

**Close Corporations Act 1989**

**No. 120 of 1989**

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SCHEDULE

PENALTIES FOR OFFENCES COMMITTED BY NATURAL PERSONS



**Close Corporations Act 1989**

**No. 120 of 1989**

**An Act to enact a national law about closely held corporations, and for related purposes**

[*Assented to 14 July 1989*]

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

**PART 1—PRELIMINARY**

***Division 1*—*Introductory***

**Short title**

**1.** This Act may be cited as the *Close 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)** Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.

**Application to the Crown**

**3.** Parts 12, 13, 14 and 16 bind the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

**Extension to external Territories**

**4.** This Act extends to such external Territories (if any) as are prescribed.

**Administration**

**5.** Subject to the Commission Act, the Commission has the general administration of this Act.

***Division 2*—*Miscellaneous interpretation provisions***

**General dictionary**

**6.** **(1)** In this Act, unless the contrary intention appears:

“accounting records” includes:

(a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry; and

(b) such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up;

“association agreement” means an agreement entered into in accordance with subsection 67 (1) that is in force or, if such an agreement has been varied by a supplementary association agreement, the agreement as varied and in force;

“Australia” includes the external Territories to which this Act extends;

“books” includes:

(a) a register;

(b) any other record of information;

(c) accounts or accounting records, however compiled, recorded or stored; and

(d) a document;

“certificate of compliance” means a certificate referred to in section 83;

“close corporation” means a close corporation registered under this Act;

“Commission” means the Australian Securities Commission;

“Commission Act” means the *Australian Securities Commission Act 1989*;

“Commission delegate” has the same meaning as in the Commission Act;

“company” means a company incorporated under Division 1 of Part 2.2 of the Corporations Act;

“contributory”, in relation to a close corporation, means:

(a) a person liable as a member or past member to contribute to the property of the corporation if it is wound up;

(b) a member of the corporation; and

(c) before the final determination of the persons who are contributories by virtue of paragraphs (a) and (b)—a person alleged to be such a contributory;

“Corporations Act” means the *Corporations Act 1989*;

“Court” means the Federal Court of Australia or the Supreme Court of a State or Territory;

“decisive number of members”, in relation to a close corporation, means:

(a) where there is only one member—that member;

(b) where there are 2 members—both of those members; or

(c) where there are more than 2 members—not fewer than:

(i) if there are 3 members—2 members;

(ii) if there are 4 members—3 members;

(iii) if there are 5 members—4 members;

(iv) if there are 6 members—5 members;

(v) if there are 7 or 8 members—6 members;

(vi) if there are 9 members—7 members; or

(vii) if there are 10 members—8 members;

“declaration of solvency” means a declaration, referred to in paragraph 89 (1) (b);

“dormant”, in relation to a close corporation, has the meaning given by section 7;

“eligible negotiable instrument”, in relation to a close corporation, means:

(a) a bill of exchange, promissory note, cheque or other negotiable instrument;

(b) an indorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument; or

(c) a letter of credit;

of, or purporting to be issued or signed by or on behalf of, the corporation;

“financial year”, in relation to a close corporation, means either of the following, whether ending before, at or after the commencement of this section:

(a) a period of 12 months, or such other period (whether longer or shorter than 12 months) of not more than 18 months as a majority of the members decide, beginning:

(i) if there has been no previous financial year of the corporation—on the day of the corporation’s incorporation; or

(ii) otherwise—at the end of the previous financial year of the corporation;

(b) if the close corporation was a company immediately before it became a close corporation—a period that was a financial year in relation to the company for the purposes of the Corporations Act;

“founding statement”, in relation to a close corporation or proposed close corporation, means a statement relating to the corporation or proposed corporation that is referred to in paragraph 18 (1) (a);

“holder”, in relation to shares in a close corporation, means the person who is the legal owner of the shares, whether or not the person’s name and the number of shares are entered in the corporation’s membership register;

