intention appears in this Division.

Interpretation

“206BB. Unless the contrary intention appears:

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

- (a) if Part 3.7 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 206BC;

‘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 206FB constitute a buy-back scheme;

‘class’, in relation to shares, has a meaning affected by sections 206BM and 206FA;

‘completed’ has a meaning affected by section 206BK;

‘compliance certificate’ means a certificate given for the purposes of section 206SA;

‘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 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 Chapter 6;

SCHEDULE 5—continued

'externally-administered company' means a company:

- (a) in respect of which a provisional liquidator has been appointed and not since removed; or
- (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 Capital 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;

'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

SCHEDULE 5—continued

- (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 206FA;
- ‘solvency declaration’** has the meaning given by section 206BH;
- ‘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 206BF;
- ‘terms’** includes conditions;
- ‘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 206BL.

What constitutes buying back shares

“206BC. Where a company buys shares in itself, it is taken to buy back the shares.

SCHEDULE 5—continued

The 10% in 12 months limit

“206BE. A buy-back of shares exceeds the 10% in 12 months limit if, and only if, the number worked out using the following formula exceeds 10:

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

where:

‘**Buy-backs**’ means 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**’ means the aggregate nominal value of all the issued ordinary shares, as at the start of that period, in the company;

‘**New issues**’ means the aggregate nominal value of all ordinary shares that the company issued during that period;

‘**Cancelled shares**’ means the aggregate nominal value of all ordinary shares in the company that were cancelled during that period otherwise than by force of subsection 206PC (1).

Takeover aspects of proposed resolution

“206BF. (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 must 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 must 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:
 - (i) each proposal and takeover bid concerned; and
 - (ii) the extent to which each has influenced that decision.

SCHEDULE 5—continued

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

“206BG. (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 Chapter 6 relating to the proposed takeover bid;

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

“(2) A director of a company is, unless the contrary is established, to 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 206BF (2) and paragraph 206GA (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

“206BH. (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; and
- (b) specifies that day; and
- (c) states to the effect that it is the directors’ opinion that the company was solvent on that day; and
- (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; and

- (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; and

SCHEDULE 5—continued

- (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; and
 - (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; and
 - (iii) each agreement (if any) of the kind referred to in paragraph (e) is completed during that period; and
 - (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 is to 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 is to be taken to have been made on the day specified in it under paragraph (1) (b).

“(4) Unless sooner revoked under section 206MD, 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), (e) or (f).

“(6) In subsection (5):
'buy-back' includes a proposed buy-back;
'buy-back scheme' includes a proposed buy-back scheme.

SCHEDULE 5—continued

Auditor's report on solvency declaration

“206BJ. 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; and
- (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

“206BK. 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

“206BL. 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

“206BM. 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

“206CA. (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.

SCHEDULE 5—continued

Completion of buy-back

“206CB. Subject to this Division (other than section 206CA), where a company buys back shares as permitted by section 206CA, the shares may be transferred to the company pursuant to the buy-back.

Effect of Division

“206CC. (1) This Division has effect despite:

- (a) sections 205 and 206 and Division 4A; or
- (b) section 615; or
- (c) the constitution, or a resolution, of a company; or
- (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 206CA or 206CB 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 186.

“(4) Shares bought back as permitted by section 206CA are, so long as the rights attached to them are suspended because of section 206PA, to be disregarded in ascertaining, for the purposes of Chapter 6, the shares, or the voting shares, as the case requires, in which the company has a relevant interest or relevant interests.

“(5) Sections 206PA and 206PB are to be disregarded in determining, for the purposes of Part 6.7, whether or not a person has a relevant interest in particular shares.

Other obligations and liabilities not affected

“206CD. (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 232 or otherwise and whether of a fiduciary nature or not.

“Subdivision D—Buy-back Authorisation in Articles

Articles to contain buy-back authorisation

“206DA. (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

SCHEDULE 5—continued

206GA does not apply—when the first offer is made under the buy-back scheme; or

- (b) if section 206GA, 206HA, 206JA or 206JB 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

“206DB. (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 constitution.

“(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; or
- (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; or
- (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 must, 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 effected in the manner in which the renewal is effected.

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

- (a) sets out the intention to propose:

SCHEDULE 5—continued

- (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; and
 - (d) explains the reasons for proposing the resolution and sets out the factual matters and principles underlying those reasons; and
 - (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; and
 - (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 (5), 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

“206EA. 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

“206FA. (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 206FB (10)) apply in relation to each of those classes:

SCHEDULE 5—continued

- (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

“206FB. (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.

“(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.

SCHEDULE 5—continued

“(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 607 has effect for the purposes of subsection (13) of this section as if that subsection were a provision of Chapter 6.

Withdrawal or variation of buy-back offers

“206FC. 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

“206FD. Where, at a particular time:

- (a) an offer has been made under a buy-back scheme; and
- (b) the company is a listed body; and
- (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 is, except for the purposes of subsection 206FB(11) and this section, to 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

“206FE. (1) This section applies where, because of section 206FD, 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

SCHEDULE 5—continued

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 is to be taken not to have been bought back.

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

When approval required

“206GA. 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

“206GB. 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; and
 - (ii) complies with section 206GC; and
 - (iii) was passed at a meeting held before the first offer was made under the buy-back scheme; and
- (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 206GD (2) in notices relating to the resolution that were sent for the purposes of the meeting.

Resolution to approve proposed buy-back scheme

“206GC. (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

SCHEDULE 5—continued

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 206GD; and
- (b) the resolution complies with subsection (2) of this section.

“(2) The resolution must specify:

- (a) the latest date that the proposed buy-back offers may have for the purposes of subsection 206FB (5), being a date at most 12 months after the day on which the resolution is passed; and
- (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; and
- (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 206FB (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

“206GD. (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;
- must comply with this section.

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

SCHEDULE 5—continued

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

“(5) It must 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 must 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 must 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 must 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 must 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; and
 - (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 must 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 must 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

“206HA. If the buy-back is an employee-shares purchase and exceeds the 10% in 12 months limit, the next conditions are:

SCHEDULE 5—continued

- (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; and
- (b) that each of the resolutions, or the resolution, as the case may be, complies with section 206HB; and
- (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 206HC (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

“206HB. (1) A resolution of a body corporate 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 206HC; and
- (b) the resolution specifies the consideration, or each alternative consideration included in the consideration, as the case requires, 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:

SCHEDULE 5—continued

- (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 body corporate 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

“206HC. (1) A notice that:

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

must comply with this section.

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

“(4) It must 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 body corporate, or was such an employee immediately before the person last ceased to be such an employee, as the case requires.

“(5) It must 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 body corporate, the notice must set out:

- (a) the takeover aspects of the proposed resolution; and
- (b) what the directors consider will be the likely effect on the body corporate’s state of affairs if the purchase is made; and
- (c) a copy of a solvency declaration by the directors that relates to

SCHEDULE 5—continued

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 body corporate, the notice must 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; and
- (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 body corporate’s directors consider will be the likely effect on the body corporate’s state of affairs if the purchase is made.

