

Companies (Foreign Take-overs)

No. 134 of 1972

An Act to control Foreign Take-overs of certain Australian Companies.

[Assented to 2 November 1972]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Companies (Foreign Take-overs) Act* 1972. Short title.

2.—(1.) This Act shall come into operation on the seventh day after the day on which it receives the Royal Assent. Commencement and expiration.

(2.) This Act shall cease to be in operation on the expiration of the thirty-first day of December, One thousand nine hundred and seventy-three, and shall thereupon be deemed to have been repealed by an Act other than this Act.

Additional
operation of
Act.

3. Without prejudice to its effect apart from this section, this Act also has, by force of this section, the effect it would have if the following word and paragraph were added at the end of section 5:—

“ ; or (c) is the holding company of a body corporate of a kind referred to in either of the last two preceding paragraphs.”.

Interpretation.

4.—(1.) In this Act, unless the contrary intention appears—

“ Australia ” includes all the Territories of the Commonwealth, whether forming part of the Commonwealth or not;

“ foreign corporation ” means a corporation—

(a) in respect of which—

(i) a person (other than a corporation) not ordinarily resident in Australia;

(ii) a corporation incorporated, formed or otherwise organized elsewhere than in Australia; or

(iii) two or more persons who are associated with one another and at least one of whom is a person referred to in sub-paragraph (i) of this paragraph or a corporation referred to in the last preceding sub-paragraph,

is or are entitled to exercise, or control the exercise of, the right to cast votes in respect of not less than three-twentieths of the total number of votes in respect of shares in the corporation; or

(b) in respect of which two or more persons each of whom is a person referred to in sub-paragraph (i) of the last preceding paragraph or a corporation referred to in sub-paragraph (ii) of that paragraph are entitled to exercise, or control the exercise of, the right to cast votes in respect of not less than two-fifths of the total number of votes in respect of shares in the corporation;

“ foreign person ” means—

(a) a person (other than a corporation) who is not ordinarily resident in Australia; or

(b) a foreign corporation;

“ invitation ” means a statement, however expressed, that is not an offer but expressly or impliedly invites a holder of shares to offer to dispose of shares or a holder of a right, being a right to acquire a share or an interest in a share under an option, to dispose of that right;

“ offeror ”, in relation to a take-over offer in respect of shares in a company to which this Act applies, means an offeror as defined by the law relating to companies that is in force in the State or Territory in which the company is incorporated;

- “order” includes interim order;
- “person” includes a corporation;
- “take-over offer”, in relation to shares in a company to which this Act applies, means a take-over offer as defined by the law relating to companies that is in force in the State or Territory in which the company is incorporated;
- “take-over scheme”, in relation to shares in a company to which this Act applies, means a take-over scheme as defined by the law relating to companies that is in force in the State or Territory in which the company is incorporated.

(2.) For the purposes of this Act—

- (a) a reference to a share in a company to which this Act applies or in a corporation other than such a company shall be read as a reference to a share in the capital of the company or of the corporation, as the case may be;
- (b) a reference to a share in a company to which this Act applies or in a corporation other than such a company shall be read as including a reference to stock into which a share has been converted;
- (c) a person shall be taken to be the beneficial owner of shares if, and only if, those shares are held in any manner in whole or in part for the use or benefit of the person; and
- (d) a corporation shall be taken not to be a foreign corporation if the Minister is satisfied that, having regard to all the circumstances, persons or corporations, or persons and corporations, referred to in the definition of “foreign corporation” in the last preceding sub-section are not in a position to exercise a significant degree of control over the conduct of the affairs of the corporation.

5. A reference in this Act to a company to which this Act applies is a reference to a body corporate that—

Companies to which Act applies.

- (a) is a trading corporation formed within the limits of the Commonwealth or is a financial corporation so formed; or
- (b) is incorporated in a Territory of the Commonwealth, other than Papua New Guinea, under the law in force in that Territory relating to companies.

6. The obligation to comply with this Act extends to all natural persons, whether resident in Australia or not and whether Australian citizens or not, and to all bodies corporate, whether incorporated or carrying on business in Australia or not.

Persons obliged to comply with Act.