“holding company” has the meaning given by section 9;

“information” includes complaint;

“involved”, in relation to a contravention, has the meaning given by section 13;

“issue” includes circulate, distribute and disseminate;

“lodge” means lodge with the Commission;

“majority of the members”, in relation to a close corporation that has only 1 member or 2 members, means that member or both of those members, as the case may be;

“member”, in relation to a close corporation, means a person who is a member of the corporation as provided by Part 5;

“new close corporation” has the meaning given by section 8;

“officer”, in relation to a close corporation, includes:

(a) a member or employee of the corporation;

(b) a receiver and manager, appointed under a power contained in an instrument, of property of the corporation;

(c) an official manager, or deputy official manager, of the corporation;

(d) a liquidator of the corporation appointed in a voluntary winding up of the corporation; and

(e) a trustee or other person administering a compromise or arrangement made between the corporation and any other person or persons;

but does not include:

(f) a receiver who is not also a manager;

(g) a receiver and manager appointed by a court; or

(h) a liquidator appointed by a court;

“prescribed” means prescribed by this Act, by the regulations or by the rules;

“prove” includes establish in any way;

“receiver and manager” has a meaning affected by section 14;

“registered office” means the premises the address of which is specified in the founding statement in accordance with paragraph 19 (b) or, if an address of other premises has been specified in a notice lodged under section 20, the premises the address of which is specified in that notice or the last such notice;

“registration number” in relation to a close corporation, means the number allotted to it under subsection 18 (1);

“rules” means rules of the Court;

“securities”, in relation to a close corporation, means shares in, or debentures of, the corporation;

“share”, in relation to a close corporation, means a share in the share capital of the corporation;

“staff member”, in relation to the Commission, means a person who is a staff member for the purposes of the Commission Act;

“State” includes the Northern Territory;

“substantial part”, in relation to activities, includes the whole of those activities;

“supplementary association agreement” has the meaning given by subsection 67 (4);

“Territory” means:

(a) the Australian Capital Territory and the Jervis Bay Territory treated as a single Territory; or

(b) an external Territory to which this Act extends;

“this Act” includes:

(a) any provision of the Corporations Act as applying in relation to close corporations by virtue of this Act; and

(b) the regulations;

“trading activities”, in relation to an existing or proposed close corporation, includes financial activities but does not include activities that the corporation engages in, or will engage in, in the course of carrying on, as its sole or principal business, the business of banking or insurance;

“trading corporation” means a trading corporation, or a financial corporation, within the meaning of paragraph 51 (xx) of the Constitution;.

“unit”, in relation to a share, means a right or interest, whether legal or equitable, in the share, by whatever term called, and includes an option to acquire such a right or interest in the share;

“value”, in relation to an asset, includes amount.

**(2)** Expressions used in this Act (other than expressions defined by subsection (1) or by another provision of this Part) that are defined by the Corporations Act have in this Act, unless the contrary intention appears, the same meanings as in the Corporations Act.

***Division 3***—***Dormant and new close corporations***

**Dormant close corporations**

**7. (1)** For the purposes of this Act, a close corporation is dormant throughout a particular period if, and only if, throughout that period, the corporation:

(a) did not receive or become entitled to any income or incur or become liable for any expenditure;

(b) did not purchase, sell or supply any goods or other property, or any services, or enter into any agreement in relation to the purchase, sale or supply of goods or other property, or services;

(c) did not issue, sell, purchase or make available any securities, or enter into any agreement in relation to the issue, sale, purchase or making available of securities;

(d) did not issue a prospectus or statement, or enter into any agreement in relation to the issue of a prospectus or statement, in connection with the issue, sale, purchase or making available, or the proposed issue, sale, purchase or making available, of any securities;

(e) did not take part in any research, development or exploration activities, or enter into any agreement in relation to taking part in research, development or exploration activities;