“(8) The notice must 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 must 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

“206JA. 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;

such members of the company as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at the meeting; and

- (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

SCHEDULE 5—continued

- (ii) a person associated with such a party; and
- (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; and
- (f) that, as at the time when the first such notice was so sent, each expert (if any) who had signed under paragraph 206KD (2) (a) or subsection 206KE (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; and
- (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 206KC; and
- (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

“206JB. 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; and
- (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; and
- (e) that a copy of the agreement as proposed when the first such

SCHEDULE 5—continued

notice was so sent was available in accordance with the statement set out in each such notice as required by section 206KC; and

- (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

“206KA. 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;

must comply with this Subdivision.

Contents of resolution and proposed agreement

“206KB. (1) It must set out the text of the proposed resolution.

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

Availability of agreement for inspection

“206KC. It must 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

“206KD. (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 must 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:

SCHEDULE 5—continued

- (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; and
 - (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 206KF; 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.

“(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 must 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

“206KE. (1) If the company is a public company, the notice must 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; and
- (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

SCHEDULE 5—continued

- (iv) sets out the expert's reasons for forming that opinion; and
- (c) in relation to each report (if any) that was signed under paragraph 206KD (2) (a) and a copy of which is set out in the notice—states:
 - (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 206KF.

“(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 must 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

“206KF. For the purposes of subparagraph 206KD (2) (a) (iii) or paragraph 206KE (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; or
 - (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; and

- (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

SCHEDULE 5—continued

(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

“206KG. If the company is a public company, the notice must set out, in relation to each report that was signed under paragraph 206KD (2) (a) or subsection 206KE (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

“206KH. (1) The notice must set out the reasons why the buy-back is being proposed and the facts and principles underlying those reasons.

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

Solvency aspects

“206KJ. (1) The notice must 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 must 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 must 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

“206KK. (1) The notice must 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.

SCHEDULE 5—continued

“(2) The notice must set out each declaration (if any) that, before the notice was prepared, a director of the company has made under section 231 in relation to the proposed agreement.

Effect on control of company

“206KL. (1) The notice must 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 must 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

“206KM. The notice must 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

“206KN. The notice must be the same as each of the other notices of the kind referred to in section 206KA 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

- “206LA. (1) This section applies if:
- (a) the buy-back is made under a buy-back scheme; or
 - (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

SCHEDULE 5—continued

buy-back scheme, or to enter into the agreement constituting the buy-back, as the case may be; and

- (b) specifying the documents referred to in paragraphs (3) (a) and (b) and, if applicable, paragraph (3) (c); and
- (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 206LB;

was published in accordance with section 206LC 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 206GA, 206JA or 206JB 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; and
- (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; and
- (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 206GA, 206JA or 206JB 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 206KD (2) or 206KE (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.

SCHEDULE 5—continued

“(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

“206LB. (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 206LC must comply with this section.

“(2) The notice must 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.

SCHEDULE 5—continued

“(3) If paragraph (1) (a) applies, the notice must 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 must 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 must 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 must set out the effect of section 206LD 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

“206LC. 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; and
- (b) if a daily newspaper (other than a national newspaper) circulates generally in the jurisdiction in which the company has its registered office—in such a newspaper that so circulates; and
- (c) in each jurisdiction in which:
 - (i) the company carries on business; and
 - (ii) a daily newspaper (other than a national newspaper) circulates generally;

in such a newspaper that circulates generally in that jurisdiction; whether on the same day or on different days.

Creditor may apply to Court

“206LD. 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;

SCHEDULE 5—continued

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

How application to be dealt with

“206LE. (1) On an application made in accordance with section 206LD, the Court must, if satisfied that:

- (a) the company is insolvent; or
- (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

“206LF. (1) This section applies if section 206LA applies and notice of an application made in accordance with section 206LD 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 206LA (2) and paragraph 206LA (3) (b), how long before a particular day:

- (a) a notice relating to the offers or agreement was published in accordance with section 206LC; and
- (b) a solvency declaration by the company’s directors that relates to the offers or agreement was made.

SCHEDULE 5—continued

Company to comply with order of Court

“206LG. (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 206LE.

“(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

“206MA. 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

“206MB. 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; 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 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

“206MC. (1) Where a solvency declaration by a company’s directors is made, the company must 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

SCHEDULE 5—continued

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 must lodge with the Commission a copy of the report.

Revocation of solvency declaration

“206MD. (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 must, as soon as practicable:

- (c) sign a notice stating that he or she is of that opinion; and
- (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

“206ME. A company must 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; and

SCHEDULE 5—continued

- (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

“206MF. Where an offer made by a company under a buy-back scheme is accepted, the company must 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

“206NA. 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

“206NB. 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; or
- (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

SCHEDULE 5—continued

- (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

“206NC. (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

“206PA. 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

“206PB. (1) A company must 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

“206PC. (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.

SCHEDULE 5—continued

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

“206PD. (1) This section applies where a company buys back shares.

“(2) The company must 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, must 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 must 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

“206QA. 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

“206QB. (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

SCHEDULE 5—continued

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; or
- (b) a court makes an order for the winding up of the company; or
- (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 is, despite section 206FC, to be taken to have been withdrawn.

“(6) If the offer has been accepted by a person, the company must, 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

“206QC. (1) This section applies where:

- (a) a company is placed under official management or commences to be wound up; and
- (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

SCHEDULE 5—continued

(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:

SCHEDULE 5—continued

- (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 206QC

“206QD. (1) Where, in a proceeding against a person in respect of an alleged liability of the person under section 206QC 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 206QC 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

“206RA. Subject to section 206RB, 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

“206RB. (1) Subject to section 206RC, an agreement constituting a buy-back by a company is unenforceable while:

- (a) the company is being wound up; or
- (b) there is a provisional liquidator of the company; or
- (c) the company is under official management; or
- (d) a receiver, or a receiver and manager, of property of the company, whether or not appointed by a court, is acting; or

SCHEDULE 5—continued

- (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

“206RC. (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 553 or 554.

“(4) Section 568 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

“206RD. (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; or

SCHEDULE 5—continued

- (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 is to be taken not to be, and must 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), must 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

“206SA. (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 206 (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 206 (2), because it:

- (a) is made or performed, or engaged in, as the case may be; or
 - (b) is, for the purposes of section 206, related to an agreement made or performed, or to a transaction engaged in;
- in contravention of section 205.

“(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

SCHEDULE 5—continued

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

“206SB. (1) In a proceeding, a document purporting to be a compliance certificate is, unless the contrary is established, to be presumed to be a certificate duly given for the purposes of section 206SA.

“(2) In a proceeding, a document purporting to be a copy of a compliance certificate is, unless the contrary is established, to be presumed to be a true copy of a certificate duly given for the purposes of section 206SA.

“(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 is to be presumed, unless the contrary is established, that the copy accompanied the offer.

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

“(5) For the purposes of subsection 206SA (5), a person is, unless the contrary is established, to 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

“206SC. A compliance certificate must 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

“206SD. (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

SCHEDULE 5—continued

relating to the buy-back scheme and a buy-back made under the buy-back scheme contravenes section 205, the company is to 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 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 205.

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

Offences relating to compliance certificates: other buy-backs

“206SE. (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 205;

the person is to 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 205.