7. This Act applies both within and outside Australia and extends to all the Territories of the Commonwealth, whether forming part of the Commonwealth or not.

Extra-territorial operation.

Control of
exercise of
right to cast
vote.

8. For the purposes of this Act, a reference to control of the exercise of the right to cast a vote in respect of a share in a company to which this Act applies, or to control of the exercise of the right to cast a vote in respect of a share in any other corporation, shall be read as including a reference to control of that right that is direct or indirect, including control that is exercisable—

- (a) as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights; or
- (b) by reason of a person being in a position to control a corporation or corporations.

Position to
control
corporation.

9. For the purposes of this Act—

- (a) a person (other than a corporation) shall be deemed to be in a position to control a corporation if he alone is, or he and a person with whom he is associated are together, in a position to control not less than three-twentieths of the total of the rights to cast votes in respect of shares in that corporation;
- (b) a corporation shall be deemed to be in a position to control another corporation if it alone is, or it and a person with whom it is associated are together, in a position to control not less than three-twentieths of the total of the rights to cast votes in respect of shares in that other corporation;
- (c) a person who is or is to be deemed to be in a position to control a corporation which, or a person who, is or is to be deemed to be in a position to control another corporation shall be deemed to be in a position to control that last-mentioned corporation; and
- (d) a person who is or is to be deemed to be in a position to control a corporation shall be deemed to be in a position to control the exercise of any right of that corporation to cast a vote in respect of a share in another corporation.

Associated
persons.

10.—(1.) For the purposes of this Act, a person shall be deemed to be associated with another person in relation to a corporation if, and only if—

- (a) one of the persons is a corporation and the other person is an officer of that corporation;
- (b) one person is a partner of the other person;
- (c) one of the persons is a corporation and the other person, whether a corporation or not, is in a position to control that corporation; or
- (d) both persons are corporations and one person, whether a corporation or not, is in a position to exercise control over both of those persons.

(2.) Where, by reason of the last preceding sub-section—

- (a) one person is to be deemed to be associated with another person in relation to a corporation; and

- (b) another person is also to be deemed to be associated with either of the persons referred to in the last preceding paragraph in relation to that corporation,

each of those persons and that other person shall, for the purposes of this Act, be deemed to be associated with one another.

11. For the purposes of this Act, a substantial number of voting shares in a company shall be taken to be owned by foreign persons if, and only if— Foreign ownership of shares.

- (a) a foreign person alone is, or a foreign person and another person or other persons with whom the foreign person is associated are together, in a position to control not less than three-twentieths of the total of the rights to cast votes in respect of shares in the company; or
- (b) two or more foreign persons, and any persons with whom any of those foreign persons is associated, are together in a position to control not less than two-fifths of the total of the rights to cast votes in respect of shares in the company.

12. The question whether a body corporate is the holding company of another body corporate for the purposes of this Act shall be determined in the same manner as the question whether a corporation is the holding company of another corporation is determined under the *Companies Ordinance* 1962–1972 of the Australian Capital Territory or, if that Ordinance is amended, under that Ordinance as amended. Holding companies.

13.—(1.) This section applies where—

- (a) a take-over offer has been made, or two or more take-over offers that form part of a take-over scheme have been made, whether before or after the commencement of this Act, in relation to shares in a company to which this Act applies; or
- (b) the Minister has reason to believe that—
- (i) an offer (other than an offer constituting, or made in pursuance of an invitation constituting, a take-over offer) has been made, or two or more such offers have been made, whether before or after the commencement of this Act, to sell or purchase shares in a company to which this Act applies;
- (ii) negotiations are taking place, or are about to take place, with respect to the purchase of shares in a company to which this Act applies and an agreement to purchase shares in that company is likely to be entered into as a result of the negotiations; or
- (iii) a company to which this Act applies is proposing to issue shares in the company. Power of Minister to prohibit acquisition of shares by certain persons.