(f) was not, and did not become, a party to any lease, franchise, joint venture or partnership arrangement, and did not take part in any lease, franchise, joint venture or partnership arrangement, or enter into any agreement in relation to becoming a party to, or taking part in, any lease, franchise, joint venture or partnership arrangement;

(g) did not make, receive or guarantee any loan, or enter into any agreement in relation to making, receiving or guaranteeing a loan;

(h) was not, and did not become, a party to any underwriting agreement and did not enter into any agreement in relation to becoming a party to any underwriting agreement;

(j) did not obtain or receive a grant of any licence or other authority, or make any application in relation to obtaining a licence or other authority; and

(k) was not, and did not become, a party to any litigation or negotiations with any other person or body.

**(2)** A close corporation shall not be taken not to be dormant throughout a particular period merely because, during that period, the corporation:

(a) issues shares to a subscriber to the corporation’s founding statement;

(b) holds shares in a body corporate that is dormant for the purposes of the Corporations Act throughout that period;

(c) receives or becomes entitled to income by way of a payment of a charge imposed by the corporation:

(i) in connection with its performance of an obligation imposed by this Act; and

(ii) in accordance with this Act; or

(d) incurs or becomes liable to a necessary expense in connection with doing an act or thing mentioned in paragraph (a) or (b) or performing an obligation imposed on the corporation, or an officer of the corporation, by this Act.

**(3)** A close corporation is dormant at a particular time if, and only if, that time occurs during, or at the beginning or end of, a period throughout which the body is dormant.

**(4)** A close corporation becomes dormant at its incorporation if, and only if, the corporation is dormant throughout a period beginning at its incorporation.

**(5)** A close corporation becomes dormant at a particular time after its incorporation if, and only if, the corporation:

(a) is dormant throughout a period beginning at that time; and

(b) was dormant throughout no period ending at that time.

**(6)** A close corporation ceases at a particular time to be dormant if, and only if, the corporation:

(a) was dormant throughout a period ending at that time; and

(b) is dormant throughout no period beginning at that time.

**New close corporations**

**8.** For the purposes of this Act, a close corporation is a new close corporation from its incorporation until the end of:

(a) if the statement that was lodged for the purposes of section 25 and relates to the corporation states as mentioned in subsection 25 (3)— 3 months beginning on the day:

(i) if the statement also states as mentioned in subsection 25 (2) and the corporation becomes dormant at its incorporation— when the corporation first ceases to be dormant; or

(ii) otherwise—of the corporation’s incorporation;

(b) if the statement states as mentioned in subsection 25 (4) and the corporation lodges a statement in accordance with section 26:

(i) if the last-mentioned statement states to the effect that the corporation intends as mentioned in subsection 26 (3)— 3 months beginning on the day specified under paragraph 26 (2) (c); or

(ii) otherwise—the day on which the last-mentioned statement is lodged; or

(c) otherwise—the day of the corporation’s incorporation.

***Division 4***—***Holding company***

**What is a holding company**

**9.** For the purposes of this Act, a close corporation is a holding company of a body corporate if a body corporate is a subsidiary of the close corporation.

**What is a subsidiary**

**10.** For the purposes of this Act, a body corporate is a subsidiary of a close corporation if, and only if, the corporation:

(a) controls the composition of the body’s board;

(b) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the body; or

(c) holds more than one-half of the issued share capital of the body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

**Control of a body corporate’s board**

**11.** Without limiting by implication the circumstances in which the composition of a body corporate’s board is to be taken to be controlled by a close corporation, the composition of the board shall be taken to be so controlled if the corporation, by exercising a power exercisable (whether with or without the consent or concurrence of any other person) by it, can appoint or remove all, or the majority, of the directors of the body, and, for the purposes of this Division, the corporation shall be deemed to have power to make such an appointment if:

(a) a person cannot be appointed as a director of the body without the exercise by the corporation of such a power in the person’s favour; or

(b) a person’s appointment as a director of the body follows necessarily from the person being an officer of the corporation.