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

Declaration by Court of substantial compliance

“206SF. 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

“206TA. (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 must lodge with the Commission a written notice that specifies the buy-back scheme and sets out:

SCHEDULE 5—continued

- (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 must 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 must 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

“206TB. A listed body that section 206TA requires to lodge a notice with the Commission must 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 206TA (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

“206UA. A company that is a listed body must, 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 206PC (1), send to the person a written notice that:

- (a) states that the shares have been cancelled; and
- (b) specifies the day of the cancellation; and

SCHEDULE 5—continued

- (c) specifies the number of issued shares in that class as at the time immediately after the cancellation.

Notifying members generally

“206UB. (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 worked out using the following formula exceeds 5:

$$\frac{(\text{Previous issued shares} - \text{Current issued shares}) \times 100}{\text{Previous issued shares}}$$

where:

‘**Previous issued shares**’ means 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;

‘**Current issued shares**’ means 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 must 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 is to 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

“206VA. A company:

- (a) whose articles contain a buy-back authorisation; or

SCHEDULE 5—continued

(b) that has at any time bought back shares;
must establish a register for the purposes of this Division and keep it in accordance with this Subdivision.

Particulars of buy-back schemes

“206VB. (1) As soon as practicable after making offers under a buy-back scheme, the company must 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 must 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

“206VC. As soon as practicable after a buy-back is made by the company otherwise than under a buy-back scheme, the company must:

- (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); and
 - (ii) the date on which the agreement was made; and
 - (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

“206VD. (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 206QB, the company must remove from the register:

- (a) the copy of an offer made under the buy-back scheme included under subsection 206VB (1); and
- (b) each entry made under subsection 206VB (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 must remove from the register the entry made under subsection 206VB (2) because of the acceptance that resulted in the agreement, or made under section 206VC because of the

SCHEDULE 5—continued

agreement, as the case requires, and the copy (if any) of the agreement included under section 206VC.

“(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 206VB and 206VC; and
- (b) removing the copy or entry from the last-mentioned part.

Entries in register after cancellation of shares

“206VE. (1) As soon as practicable after shares in the company are transferred to the company pursuant to an agreement, the company must include in the register, in relation to the entry:

- (a) made under subsection 206VB (2) because of the acceptance that resulted in the agreement; or
- (b) made under section 206VC 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 206PC (1), the company must 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

“206VF. (1) The register must be kept at the company’s registered office and must 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 must 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

SCHEDULE 5—continued

(b) otherwise—within 21 days after the request is made or within such longer period as the Commission approves.”.

Subsection 553 (2):

Before “279” insert “206RD,”.

SCHEDULE 6

Subsection 9 (2)

**AMENDMENTS RELATING TO ON-MARKET SHARE
BUY-BACKS**

Section 206BB:

Insert:

“ ‘on-market purchase’ has the meaning given by section 206BD;”.

After section 206BC:

Insert:

On-market purchase

“206BD. (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’.”.

Section 206JA:

Insert “on-market purchase, an” after “an” (first occurring).

Paragraph 206LA (1) (c):

Insert “on-market purchase, an” after “an” (first occurring).

SCHEDULE 7

**AMENDMENTS OF THE AUSTRALIAN SECURITIES
COMMISSION ACT 1989**

Subsection 5 (1) (definition of “affairs”):

Omit “*Corporations Act 1989*”, substitute “Corporations Law”.

Subsection 5 (1) (definition of “appropriate officer”):

Omit the definition.

Subsection 5 (1) (definition of “company”):

Omit the definition.

Subsection 5 (1) (definition of “contravention”):

Omit “of the Commonwealth”.

Subsection 5 (1) (definition of “examination”):

Omit the definition, substitute:

“ ‘**examination**’ means:

- (a) in this section, and Part 3 (other than subsection 27 (2) and Division 9)—an examination of a person pursuant to a requirement made under section 19; or
- (b) in subsection 27 (2) and Division 9 of Part 3—an examination of a person pursuant to a requirement made under section 19 or a corresponding provision of the ASC Law of another jurisdiction;”.

Subsection 5 (1) (definition of “federal proceeding”):

Omit the definition.

Subsection 5 (1) (definition of “foreign country”):

Omit the definition, substitute:

“ ‘**foreign country**’ means:

- (a) an external Territory to which this Act does not extend; or
- (b) a country outside Australia and the external Territories; or
- (c) a part of such a country;”.

Subsection 5 (1) (definition of “national scheme law”):

Omit the definition, substitute:

“ ‘**national scheme law**’ means:

- (a) the following:
 - (i) the *Corporations Act 1989*;

SCHEDULE 7—continued

- (ii) the Corporations Law of the Capital Territory;
- (iii) this Act; or
- (b) a law of another jurisdiction that corresponds to an Act or Law referred to in paragraph (a);”.

Subsection 5 (1) (definition of “Panel”):

Insert “established by section 171” after “Securities Panel”.

Subsection 5 (1) (definition of “Parliamentary Committee”):

Insert “referred to in section 241” after “Securities”.

Subsection 5 (1) (definition of “proceeding”):

Omit the definition, substitute:

“ **‘proceeding’** means:

- (a) a proceeding in a court; or
- (b) a proceeding or hearing before, or an examination by or before, a tribunal;

whether the proceeding, hearing or examination is of a civil, administrative, criminal, disciplinary or other nature;”.

Subsection 5 (1) (definition of “Review Board”):

Omit the definition.

Subsection 5 (1):

Insert:

“ **‘national scheme law of this jurisdiction’** means an Act or Law referred to in paragraph (a) of the definition of ‘national scheme law’ in this subsection;

‘non-applied provisions’ means the following provisions of this Act:

Part 1 (other than section 6A)

Part 2

Section 88

Divisions 1 and 4 of Part 4

Part 5

Part 6

Division 1 of Part 7

Part 8

Part 9

Division 1 of Part 10

Division 1 of Part 11

Part 12

Part 14

Sections 251 and 252;

‘prescribed’ means prescribed by this Act or the regulations;

SCHEDULE 7—continued

‘regulations’ means the ASC Regulations of this jurisdiction;
‘Standards Board’ means the Australian Accounting Standards Board established by section 224;
‘this Law’ includes the regulations;”.

Subsection 5 (2):

Omit “*Corporations Act 1989*”, substitute “Corporations Law of the Capital Territory”.

Subsection 5 (3):

Omit the subsection, substitute:

“(3) Except so far as the contrary intention appears in this Act, Parts 1.2 and 1.3 (except section 8) of the Corporations Law apply for the purposes of this Act as if the provisions of this Act were provisions of that Law.

“(4) This Part, and Parts 1.2 and 1.3 of the Corporations Law as applying because of subsection (3) of this section, have effect to the exclusion of the *Acts Interpretation Act 1901*.

“(5) Subject to subsection (4), the *Acts Interpretation Act 1901* as amended and in force at the commencement of this subsection applies, and that Act as amended and in force at any later time does not apply, in relation to this Act (other than the non-applied provisions).”.