(2.) In a case to which paragraph (a) of the last preceding sub-section applies, where—

- (a) if the take-over offer or some or all of the take-over offers were accepted, a substantial number of voting shares in the company would be owned by foreign persons, whether or not a substantial number of voting shares in the company are already owned by those persons; and
- (b) the Minister is satisfied that—
 - (i) foreign persons are not in a position to exercise effective control of the company but, if the take-over offer or some or all of the take-over offers were accepted, foreign persons would, as a result of the acceptance of the take-over offer or of some or all of the take-over offers, be in a position to exercise effective control of the company; and
 - (ii) the exercise of that control would be contrary to the national interest,

the Minister—

- (c) may make an order expressed to prohibit the implementation of the take-over offer or take-over offers; and
- (d) where he makes such an order, may also make an order expressed to direct that the foreign persons last mentioned in subparagraph (i) of paragraph (b) of this sub-section, and any persons who are associated with any of those foreign persons, shall not together be the beneficial owners of shares in the company carrying more than—
 - (i) the fraction of the total of the rights to cast votes in respect of shares in the company that was carried by the shares in the company of which those foreign persons, and any persons who are associated with any of those foreign persons, were the beneficial owners immediately before the day on which the order comes into operation; or
 - (ii) three-twentieths of that total,whichever is the greater.

(3.) In a case to which paragraph (b) of sub-section (1.) of this section applies, where—

- (a) if the offer or some or all of the offers were accepted, the agreement were entered into, or the shares were issued, a substantial number of voting shares in the company would be owned by foreign persons, whether or not a substantial number of voting shares in the company are already owned by those persons; and
- (b) the Minister is satisfied that—
 - (i) foreign persons are not in a position to exercise effective control of the company but, if the offer or some or all of

the offers were accepted, the agreement were entered into, or the shares were issued, foreign persons would, as a result of the acceptance of the offer or of some or all of the offers, the entering into of the agreement, or the issue of the shares, be in a position to exercise effective control of the company; and

- (ii) the exercise of that control would be contrary to the national interest,

the Minister—

- (c) may make an order expressed to prohibit the acceptance of the offer or offers, the entering into of the agreement, or the issue of the shares, as the case may be; and

- (d) where he makes such an order, may also make an order expressed to direct that the foreign persons last mentioned in subparagraph (i) of paragraph (b) of this sub-section, and any persons who are associated with any of those foreign persons, shall not together be the beneficial owners of shares in the company carrying more than—

- (i) the fraction of the total of the rights to cast votes in respect of shares in the company that was carried by the shares in the company of which those foreign persons, and any persons who are associated with any of those foreign persons, were the beneficial owners immediately before the day on which the order comes into operation; or

- (ii) three-twentieths of that total,

whichever is the greater.

(4.) Where the Minister makes an order of a kind referred to in paragraph (d) of sub-section (2.) or paragraph (d) of sub-section (3.) of this section, he may specify in the order, in lieu of the fraction of three-twentieths referred to in that paragraph, a greater fraction.

(5.) The Minister shall not treat persons referred to in sub-section (2.) or sub-section (3.) of this section as being in a position to exercise effective control of a company if he is satisfied that, having regard to all the circumstances, those persons are not in a position to exercise a significant degree of control over the conduct of the affairs of the company.

(6.) For the purpose of enabling due consideration to be given to the question whether an order should be made under sub-section (2.) or sub-section (3.) of this section in relation to a company to which this Act applies, the Minister may make an interim order expressed to prohibit, for such period, not exceeding three months, as is specified in the order—

- (a) in a case to which paragraph (a) of sub-section (1.) of this section applies—the implementation of the take-over offer or take-over offers;

- (b) in a case to which subparagraph (i) of paragraph (b) of that sub-section applies—the acceptance of the offer or offers;

- (c) in a case to which sub-paragraph (ii) of paragraph (b) of that sub-section applies—the entering into of an agreement of a particular description by the parties to the negotiations; or
 - (d) in a case to which sub-paragraph (iii) of paragraph (b) of that sub-section applies—the issue of shares to a person referred to in the order.
- (7.) Where—
- (a) a notice in writing that a take-over offer has been made in relation to shares in a specified company to which this Act applies is received by the Minister from the offeror;
 - (b) a notice in writing that an offer (other than an offer constituting, or made in pursuance of an invitation constituting, a take-over offer) has been made to sell or purchase shares in a specified company to which this Act applies is received by the Minister from the person who made the offer; or
 - (c) a notice in writing that a company to which this Act applies is proposing to issue shares is received by the Minister from the company,

and the Minister does not, before the expiration of one month after the date on which the notice is received by him, make an order under this section in relation to the take-over offer, the offer or the issue of the shares, as the case may be, the Minister is not empowered, after the expiration of that period of one month, to make an order under this section in relation to the take-over offer, the offer or the issue of the shares.