**Matters to be disregarded**

**12.** **(1)** This section applies for the purpose of determining whether a body corporate is a subsidiary of a close corporation.

**(2)** Any shares held, or power exercisable, by the corporation in a fiduciary capacity shall be treated as not held or exercisable by it.

**(3)** Subject to subsections (4) and (5), any shares held, or power exercisable, by a person as a nominee for the corporation (except where the corporation is concerned only in a fiduciary capacity) shall be treated as held or exercisable by the corporation.

**(4)** Any shares held, or power exercisable, by a person by virtue of the provisions of debentures of the body, or of a trust deed for securing an issue of such debentures, shall be disregarded.

**(5)** Any shares held, or power exercisable, otherwise’than as mentioned in subsection (4), by, or by a nominee for, the corporation shall be treated as not held or exercisable by the corporation if:

(a) the ordinary business of the corporation includes lending money; and

(b) the shares are held, or the power is exercisable, only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with lending money, not being a transaction entered into with an associate of the corporation.

***Division 5—Other interpretation provisions***

**Involvement in contraventions**

**13.** For the purposes of this Act, a person is involved in a contravention if, and only if, the person:

(a) has aided, abetted, counselled or procured the contravention;

(b) has induced, whether by threats or promises or otherwise, the contravention;

(c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or

(d) has conspired with others to effect the contravention.

**Receivers and managers**

**14.** For the purposes of this Act, a receiver of property of a close corporation is also a manager if the receiver manages, or has under the terms of the receiver’s appointment power to manage, affairs of the corporation.

***Division 6***—***Application of Corporations Act***

**How certain provisions of Corporations Act apply to close corporations**

**15.** **(1)** Where this Act applies a provision of the Corporations Act (in this subsection called the “applied provision”) in relation to a close corporation, the applied provision, and any other provision of the Corporations Act that has effect for the purposes of, or in relation to, the applied provision, apply in relation to the close corporation:

(a) subject to this Act;

(b) so far as the provisions concerned are capable of application and *mutatis mutandis*;and

(c) as if the corporation were a company limited by shares.

**(2)** In any provision of the Corporations Act as applying in relation to a close corporation by virtue of this Act, unless the contrary intention appears:

(a) a reference to a company or to a corporation is a reference to the close corporation;

(b) a reference to the memorandum or articles of a company or to the constitution of a company or corporation is a reference to the founding statement of the close corporation as affected by any notice lodged under section 20;

(c) a reference to the common seal of a company or of a corporation is a reference to the official seal of the close corporation;

(d) a reference to a director of a company or of a corporation is a reference to a member of the close corporation;

(e) a reference to a resolution passed by a company or corporation is a reference to a decision made by a majority of the members of the close corporation and recorded in writing that sets out the time and date when the decision was made, and a reference to the time of the passing of such a resolution is a reference to the time so recorded;

(f) a reference to a special resolution passed by a company or corporation is a reference to a decision made by a decisive number of members of the close corporation and recorded in writing that sets out the time and date when the decision was made, and a reference to the time of passing of such a special resolution is a reference to the time so recorded; and

(g) a reference to an expression that is given by this Act a different meaning from the meaning given by the Corporations Act is a reference to that expression with the meaning given by this Act.

**(3)** For the purpose of achieving the object of any provision of the Corporations Act in its application in relation to a close corporation by virtue of this Act, the Court may make such order or orders as it thinks just and reasonable to resolve any difficulties arising in connection with the application of that provision, including an order modifying the terms of the provision.

**PART 2—REGISTRATION**

***Division 1*—*Manner of registration***

**Formation**

**16.** Subject to this Act, any natural person, or any natural persons not exceeding 10 in number, may, by subscribing his or her name, or their names, to a founding statement and complying with the requirements as to registration under this Part, form a close corporation.