After section 6:

Insert in Part 1:

Acting appointments

“6A. Where a provision of the ASC Law of this jurisdiction (other than subsection 109ZB (8) of the Corporations Law as it applies because of subsection 5 (3) of the ASC Law) confers on a person or body (in this section called the **‘appointer’**) a power to appoint a person (in this section called the **‘appointee’**) to act in a particular office, then, except so far as the ASC Law otherwise provides, the following paragraphs apply in relation to an appointment made under the provision:

- (a) the appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment;
- (b) the appointer may:
 - (i) determine the terms and conditions of the appointment, including remuneration and allowances; and
 - (ii) terminate the appointment at any time;
- (c) where the appointee is acting in an office other than a vacant office and the office becomes vacant while the appointee is acting, then, subject to paragraph (a), the appointee may continue so to act until:

SCHEDULE 7—continued

- (i) the appointer otherwise directs; or
 - (ii) the vacancy is filled; or
 - (iii) a period of 12 months from the day of the vacancy ends;
- whichever happens first;
- (d) the appointment ceases to have effect if the appointee resigns in writing delivered to the appointer;
 - (e) while the appointee is acting in the office:
 - (i) the appointee has and may exercise all the powers, and shall perform all the functions and duties, of the holder of the office; and
 - (ii) any law of this jurisdiction applies in relation to the appointee as if the appointee were the holder of the office.

Alterations of names and constitutions

“6B. (1) Where:

- (a) the name of a body established by this Act is changed by law (whether or not the body is incorporated); or
 - (b) the name of an office established by this Act is changed by law;
- then, unless the contrary intention appears:
- (c) the body or office continues in existence under the new name so that its identity is not affected; and
 - (d) a reference, in:
 - (i) any Act of this jurisdiction; or
 - (ii) any instrument under such an Act; or
 - (iii) any award or other industrial determination or order or any industrial agreement; or
 - (iv) any other order (whether executive, judicial or otherwise); or
 - (v) any contract; or
 - (vi) any pleading in, or process issued in connection with, any legal or other proceeding; or
 - (vii) any other instrument;to the body or the office under the former name, except in relation to matters that occurred before the change took place, is taken as a reference to the body or the office under the new name.

“(2) Where the constitution of a body established by this Act is changed by law (whether or not the body is incorporated), then, unless the contrary intention appears:

- (a) the body continues in existence as newly constituted so that its identity is not affected; and

SCHEDULE 7—continued

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

Presentation of papers to the Parliament

“6C. (1) Where, by this Act, provision is made requiring or permitting the presentation (however expressed) of a paper to the Parliament or to both Houses, or to each or either House, of the Parliament, it is sufficient compliance with the provision, in relation to a House, if:

- (a) the paper is presented in that House in accordance with the rules or orders of the House or, if, under the rules or orders of the House, papers are taken to be presented to the House if they are delivered to the Clerk of the House and recorded in the records of the proceedings of the House, the paper is so delivered and recorded; and
- (b) where the provision provides for a specified person to present the paper or to cause the paper to be presented—that person, or any other person who could by virtue of this or any other Act, or of a law of a Territory, act in the place of that person, makes or causes to be made, as the case may be, the presentation or the delivery of the paper referred to in paragraph (a); and
- (c) where the provision specifies a period within which the paper is to be presented—the presentation, or the delivery and recording, of the paper referred to in paragraph (a) takes place within that period.

“(2) For the purposes of a provision of this Act that refers to papers presented (however the presentation is described) to the Parliament or to both Houses, or to each or either House, of the Parliament:

- (a) presentation of a paper in a House of the Parliament in accordance with the rules or orders of the House; or

SCHEDULE 7—continued

- (b) if, under the rules or orders of a House of the Parliament, papers are to be deemed to be presented to the House if they are delivered to the Clerk of the House and recorded in the records of the proceedings of the House—such a delivery and recording of a paper;

is taken to have been presentation of the paper to that House, as described in this Act, effected or caused by the person who so presented or delivered the paper or caused the paper to be so presented or delivered.

“(3) In this section, ‘**paper**’ includes:

- (a) an ordinance, rule, regulation or by-law; and
- (b) a report; and
- (c) any other document or instrument whatever.

Periodic reports

“6D. (1) In this section:

‘**periodic report**’ means a regular report relating to the activities, operations, business or affairs of a body established by this Act.

“(2) Where this or any other Act:

- (a) requires a body to furnish a periodic report to the Minister; but
- (b) does not specify a period within which the report is to be so furnished;

that body must furnish the report to the Minister as soon as practicable after the end of the particular period to which the report relates and, in any event, within 6 months after the end of that particular period.

“(3) Where this or any other Act:

- (a) requires a body to furnish a periodic report to the Minister for presentation to the Parliament; but
- (b) does not specify a period within which the report is to be so presented;

the Minister must cause a copy of the periodic report to be laid before each House of the Parliament within 15 sitting days of that House after receiving the report.

“(4) Where:

- (a) this or any other Act requires a body to furnish a periodic report to the Minister within a specified period; and
- (b) the body is of the opinion that it will not be reasonably possible to comply with the requirement;

the body may, within the specified period, apply to the Minister for an extension of the period, and, where the body does so apply, it must give the Minister a statement in writing explaining why, in the body’s

SCHEDULE 7—continued

opinion, it will not be reasonably possible to comply with the requirement.

“(5) The Minister may, on application under subsection (4), grant such extension as he or she considers reasonable in the circumstances.

“(6) Despite subsection (2) and any other provisions of this Act, where the Minister grants an extension pursuant to an application under subsection (4):

- (a) the Minister must cause to be laid before each House of the Parliament, within 3 sitting days of that House after granting the extension, a copy of the statement given under subsection (4) in respect of the application together with a statement specifying the extension granted and the reasons for granting the extension; and
- (b) the body that made the application must furnish the periodic report to the Minister within the period as so extended; and
- (c) the Minister must cause a copy of the periodic report to be laid before each House of the Parliament within 15 sitting days of that House after receiving the report.

“(7) Where this or any other Act requires a body to furnish a periodic report to the Minister within a specified period or an extension of that period under this section and the body fails to do so:

- (a) the body must, not later than 14 days after the end of that specified period or extension, as the case may be, give the Minister a statement in writing explaining why the report was not furnished as required; and
- (b) the Minister must cause a copy of the statement to be laid before each House of the Parliament within 3 sitting days of that House after receiving the statement.”.

Subsection 11 (1):

Omit the subsection, substitute:

“(1) The Commission has such functions and powers as are conferred on it by or under the following:

- (a) the *Corporations Act 1989*;
- (b) the Corporations Law of the Capital Territory;
- (c) this Act.

“(1A) The Commission also has the functions and powers expressed to be conferred upon the NCSC by or under:

- (a) any Act that is a relevant Act for the purposes of the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980*; or
- (b) any law of a State that corresponds to such an Act.

SCHEDULE 7—continued

“(1B) In the performance of a function, or the exercise of a power, referred to in paragraph (1A) (a), the Commission is not subject to any directions other than directions given under section 12.”.

Subsection 11 (5):

Omit the subsection.

Section 11:

Add at the end:

“(7) The Commission has any functions and powers that are expressed to be conferred on it by a national scheme law of another jurisdiction.

“(8) The Commission may, with the consent of the Minister, enter into an agreement or arrangement with a State or Territory for the performance of functions or the exercise of powers by the Commission as an agent of the State or Territory.

“(9) The Commission has such functions and powers as are referred to in such an agreement or arrangement.