(8.) Where, before the commencement of this Act, a public announcement was made, or the Government of the Commonwealth received a notification, that a specified person had made a take-over offer in relation to shares in a specified company to which this Act applies, a specified person had made an offer (other than an offer constituting, or made in pursuance of an invitation constituting, a take-over offer) to sell or purchase shares in a specified company to which this Act applies or a specified company to which this Act applies proposed to issue shares and—

- (a) the person who made the take-over offer or other offer or the company that proposed to issue the shares received before the commencement of this Act a notification in writing from the Government of the Commonwealth to the effect that the Government did not object to the take-over offer or other offer or to the issue of the shares;
- (b) if the period of one month immediately following the date of that announcement, the date on which the Government of the Commonwealth received that notification, or the twenty-sixth day of September, One thousand nine hundred and seventy-two, whichever was the latest date, ended before the commencement of this Act—the person who made the take-over offer or other offer or the company that proposed to issue the shares did not receive a notification in writing from the Government within that period of one month to the effect that—
 - (i) the Government considered that the acceptance of the

take-over offer or, in the case of a take-over offer being an invitation, of an offer made in pursuance of the take-over offer, the acceptance of the other offer or the issue of the shares would be contrary to the national interest; or

- (ii) the Government proposed to give further consideration to the question whether the acceptance of the take-over offer or, in the case of a take-over offer being an invitation, of an offer made in pursuance of the take-over offer, the acceptance of the other offer or the issue of the shares would be contrary to the national interest; or

- (c) if the period of one month immediately following the date of that announcement, the date on which the Government of the Commonwealth received that notification, or the twenty-sixth day of September, One thousand nine hundred and seventy-two, whichever was the latest date, did not end before the commencement of this Act—the Minister did not, before the expiration of that period of one month, make an order under this section in relation to the take-over offer, the other offer or the issue of the shares,

the Minister is not empowered to make an order under this section in relation to the take-over offer, the other offer or the issue of the shares, as the case may be.

(9.) The Minister may at any time make an order revoking an order made under this section.

(10.) Where the Minister makes an order under paragraph (c) of sub-section (2.), or sub-section (6.), of this section expressed to prohibit the implementation of a take-over offer, a person shall not, while the order is in force—

- (a) in the case of a take-over offer constituted by an offer to purchase shares—accept the offer; or
- (b) in the case of a take-over offer constituted by an invitation to sell shares—offer to sell shares in pursuance of the invitation or accept such an offer to sell shares.

Penalty: Fifty thousand dollars or imprisonment for six months.

(11.) Where the Minister makes an order under paragraph (c) of sub-section (3.), or sub-section (6.), of this section—

- (a) in the case of an order expressed to prohibit the acceptance of an offer—a person shall not, while the order is in force, accept the offer;
- (b) in the case of an order expressed to prohibit the entering into of an agreement by the parties to negotiations—a person who is or was a party to those negotiations shall not, while the order is in force, enter into such an agreement; or

- (c) in the case of an order expressed to prohibit a company from issuing shares to a person—the company shall not, while the order is in force, issue shares in the company to that person.

Penalty: Fifty thousand dollars or imprisonment for six months.

(12.) A person shall not contravene an order in force under paragraph (d) of sub-section (2.), or paragraph (d) of sub-section (3.), of this section.

Penalty for a contravention of this sub-section: Two hundred dollars for each day during which the contravention continues.