**Share capital**

**17.** **(1)** A close corporation shall have a share capital.

**(2)** The shares in a close corporation shall be fully paid up, be of the same value and have the same rights.

**Registration**

**18.** **(1)** Persons desiring the incorporation of a close corporation shall lodge:

(a) a statement relating to the proposed corporation that is in a form made available by the Commission and complies with section 19; and

(b) the other documents required to be lodged by or under this Act;

and, subject to this Act, the Commission shall register the corporation by registering the founding statement and allotting a number to the corporation.

**(2)** The Commission shall not register a close corporation under subsection (1) unless:

(a) subject to section 33, the name under which the corporation is proposed to be registered is reserved under section 35 in respect of the corporation; and

(b) the Commission is satisfied that, upon the registration of the corporation, any relevant requirements of sections 60 to 63, inclusive, would be complied with in relation to the corporation.

**Requirements as to founding statement**

**19.** **(1)** The founding statement of a close corporation shall be dated, and signed by the person or persons desiring the formation of the corporation, and shall state:

(a) the name of the corporation;

(b) an address of premises to which all communications to the corporation may be sent and which will be open and accessible to the public;

(c) the amount of share capital with which the corporation proposes to be registered and the division of that share capital into shares of a fixed amount, being the same amount in respect of each share;

(d) the full name, residential address and date and place of birth of the subscriber or each subscriber to the statement;

(e) the number of shares (being at least one) that the subscriber or each subscriber agrees to take; and

(f) that the subscriber or subscribers desires or desire to be formed into a close corporation pursuant to the statement and proposes or propose to take the number of shares in the capital of the corporation set out opposite his or her name or their respective names.

**(2)** If the subscribers to the founding statement constitute all the members of a company, the statement may state that they desire to convert the company into the close corporation.

**Changes in particulars in founding statement or membership register**

**20.** If:

(a) a change takes place in any of the matters set out in a close corporation’s founding statement;

(b) an entry is required by this Act to be made to a close corporation’s membership register (whether or not the entry is made); or

(c) an entry in a close corporation’s membership register is required by this Act to be altered (whether or not the alteration is made);

the corporation shall lodge a notice setting out particulars of the change, of the entry that is required to be made, or of the alteration that is required

to be made to an entry, as the case may be, within 14 days after the day on which the change took place or the requirement arose.

**Certificate of registration**

**21.** **(1)** On registering a close corporation, the Commission shall prepare a certificate under its common seal that complies with this section and shall issue the certificate to the corporation.

**(2)** The certificate shall state that the corporation:

(a) is registered as a close corporation under this Act; and

(b) because of that registration is a body corporate;

and shall specify the day of commencement of the registration.

**(3)** The certificate shall state that the corporation has a share capital.

**(4)** The Commission shall keep a copy of the certificate and this Act applies in relation to that copy as if it were a document that had been lodged.

**Effect of certificate**

**22.** A certificate under the Commission’s common seal stating that a specified close corporation has been registered under this Act is conclusive evidence that:

(a) all requirements of this Act (other than section 26) in respect of:

(i) registration of the corporation as a close corporation under this Act; and

(ii) matters preceding or incidental to the registration; have been complied with;

(b) the corporation is duly registered under this Act; and

(c) the day of commencement of the registration is the day specified as such in the certificate.

**Incorporation**

**23.** **(1)** Subject to this Act, on and from the day specified in a certificate under section 21 as the day of commencement of the registration of a close corporation under this Act, the subscriber or subscribers to the founding statement, together with such other persons as from time to time become members of the corporation, are a body corporate incorporated as a close corporation by the name stated in the founding statement.

**(2)** A close corporation registered under this Act:

(a) is capable of performing all the functions of a body corporate;

(b) is capable of suing and being sued;

(c) has perpetual succession;

(d) shall have an official seal; and

(e) has power to acquire, hold and dispose of property.