“(10) The Commission has power to do acts in the Capital Territory in the performance or exercise of any function or power:

- (a) expressed to be conferred on the Commission by a national scheme law of another jurisdiction; or
- (b) referred to in an agreement or arrangement of the kind referred to in subsection (8).”.

Subsection 12 (1):

Add at the end “under a national scheme law of this jurisdiction”.

Subsection 13 (1):

Insert “of this jurisdiction” after “national scheme law” (first occurring).

Subsection 13 (2):

Omit “*Corporations Act 1989*”, substitute “Corporations Law of this jurisdiction”.

Paragraph 13 (2) (a):

Omit “Act”, substitute “Law”.

Section 13:

Add at the end:

“(3) Where the Commission has reason to suspect that a contravention of a relevant previous law of this jurisdiction may have

SCHEDULE 7—continued

been committed, the Commission may make such investigation as it thinks appropriate.

“(4) Neither of subsections (1) and (3) limits the generality of the other.

“(5) Where:

- (a) immediately before the commencement of this subsection, the NCSC was investigating a matter under a relevant previous law of this jurisdiction; and
- (b) either or both of subsections (1) and (3) empower the Commission to investigate that matter;

then:

- (c) the Commission may continue the NCSC’s investigation of that matter; and
- (d) the investigation, as continued by the Commission, is taken to be an investigation under that subsection, or each of those subsections, as the case may be.”.

Subsection 14 (1):

Insert “in respect of this jurisdiction” after “public interest”.

Subsection 14 (2):

Insert “any of the following, whether occurring, or alleged to have occurred, within this jurisdiction or elsewhere” after “matter relating to”.

Paragraph 14 (2) (a):

After “law” insert “or of a relevant previous law of a jurisdiction”.

Paragraph 14 (2) (b):

Before “Territory” insert “State or”.

Paragraph 14 (2) (d):

Omit “eligible”.

Paragraph 14 (2) (e):

Omit the paragraph, substitute:

“(e) dealing in futures contracts;”.

Paragraph 14 (2) (f):

Omit the paragraph, substitute:

“(f) the establishment or conducting of a stock market or futures market;”.

SCHEDULE 7—continued

Paragraphs 14 (2) (g) and (h):

Omit the paragraphs, substitute:

“(g) the provision of clearing house facilities for a futures market;”.

Paragraphs 14 (2) (j) and (k):

Omit the paragraphs, substitute:

“(j) the giving of advice, analyses or reports about securities or futures contracts.”.

After section 14:

Insert:

Directions under relevant previous laws

“14A. (1) This section applies where, immediately before the commencement of this section:

(a) a direction was in force under:

- (i) subsection 290 (4) or 291 (1), (2) or (3) of the relevant previous law of this jurisdiction relating to the formation of companies; or
- (ii) subsection 16 (1), (2) or (3) of the relevant previous law of this jurisdiction relating to the securities industry; or
- (iii) subsection 22 (1), (2) or (3) of the relevant previous law of this jurisdiction relating to the futures industry; and

(b) no investigation pursuant to the direction had yet begun, or such an investigation had begun but had not yet been completed or terminated.

“(2) The direction has effect:

- (a) with such modifications (if any) as are specified, in relation to the direction, in an application order; and
- (b) with such other modifications (if any) as the circumstances require;

as if it were a direction to the Commission under subsection 14 (1).

“(3) If, immediately before that commencement, an investigation was being carried out pursuant to the direction:

- (a) the Commission must comply with the direction, as it has effect because of subsection (2), by continuing the investigation in accordance with the direction as it so has effect; and
- (b) the investigation, as continued by the Commission, is taken to be an investigation under section 14.”.

SCHEDULE 7—continued

Section 15:

- (a) Omit “*Corporations Act 1989*”, substitute “Corporations Law or under a previous law corresponding to section 422 or 533 of that Law”.
- (b) Omit “law of the Commonwealth or a Territory”, substitute “national scheme law of this jurisdiction”.

Subsection 27 (2):

Omit “the examination”, substitute “an examination”.

Paragraphs 28 (a), (b) and (c):

Omit the paragraphs, substitute:

- “(a) for the purposes of the performance or exercise of any of the Commission’s functions and powers under a national scheme law of this jurisdiction; or
- (b) for the purposes of ensuring compliance with a national scheme law of this jurisdiction; or
- (c) in relation to:
 - (i) an alleged or suspected contravention of a national scheme law of this jurisdiction; or
 - (ii) an alleged or suspected contravention of a law of this jurisdiction, being a contravention that concerns the management or affairs of a body corporate, or involves fraud or dishonesty and relates to a body corporate, securities or futures contracts; or”.

Subsection 29 (1):

After “national scheme law” insert “of this jurisdiction”.

Subsection 35 (1):

After “particular premises” insert “within this jurisdiction”.

Paragraph 35 (1) (a):

After “this Division” insert “or a corresponding law of another jurisdiction”.

Paragraph 36 (1) (a):

After “this Division” insert “or a corresponding law of another jurisdiction”.

SCHEDULE 7—continued

Section 37:

Add at the end:

“(10) In this section:

“‘**proceeding**’ includes a proceeding under a law of another jurisdiction.”.

Section 40:

Repeal the section, substitute:

When certain powers may be exercised

“40. A power conferred by section 41 or 44 may only be exercised:

- (a) for the purposes of the performance or exercise of any of the Commission’s functions and powers under a national scheme law of this jurisdiction; or
- (b) for the purposes of ensuring compliance with a national scheme law of this jurisdiction; or
- (c) in relation to:
 - (i) an alleged or suspected contravention of a national scheme law of this jurisdiction; or
 - (ii) an alleged or suspected contravention of a law of this jurisdiction, being a contravention that concerns the management or affairs of a body corporate, or involves fraud or dishonesty and relates to a body corporate, securities or futures contracts; or
- (d) for the purposes of an investigation under Division 1.”.

Section 42:

Repeal the section.

Paragraphs 43 (1) (a), (b) and (c):

Omit “*Corporations Act 1989*”, substitute “Corporations Law”.

Paragraph 43 (1) (d):

Omit “the Commonwealth or a Territory”, substitute “this jurisdiction”.

Paragraphs 43 (1) (e) and (f):

Omit “*Corporations Act 1989*”, substitute “Corporations Law”.

Paragraph 43 (4) (c):

Omit “*Corporations Act 1989*”, substitute “Corporations Law”.

Section 45:

Repeal the section.

SCHEDULE 7—continued

Paragraph 46 (1) (a):

Omit “*Corporations Act 1989*”, substitute “Corporations Law”.

Subparagraph 46 (1) (b) (i):

Omit “*Corporations Act 1989*”, substitute “Corporations Law”.

Subparagraph 46 (1) (b) (ii):

Omit “the Commonwealth or of a Territory”, substitute “this jurisdiction”.

Subsection 49 (1):

Omit the subsection, substitute:

“(1) This section applies where:

(a) as a result of an investigation; or

(b) from a record of an examination;

conducted under this Part or a corresponding law, it appears to the Commission that a person:

(c) may have committed an offence against a national scheme law, or a relevant previous law, of this jurisdiction; and

(d) ought to be prosecuted for the offence.”.