14.—(1.) Where—

- (a) a substantial number of voting shares in a company to which this Act applies are owned by foreign persons but would not be so owned but for—

- (i) the acceptance after the twenty-sixth day of September, One thousand nine hundred and seventy-two, of an offer or offers to purchase shares in that company, being an offer or offers that constituted a take-over offer or take-over offers in relation to the shares;
- (ii) the acceptance after that date of an offer or offers to sell shares in that company, being an offer or offers made in pursuance of an invitation or invitations that constituted a take-over offer or take-over offers in relation to the shares;
- (iii) the acceptance after that date of any other offer or offers for the sale or purchase of shares in that company; or
- (iv) the issue after that date of shares in that company not being an issue made at a time when a substantial number of voting shares in that company were already owned by foreign persons; and

- (b) the Minister is satisfied that—

- (i) the foreign person concerned is, or the foreign persons concerned are, in a position to exercise effective control of that company; and
- (ii) the exercise of that control would be contrary to the national interest,

the Minister may make an order expressed to direct that that person or those persons, and any persons who are associated with that person or any of those persons, shall not together be the beneficial owners of shares in the company carrying more than a fraction specified in the order of the total of the rights to cast votes in respect of shares in the company.

(2.) The Minister shall not treat a person or persons referred to in the last preceding sub-section as being in a position to exercise effective control of a company if he is satisfied that, having regard to all the circumstances,

Power of
Minister to
limit
beneficial
ownership
of shares.

that person is not or those persons are not in a position to exercise a significant degree of control over the conduct of the affairs of the company.

(3.) For the purposes of an order made under sub-section (1.) of this section in relation to a person, the beneficial ownership by that person of any shares in the company concerned of which that person was the beneficial owner immediately before the twenty-seventh day of September, One thousand nine hundred and seventy-two, shall be disregarded.

(4.) For the purposes of an order made under sub-section (1.) of this section, the beneficial ownership by a person of any shares in the company concerned of which the person became the beneficial owner before the commencement of this Act shall be disregarded where, before the commencement of this Act, a public announcement was made, or the Government of the Commonwealth received a notification, that an act had been, or was proposed to be, done that would or might result in the person becoming the beneficial owner of those shares and—

- (a) the person or company received before the commencement of this Act a notification in writing from the Government of the Commonwealth to the effect that the Government did not object to the person becoming, or to the doing of any act that would result in his becoming, the beneficial owner of those shares;
- (b) if the period of one month immediately following the date of that announcement, the date on which the Government of the Commonwealth received that notification, or the twenty-sixth day of September, One thousand nine hundred and seventy-two, whichever was the latest date, ended before the commencement of this Act—neither the person nor the company received a notification in writing from the Government within that period of one month to the effect that—
 - (i) the Government considered that the doing of that act was or would be contrary to the national interest; or
 - (ii) the Government proposed to give further consideration to the question whether the doing of that act was or would be contrary to the national interest; or
- (c) if the period of one month immediately following the date of that announcement, the date on which the Government of the Commonwealth received that notification, or the twenty-sixth day of September, One thousand nine hundred and seventy-two, whichever was the latest date, did not end before the commencement of this Act—the Minister did not before the expiration of that period of one month make an order under the last preceding section in relation to the doing of that act.

(5.) Where the Minister receives a notice in writing from the person or company concerned that an act has been or is proposed to be done that would or might result in a specified person becoming the beneficial owner of shares in a specified company to which this Act applies, and the Minister

does not, before the expiration of one month after the date on which the notice is received by him, make an order under the last preceding section in relation to the doing of that act, the beneficial ownership by the person of the shares shall be disregarded for the purposes of an order made under sub-section (1.) of this section in relation to that person.

(6.) A person shall not contravene an order in force under this section.

Penalty: Two hundred dollars for each day during which the contravention continues.

Powers of court with respect to defaulting foreign owners of shares.