**Conversion of company into close corporation**

**24.** **(1)** If the Commission is satisfied that:

(a) the subscribers to the founding statement of a proposed close corporation constitute all the members of a company;

(b) the company has a share capital;

(c) all the shares are fully paid up, are of the same value and have the same rights;

(d) the company is not a holding company of another body corporate;

(e) the company is not in default in respect of any of its obligations under the Corporations Act; and

(f) the founding statement states as mentioned in subsection 19 (2);

the certificate issued under section 21 shall state that the close corporation is the same body corporate as the company.

**(2)** Upon the registration of the close corporation, the company ceases to be registered under the Corporations Act but the body corporate that was registered as the company continues in existence as the close corporation so that its corporate identity is not affected.

**(3)** The continued existence as a close corporation of a body corporate that was previously a company does not:

(a) affect the property, or the rights or obligations, of the body; or

(b) render defective any legal proceedings by or against the body;

and any legal proceedings that could have been continued or begun by or against the company may be continued or begun by or against the corporation.

***Division 2*—*Activities statements***

**Lodgment of activities statement**

**25.** **(1)** The Commission shall not register a close corporation under Division 1 unless:

(a) a written statement in a form made available by the Commission has been lodged;

(b) the statement is signed by the subscriber or subscribers to the proposed corporation’s founding statement;

(c) the statement specifies the day on which it was so signed, or the first day on which it was signed by any of the subscribers, as the case requires;

(d) the day specified is not more than 7 days before the founding statement was lodged for registration and not more than 28 days before the corporation is so registered; and

(e) the statement, whether or not it also states as mentioned in subsection (2), states as mentioned in subsection (3) or (4).

**(2)** The statement may state to the effect that the subscriber or subscribers intend the proposed close corporation to be dormant throughout a substantial period beginning at its incorporation.

**(3)** The statement may state to the effect that the subscriber or subscribers intend that, within 3 months after:

(a) the day of the proposed corporation’s incorporation; or

(b) the period referred to in subsection (2);

as the case requires, trading activities within the meaning of this Act will be the whole or a substantial part of the corporation’s activities.

**(4)** The statement may state to the effect that the subscriber or subscribers intend that within:

(a) 21 days after the day of the proposed corporation’s incorporation; or

(b) the period referred to in subsection (2);

as the case requires, a person or persons other than the subscriber or subscribers will be a member or members and have interests in the corporation that together constitute a controlling interest in it.

**(5)** A statement may state as mentioned in subsection (4) even if, when the statement is signed by the subscriber or any of the subscribers, it is not known who the person or persons referred to in that subsection will be.

**(6)** Where a statement is lodged for the purposes of this section, each person who has signed the statement shall be taken to have stated in it that that person had, when signing the statement, the intention described in it.

**Further activities statement where control of corporation is to change**

**26. (1)** Where:

(a) a close corporation is registered under Division 1; and

(b) the statement that was lodged for the purposes of section 25 and relates to the corporation states as mentioned in subsection 25 (4);

the corporation shall:

(c) if the statement states as mentioned in subsection 25 (2) and the corporation becomes dormant at its incorporation—within 14 days after the corporation first ceases to be dormant; or

(d) otherwise—within 35 days after the corporation’s incorporation;

lodge a statement that complies with this section.

**(2)** The statement shall:

(a) be in writing in a form made available by the Commission;

(b) be signed by a member; and

(c) specify the day on which it was so signed, being a day not more than 7 days before the statement is lodged.

**(3)** The statement shall state whether or not the corporation intends that, within 3 months after the specified day, trading activities within the meaning of this Act will be the whole or a substantial part of the activities of the corporation.