Section 50:

(a) Insert “(being an investigation or examination conducted under this Part or a corresponding law)” after “examination” (first occurring).

(b) Omit “federal”.

Section 51:

(a) After “functions and powers” insert “under a national scheme law of this jurisdiction”.

(b) Omit “*Corporations Act 1989*”, substitute “Corporations Law”.

(c) Add at the end:

“(2) Where:

(a) immediately before the commencement of this section, the NCSC was holding a hearing, under a relevant previous law of this jurisdiction, in relation to a matter; and

(b) subsection (1) empowers the Commission to hold a hearing in relation to that matter;

then:

(c) the Commission may continue the NCSC’s hearing, so far as it relates to that matter; and

SCHEDULE 7—continued

(d) the hearing, as continued by the Commission, is taken to be a hearing under subsection (1).”.

Paragraph 53 (1) (a):

After “national scheme law” insert “of this jurisdiction”.

Section 54:

After “national scheme law” insert “of this jurisdiction”.

Paragraph 56 (2) (a):

After “national scheme law” insert “of this jurisdiction”.

Subsection 57 (1):

After “national scheme law” insert “of this jurisdiction”.

Subsection 59 (1):

After “national scheme laws” insert “of this jurisdiction”.

Subsection 61 (2):

Omit the subsection.

After subsection 62 (1):

Insert:

“(1A) A delegate of a member has, in the performance or exercise of any delegated function or power in relation to a hearing, the same protection and immunity as a Justice of the High Court.”.

Subsection 62 (3):

Omit “Act”, substitute “Law”.

Subsection 67 (2):

After “national scheme law” insert “of this jurisdiction”.

Paragraph 68 (2) (a):

Insert “or under a corresponding law of another jurisdiction,” after “Part 11,”.

Subsection 76 (1):

Omit “federal”.

Subsection 76 (3):

Omit “federal”.

Section 77:

Omit “federal”.

SCHEDULE 7—continued

Subsection 79 (1):

Omit “federal”.

Subsection 80 (1):

Omit “federal”.

Section 81:

- (a) After “Division 1” insert “or a corresponding law of another jurisdiction”.
- (b) Omit “federal”.

Paragraph 81 (a):

Omit “*Corporations Act 1989*”, substitute “Corporations Law of this jurisdiction”.

Before section 84:

Insert in Division 10 of Part 3:

Exercise of powers etc. for purposes of investigation under corresponding law

“83A. Where an investigation is being conducted under the provisions of a law of another jurisdiction that correspond to this Part, actions may be taken, and powers may be exercised, within this jurisdiction, for the purposes of that investigation as if the investigation were being conducted under this Part.”.

Section 86:

Omit all the words before “to leaving” (first occurring), substitute “Section 109X of the Corporations Law of this jurisdiction has effect for the purposes of this Part as if a reference in subparagraph (1) (a) (ii) of that section”.

After subsection 88 (1):

Insert:

“(1A) For the purposes of this Law, an offence under Part III of the *Crimes Act 1914* as it applies in relation to an examination or hearing is taken to be an offence against this section.”.

Subsection 91 (1):

Omit all the words from and including “Where” to and including “orders:”, substitute:

“Subject to subsection (1A), where:

- (a) a person is convicted of an offence against a law of this jurisdiction in a prosecution; or

SCHEDULE 7—continued

(b) a judgment is awarded against a person in a proceeding in a court of this jurisdiction;
begun as a result of an investigation under Division 1 or a corresponding law of another jurisdiction, the Commission may make one of the following orders:".

After subsection 91 (1):

Insert:

“(1A) The Commission may not make an order under subsection (1) in respect of expenses or costs that have already been paid, or recovered by the Commission, pursuant to an order made under a provision of a law of another jurisdiction that corresponds to that subsection.”.

Subsection 91 (4):

Insert “or a corresponding law of another jurisdiction” after “section”.

Subsection 93 (2):

Omit “a State or Territory”, substitute “of this or any other jurisdiction”.

Subsection 95 (1):

Omit the subsection, substitute:

“(1) For the purpose of performing its functions and exercising its powers under national scheme laws, the Commission must establish a regional office in each jurisdiction, and may establish such other offices as it thinks fit.”.

Section 96:

Repeal the section, substitute:

Regional Commissioners

“96. (1) There is to be a different Regional Commissioner, employed by the Commission under subsection 120 (3), for each jurisdiction.

“(2) A Regional Commissioner for a jurisdiction is to manage the regional office established under section 95 in that jurisdiction.”.

Paragraph 102 (4) (a):

Add at the end “and”.

Paragraph 102 (4) (b):

Omit “; and”.

SCHEDULE 7—continued

Paragraph 102 (4) (c):

Omit the paragraph.

Subsection 102 (6):

- (a) Omit “an Act (including this Act)”, substitute “a law (including this Law)”.
- (b) Omit “that Act and this Act”, substitute “that law and this Law”.

After section 119:

Insert the following Division in Part 5:

“Division 3—Delegation by members

Delegation by members

“119A. (1) A member may, in writing, delegate to a person all or any of his or her functions and powers.

“(2) A member must not, without the Minister’s approval, delegate a function or power to a person other than:

- (a) a staff member; or
- (b) a person who, by virtue of the regulations, is a prescribed person in relation to the delegation.

“(3) In the performance of a function, or the exercise of a power, delegated under this section, the delegate is subject to the member’s directions.”.

After section 122:

Insert in Part 6:

Transfer of staff to Australian Public Service

“122A. Section 81B of the *Public Service Act 1922* has effect in relation to any person who, immediately before the commencement of this Part:

- (a) was employed by the NCSC; and
- (b) was an unattached officer for the purposes of the *Public Service Act 1922*;

as if the person had ceased to be an officer of the Australian Public Service immediately before the commencement of this Part.”.

Subsection 127 (1):

Add at the end “in or in connection with the performance of its functions or the exercise of its powers under a national scheme law of this jurisdiction”.

SCHEDULE 7—continued

Subsection 127 (2):

Omit “a State or Territory”, substitute “this or any other jurisdiction”.

Paragraph 134 (b):

Add at the end “(including money paid by a State or Territory, but not including money received by the Commission on behalf of a State or Territory in the course of performing functions or exercising powers pursuant to an agreement or arrangement entered into under subsection 11 (8))”.

Paragraph 135 (1) (a):

Add at the end “under a national scheme law of this or any other jurisdiction”.

Subsection 135 (4):

Omit “law of the Commonwealth”, substitute “national scheme law of this or any other jurisdiction”.

Subsection 147 (5):

Omit the subsection, substitute:

“(5) In appointing the members:

- (a) the Minister must have regard to the desirability of the views of business communities throughout Australia being adequately represented among the members; and
- (b) the Minister must ensure so far as practicable that at any time there is at least one member of the Advisory Committee from each State and the Northern Territory.

“(6) For the purposes of subsection (5), a member is from a particular State or Territory if he or she is a resident of that State or Territory.”.

Paragraph 148 (d):

Omit “close corporations,”.

Section 148:

Add at the end:

“(2) In performing its functions, the Advisory Committee must have regard to the implications of any recommendations made by it for the laws of the jurisdictions other than the Capital Territory.