15.—(1.) Where a person (in this section referred to as “ the foreign owner ”) has failed to comply with an order in force under paragraph (d) of sub-section (2.), or paragraph (d) of sub-section (3.), of section 13, or section 14, of this Act, the Supreme Court of a State or Territory of the Commonwealth, being a court that has jurisdiction for the purpose by virtue of sub-section (9.) or sub-section (10.) of this section, may, on the application of the Minister, whether or not that failure still continues, and whether or not other proceedings in respect of that failure have been instituted, make one or more of the following orders:—

- (a) an order restraining the exercise of any voting or other rights attached to any share in the company concerned of which the foreign owner is the beneficial owner;
- (b) an order directing the company concerned not to make payment, or to defer making payment, of any sum due from the company in respect of any share in the company of which the foreign owner is the beneficial owner;
- (c) an order directing the sale of all or any of the shares in the company concerned of which the foreign owner is the beneficial owner;
- (d) an order that any exercise of the voting or other rights attached to specified shares in the company concerned of which the foreign owner is the beneficial owner be disregarded;
- (e) for the purpose of securing compliance with any other order made under this section, an order directing the company concerned or any other person to do or refrain from doing a specified act.

(2.) An order under this section may include such ancillary or consequential provisions as the court thinks just.

(3.) The court shall, before making an order under this section and in determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

(4.) The court shall not make an order under sub-section (1.) of this section, other than an order restraining the exercise of voting rights, if it is satisfied—

- (a) that the failure of the foreign owner to comply as mentioned in sub-section (1.) of this section was due to his inadvertence or mistake or to his not being aware of a fact or occurrence the existence of which was necessary to constitute that failure; and

(b) that, in all the circumstances, the failure ought to be excused.

(5.) The court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(6.) A Supreme Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(7.) A person shall not contravene or fail to comply with an order under this section that is applicable to him.

Penalty: One thousand dollars.

(8.) The last preceding sub-section does not affect the powers of a Supreme Court in relation to the punishment of contempts of the court.

(9.) The Supreme Court of each State is invested with federal jurisdiction for the purposes of the application of this section in relation to shares in a company other than a company incorporated in a Territory of the Commonwealth.

(10.) Jurisdiction is conferred on the Supreme Court of each Territory of the Commonwealth for the purposes of the application of this section in relation to shares in a company incorporated in that Territory.

16.—(1.) It is a defence to a prosecution for an offence against sub-section (12.) of section 13, or sub-section (6.) of section 14, of this Act if the defendant proves that his failure was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence.

Defence to prosecutions.

(2.) For the purposes of the last preceding sub-section, a person shall conclusively be presumed to have been aware at a particular time of a fact or occurrence of which a servant or agent of the person, being a servant or agent having duties or acting in relation to his master's or principal's ownership of a share or shares in the company concerned, was aware at that time.

17.—(1.) Where—

(a) the Minister is satisfied that—

- (i) the acceptance of a particular offer or offers to purchase shares in a company to which this Act applies, being an offer or offers constituting a take-over offer or take-over offers in relation to the shares;
- (ii) the acceptance of an offer or offers to sell shares in a company to which this Act applies, being an offer or offers made in pursuance of a particular invitation or invitations constituting a take-over offer or take-over offers in relation to the shares;
- (iii) the acceptance of a particular offer or offers (not being an offer or offers of a kind referred to in either of the last

Certificate that acquisition of shares not contrary to national interest.

two preceding sub-paragraphs) for the sale or purchase of particular shares in a company to which this Act applies;

(iv) the entering into an agreement by particular persons for the purchase of particular shares in a company to which this Act applies; or

(v) the issue to a particular person of particular shares in a company to which this Act applies,

would not result in foreign persons being in a position to exercise effective control of the company; or

(b) the Minister is satisfied that the exercise of effective control of a company to which this Act applies by particular foreign persons would not be contrary to the national interest,

he may give a certificate to that effect.

(2.) Where a certificate given by the Minister in accordance with the last preceding sub-section is in force, the Minister is not empowered to make an order under paragraph (c) of sub-section (2.), or paragraph (c) of sub-section (3.), of section 13 of this Act—

(a) in the case of a certificate in relation to a take-over offer or take-over offers—expressed to prohibit the implementation of that take-over offer or those take-over offers;

(b) in the case of a certificate in relation to the acceptance of an offer or offers (not being an offer or offers constituting, or made in pursuance of an invitation or invitations constituting, a take-over offer or take-over offers) for the sale or purchase of shares in a company—expressed to prohibit the acceptance of that offer or those offers;

(c) in the case of a certificate in relation to the entering into of an agreement for the purchase of shares in a company—expressed to prohibit the entering into of that agreement; or

(d) in the case of a certificate in relation to the issue to a person of shares in a company—expressed to prohibit the issue of those shares to that person.

(3.) Where there is in force a certificate by the Minister in accordance with sub-section (1.) of this section—

(a) in the case of a certificate to the effect that the doing of an act specified in the certificate would not result in foreign persons specified in the certificate being in a position to exercise effective control of a company to which this Act applies—the doing of that act shall be disregarded for the purposes of the application of sub-paragraphs (i) to (iv), inclusive, of paragraph (a) of sub-section (1.) of section 14 of this Act in relation to those foreign persons in relation to the company; or

(b) in the case of a certificate to the effect that the exercise of effective control of a company to which this Act applies by foreign persons specified in the certificate would not be contrary to the national

interest—the Minister is not empowered to make an order under section 14 of this Act in relation to those foreign persons in relation to the company.

(4.) A certificate given under this section shall be published in the *Gazette*.

18. The doing of any act that constitutes an offence against this Act is, notwithstanding the commission of that offence, valid for all purposes.

Validity of
acts done in
contravention
of this Act.

19. An order made under this Act shall be in writing and published in the *Gazette* and takes effect—

Provisions
relating to
orders.

- (a) except in a case to which the next succeeding paragraph applies—
on the date of publication; or
- (b) in the case of an order referred to in section 14 of this Act—on
such date as is specified in the order, being a date not earlier than
thirty days after the date of publication.

20.—(1.) Where the Minister has reason to believe that a person is capable of giving information or producing documents relating to matters that are relevant to the exercise by the Minister of his powers under this Act, he may, by notice in writing served on that person, require that person—

Power of
Minister to
require persons
to furnish
information
and produce
documents.

- (a) to furnish to him, by writing signed by that person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, any such information; or
 - (b) to produce to him, or to a person specified in the notice acting on his behalf, in accordance with the notice, any such documents.
- (2.) Without limiting by implication the generality of the last preceding sub-section, the power of the Minister under that sub-section to require a person to furnish information to the Minister includes the power—
- (a) to require a company to which this Act applies to furnish to the Minister the names and addresses of persons registered as the holders of shares in the company;
 - (b) to require a person who is registered as the holder of shares in a company to which this Act applies to furnish to the Minister such information in the possession of the person as the Minister requires in relation to the beneficial ownership of the shares or in relation to any trusts, agreements, arrangements, understandings and practices affecting the shares or any rights carried by the shares; and
 - (c) to require a person who has made a take-over offer in relation to shares in a company to which this Act applies or an offer (other than an offer constituting, or made in pursuance of an invitation constituting, a take-over offer) to sell or purchase shares in such a company to furnish to the Minister such information in the possession of the person as the Minister requires in relation to the offer.

(3.) A person shall not—

- (a) refuse or fail to comply with a notice under this section to the extent that he is capable of complying with it; or
- (b) in purported compliance with such a notice, knowingly furnish information that is false or misleading.

Penalty: One thousand dollars or imprisonment for three months.

(4.) A person is not excused from furnishing information or producing a document in pursuance of this section on the ground that the information or document might tend to incriminate him, but his answer to any question asked in the notice, or his furnishing of any other information in pursuance of the notice, is not admissible in evidence against him in any criminal proceedings other than proceedings under this Act.

Jurisdiction of
Commonwealth
Industrial
Court.

21. The Commonwealth Industrial Court has jurisdiction to hear and determine proceedings for offences against this Act (including offences that are to be deemed to have been committed by reason of the operation of section 5 of the *Crimes Act* 1914–1966) and that jurisdiction is exclusive of the jurisdiction of any other court, other than the jurisdiction of the High Court under section 75 of the Constitution.

Minister's
consent
required for
proceedings.

22. Proceedings for an offence against this Act shall not be instituted without the consent in writing of the Minister.

Effect of Act
on other laws.

23. It is the intention of the Parliament that this Act shall not apply to the exclusion of any law of a State or Territory of the Commonwealth.

Regulations.

24. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.