“(3) In this section:

‘national scheme law’ means a national scheme law of the Capital Territory.”.

SCHEDULE 7—continued

Subsection 172 (3):

Omit the subsection, substitute the following subsection:

“(3) Each of the members may be appointed as a full-time member or as a part-time member.”.

After subsection 172 (4):

Insert:

“(4A) Each person who is the Minister for a jurisdiction other than this jurisdiction may from time to time give to the Minister the names of persons who, in the opinion of the first-mentioned Minister:

- (a) are qualified for appointment as members of the Panel by virtue of their knowledge of, or experience in, one or more of the following fields, namely, business, the administration of companies, the financial markets, law, economics and accounting; and
- (b) ought to be considered for appointment as members of the Panel.

“(4B) In nominating persons as members of the Panel, the Minister must ensure so far as practicable that, at any time, at least one member of the Panel is a person whose name has been given to the Minister under subsection (4A).”.

Section 173:

Omit “full-time”.

Section 174:

Repeal the section, substitute:

Functions and powers of Panel

“174. The Panel has the functions and powers conferred on it by or under a national scheme law of this or any other jurisdiction.”.

Section 184:

Add at the end:

“(5) In this section:

‘**functions or powers**’ means functions or powers of the Panel under a national scheme law of this jurisdiction.”.

Section 185:

Add at the end:

“(3) In this section:

‘**functions or powers**’ means functions or powers of the Panel under a national scheme law of this jurisdiction.”.

SCHEDULE 7—continued

Subsection 196 (2):

Omit the subsection.

Subsection 197 (3):

Omit “Act”, substitute “Law”.

Section 204:

Repeal the section, substitute:

Functions and powers of Disciplinary Board

“204. The Disciplinary Board has the functions and powers conferred on it by or under a national scheme law of this or any other jurisdiction.”.

Subsection 213 (1):

Add at the end “in or in connection with the performance of its functions or the exercise of its powers under a national scheme law of this jurisdiction”.

Paragraph 213 (2) (a):

Omit “a State or Territory”, substitute “this or any other jurisdiction”.

Subsection 221 (3):

Omit “Act”, substitute “Law”.

Heading to Part 12:

Omit the heading, substitute:

“PART 12—AUSTRALIAN ACCOUNTING STANDARDS BOARD”.

Section 224:

Repeal the section, substitute:

Establishment of Standards Board

“224. An Australian Accounting Standards Board is established.”.

Subsection 225 (1), sections 226, 231 and 233 and subsection 234 (1):

Omit “Review” (wherever occurring), substitute “Standards”.

Subsection 226 (2):

Omit “necessary”, substitute “necessary”.

SCHEDULE 7—continued

Section 226:

Add at the end:

“(4) In performing its functions, the Standards Board must have regard to the implications of any recommendations made by it for the operation of the laws of the jurisdictions other than the Capital Territory.

“(5) In this section:

‘national scheme law’ means a national scheme law of the Capital Territory.”.

Paragraph 233 (2) (a):

Omit “a State or Territory”, substitute “this or any other jurisdiction”.

Part 13:

Repeal the Part.

Before section 244:

Insert in Part 15:

Offences under 2 or more ASC Laws

“243A. Where:

- (a) an act or omission constitutes an offence under the ASC Law of this jurisdiction and the ASC Law of another jurisdiction; and
- (b) the offender has been punished for that offence under the law of the other jurisdiction;

the offender is not liable to be punished for the offence under the law of this jurisdiction.

Offences committed partly in and partly out of the jurisdiction

“243B. Where:

- (a) a person does or omits to do an act outside this jurisdiction; and
- (b) if that person had done or omitted to do that act in this jurisdiction, the person would, by reason of also having done or omitted to do an act in this jurisdiction, have been guilty of an offence against this Law;

the person is guilty of that offence.

Reciprocity in relation to offences

“243C. Where:

- (a) a person does or omits to do an act within this jurisdiction; and

SCHEDULE 7—continued

- (b) if that person had done or omitted to do that act in another jurisdiction, the person would have been guilty of an offence against a provision of a law of another jurisdiction that corresponds to a provision of this Law;

the person is guilty of an offence against that provision of this Law.

Cash Transaction Reports

“243D. (1) If:

- (a) a cash dealer within the meaning of the *Cash Transaction Reports Act 1988* is a party to a transaction; and
- (b) the cash dealer has reasonable grounds to suspect that information that the cash dealer has concerning the transaction may be relevant to investigation of, or prosecution of a person for, an offence against this Law or the Corporations Law;

the cash dealer must, as soon as practicable after forming that suspicion:

- (c) prepare a report of the transaction; and
- (d) communicate the information contained in the report to the Director of the Cash Transaction Reports Agency.

“(2) The report must:

- (a) be prepared in the approved form; and
- (b) contain the reportable details of the transaction; and
- (c) contain a statement of the grounds on which the cash dealer holds the suspicion referred to in subsection (1); and
- (d) be signed by the cash dealer.

“(3) The communication must be made to the Director:

- (a) by giving the Director a copy of the report; or
- (b) in such other manner and form as is approved by the Director, in writing, in relation to the cash dealer or to a class of cash dealers that includes the cash dealer.

“(4) Where a cash dealer communicates information to the Director under subsection (1), the cash dealer must, if requested to do so by:

- (a) the Director; or
- (b) a relevant authority; or
- (c) an investigating officer who is carrying out an investigation arising from, or relating to the matters referred to in, the information contained in the report;

give such further information as is specified in the request to the extent to which the cash dealer has that information.

“(5) An action, suit or proceeding does not lie against:

- (a) a cash dealer; or

SCHEDULE 7—continued

(b) an officer, employee or agent of the cash dealer acting in the course of that person's employment or agency;
in relation to any action taken by the cash dealer or person pursuant to this section.

“(6) Where a cash dealer, or a person who is an officer, employee or agent of a cash dealer, communicates or gives information under this section, the cash dealer or person is taken, for the purposes of sections 81 and 82 of the *Proceeds of Crime Act 1987*, not to have been in possession of that information at any time.

“(7) The *Cash Transaction Reports Act 1988* (other than sections 16 and 17) applies as a law of this jurisdiction, to the extent that it makes provision in connection with, or for the purposes of, the operation of sections 16 and 17 of that Act, as if, in that Act:

- (a) references to section 16 were references to this section (other than subsection (6) and this subsection); and
- (b) references to section 17 were references to subsection (6) of this section; and
- (c) references to Part II included references to sections 16 and 17.

“(8) In this section:

‘approved’ means approved by the Director, in writing, for the purposes of this section;

‘investigating officer’, **‘relevant authority’** and **‘reportable details’** have the same meanings as in section 16 of the *Cash Transaction Reports Act 1988*.”.

Section 245:

Omit “this Act”, substitute “the *Australian Securities Commission Act 1989*”.

Paragraph 246 (f):

Omit “this Act or of any other prescribed Act”, substitute “the *Australian Securities Commission Act 1989* or a prescribed law of the Commonwealth or of this or any other jurisdiction”.

Section 246:

Omit “or a Territory”, substitute “or of this or any other jurisdiction”.

Subsection 248 (3):

Omit the subsection, substitute:

“(3) In this section:

- (a) **‘court’** includes a tribunal; and
- (b) a reference, in relation to a tribunal, to taking judicial notice is

SCHEDULE 7—continued

a reference to taking the same notice as would be taken by a court.”.

Section 249:

Repeal the section.

Section 250:

Repeal the section.

Paragraphs 251 (1) (a) and (b):

After “Act” insert “(other than the non-applied provisions)”.

Section 251:

Add at the end:

“(3) Regulations made under this section may provide that the ASC Law of this jurisdiction has effect, with prescribed modifications, in relation to the following:

- (a) investigations that subsection 13 (5) empowers the Commission to continue;
- (b) investigations that the Commission must make or continue because of section 14A;
- (c) hearings that subsection 51 (2) empowers the Commission to continue;
- (d) contraventions of relevant previous laws of this jurisdiction;
- (e) authorisations by the Commission under such laws;
- (f) requirements to produce books, or to give information, that are made of persons under such laws;
- (g) informations laid under such laws in order to obtain warrants;
- (h) warrants obtained under such laws.

“(4) Regulations in force because of subsection (3) have effect accordingly.

“(5) Regulations made under this section may require or permit matters to be specified, for the purposes of the regulations, by or in application orders.”.

After section 251:

Insert:

Regulations for the purposes of non-applied provisions

“252. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by the non-applied provisions to be prescribed; or

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(b) necessary or convenient to be prescribed for carrying out or giving effect to the non-applied provisions.”.

NOTES

1. No. 109, 1989.
2. No. 90, 1989.
3. No. 2, 1901, as amended. For previous amendments, see No. 4, 1916; No. 8, 1918; No. 23, 1930; No. 24, 1932; No. 10, 1937; No. 7, 1941; No. 78, 1947; No. 79, 1948; No. 80, 1950; No. 69, 1957; No. 19, 1963; No. 52, 1964; No. 93, 1966; Nos. 79 and 216, 1973; Nos. 37 and 144, 1976; No. 35, 1978; No. 1, 1980; No. 61, 1981; No. 26, 1982 (as amended by No. 80, 1982); No. 80, 1982; No. 39, 1983; No. 27, 1984 (as amended by No. 165, 1984); No. 63, 1984 (as amended by No. 165, 1984); No. 72, 1984; No. 193, 1985; Nos. 92, 120 and 141, 1987; Nos. 99 and 120, 1988; and No. 108, 1989.
4. No. 64, 1988, as amended. For previous amendments, see No. 4, 1990.
5. No. 93, 1981, as amended. For previous amendments, see No. 18, 1983; and No. 154, 1986.
6. No. 1, 1953, as amended. For previous amendments, see Nos. 28, 39, 40 and 52, 1953; No. 18, 1955; No. 39, 1957; No. 95, 1959; No. 17, 1960; No. 75, 1964; No. 155, 1965; No. 93, 1966; No. 120, 1968; No. 216, 1973; No. 133, 1974; No. 37, 1976; Nos. 19 and 59, 1979; Nos. 39 and 117, 1983; No. 123, 1984; No. 65, 1985 (as amended by No. 93, 1985); Nos. 4, 47, 104, 123 and 168, 1985; Nos. 41, 46, 48, 112, 144 and 154, 1986; No. 49, 1986 (as amended by No. 141, 1987); Nos. 120 and 145, 1987; No. 62, 1987 (as amended by No. 108, 1987); No. 108, 1987 (as amended by No. 138, 1987); No. 138, 1987 (as amended by No. 11, 1988); Nos. 95 and 97, 1988; Nos. 105, 107, 124, 163 and 167, 1989; and Nos. 20 and 61, 1990.

ADDITIONAL NOTES

1. On the commencement of Section 7 of this Act:
 - (a) the heading to section 71 of the *Corporations Act 1989* is altered by omitting “**and eligible futures advice business**”; and
 - (b) the heading to section 77 of the *Corporations Act 1989* is altered by omitting “**and eligible investment advice business**”; and
 - (c) the heading to section 93 of the *Corporations Act 1989* is altered by omitting “**and eligible securities business**”; and
 - (d) the heading to section 103 of the *Corporations Act 1989* is altered by omitting “**Act**” and substituting “**Law**”; and
 - (e) the heading to section 131 of the *Corporations Act 1989* is altered by omitting “**Act**” and substituting “**Law**”; and
 - (f) the heading to section 133 of the *Corporations Act 1989* is altered by omitting “**foreign company**” and substituting “**non-company**”; and
 - (g) the heading to section 150 of the *Corporations Act 1989* is altered by omitting “**2, 3 or 4**” and substituting “**2 or 3**”; and
 - (h) the heading to section 151 of the *Corporations Act 1989* is altered by omitting “**2, 3 or 4**” and substituting “**2 or 3**”; and

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- (j) the heading to section 154 of the *Corporations Act 1989* is altered by omitting “2, 3 or 4” and substituting “2 or 3”; and
 - (k) the heading to section 323 of the *Corporations Act 1989* is altered by omitting “or 4”; and
 - (m) the heading to section 384 of the *Corporations Act 1989* is altered by omitting “Act” and substituting “Law”; and
 - (n) the heading to section 411 of the *Corporations Act 1989* is omitted and the following heading is substituted:
“Administration of compromises etc.”; and
 - (p) the heading to section 412 of the *Corporations Act 1989* is altered by omitting “or members”; and
 - (q) the heading to section 464 of the *Corporations Act 1989* is altered by omitting “Commission Act” and substituting “ASC Law”; and
 - (r) the heading to section 557 of the *Corporations Act 1989* is altered by omitting “Commission Act” and substituting “ASC Law”; and
 - (s) the heading to section 588 of the *Corporations Act 1989* is altered by omitting “Part 5.7” and substituting “registrable”; and
 - (t) the heading to section 599 of the *Corporations Act 1989* is omitted and the following heading is substituted:
“Court may order persons not to manage certain corporations”; and
 - (u) the heading to section 929 of the *Corporations Act 1989* is omitted and the following heading is substituted:
“SEGC to keep Fund”; and
 - (w) the heading to each of sections 988 to 992, inclusive, of the *Corporations Act 1989* is altered by inserting “previous” before “law”; and
 - (y) the heading to section 1145 of the *Corporations Act 1989* is altered by adding “to body corporate”; and
 - (z) the heading to section 1193 of the *Corporations Act 1989* is altered by adding “against unlicensed person”; and
 - (za) the heading to section 1267 of the *Corporations Act 1989* is altered by omitting “eligible” (twice occurring); and
 - (zb) the heading to section 1277 of the *Corporations Act 1989* is altered by omitting “certain State and Territory laws” and substituting “other laws”; and
 - (zc) the heading to section 1347 of the *Corporations Act 1989* is altered by omitting “Act” and substituting “Law”.
2. On the commencement of Part 4 of this Act:
- (a) the heading to section 225 of the *Australian Securities Commission Act 1989* is altered by omitting “Review” and substituting “Standards”; and
 - (b) the heading to section 251 of the *Australian Securities Commission Act 1989* is omitted and the following heading is substituted:
“The ASC Regulations”.

[Minister's second reading speech made in—
House of Representatives on 8 November 1990
Senate on 15 November 1990]