**(4)** Neither section 165 of this Act nor section 4k of the *Crimes Act 1914* applies in relation to this section.

***Division 3*—*Close corporations ceasing to be trading corporations***

**Commission to take action**

**27.** Where it is satisfied that a close corporation is not a trading corporation, the Commission shall, unless the corporation is a new close corporation or an application for an order to wind up the corporation on the ground provided for by subsection 459 (1) of the Corporations Act has been made already and not yet dealt with, do either or both of the following:

(a) make such an application;

(b) take action in relation to the corporation under section 572 of the Corporations Act.

**Presumptions about loss of trading corporation status**

**28.** **(1)** This section has effect for the purposes of section 27.

**(2)** Unless it is satisfied to the contrary, the Commission shall be deemed to be satisfied that a close corporation is not, at a particular time, a trading corporation if, as at that time:

(a) the corporation:

(i) has contravened section 26; and

(ii) has lodged no certificate of compliance; or

(b) the corporation has lodged a notice under subsection 29 (2).

**(3)** Unless it is satisfied to the contrary, the Commission shall be deemed to be satisfied that a close corporation is not, at a particular time, a trading corporation, if, as at that time:

(a) the corporation has contravened section 83 in relation to a particular financial year;

(b) the Commission has given to the corporation a written notice requiring the corporation to lodge its certificate of compliance for that financial year within a specified period of at least 28 days after the notice is so given; and

(c) that period has ended and the corporation has not lodged a certificate of compliance for that financial year that includes a statement complying with section 84.

**(4)** Unless it is satisfied to the contrary, the Commission shall be deemed to be satisfied that a close corporation is not, at a particular time, a trading corporation if:

(a) as at that time, the corporation:

(i) has lodged for the purposes of section 26 a statement stating to the effect that the company does not intend as mentioned in subsection 26 (3); and

(ii) has lodged no certificate of compliance; or

(b) a statement included under section 84 in the last certificate of compliance lodged by the corporation before that time states to the effect that:

(i) as at a particular day, trading activities were not a substantial part of the corporation’s activities;

(ii) the corporation does not intend as mentioned in paragraph 84 (5) (b);

(iii) the corporation became dormant on a particular day that is not less than 3 months before that time;

(iv) trading activities were not a substantial part of the activities in which the corporation engaged during a particular period; or

(v) the corporation does not intend as mentioned in paragraph 84 (6) (c).

**Close corporation to take action**

**29.** **(1)** This section has effect where, on a particular day, trading activities cease to be a substantial part of a close corporation’s activities.

**(2)** Within 14 days after that day, the corporation shall lodge a written notice stating that the corporation has ceased to be a trading corporation.

**(3)** Within 28 days after that day, the corporation shall, unless an application for an order to wind up the corporation on the ground provided for by subsection 459 (1) of the Corporations Act has been made already and not yet dealt with, make such an application.

**PART 3—NAMES**

**Names available for registration**

**30.** **(1)** Subject to this section, a name is available for registration under this Part in relation to any proposed close corporation or any close corporation unless the name:

(a) is reserved or registered under this Part; or

(b) is a name, or a name of a kind, that is declared by the regulations to be unacceptable for registration under this Part.

**(2)** A name that is reserved under this Part as the name of a proposed close corporation or of a close corporation is available for registration under this Part in relation to that proposed close corporation or that close corporation.

**(3)** If the members of a company apply for registration as a close corporation under this Act by the name by which the company is registered under the Corporations Act and the founding statement states as mentioned in subsection 19 (2), that name is available for registration under this Part in relation to that proposed close corporation.

**(4)** A name is available for registration under this Part in relation to a proposed close corporation or a close corporation if the Minister has consented in writing to that name being available for registration in relation to that proposed close corporation or that close corporation, as the case may be.

**(5)** In comparing for the purposes of paragraph (1) (a) a name in respect of which an application for reservation is made under this Part with a name that is reserved or registered under this Part, no regard shall be had to:

(a) any use of the definite article as the first word in either name;

(b) any word, abbreviation or symbol included in either name that is required or permitted by section 31 to be so included; or

(c) the type, the size and case of letters, the size of any numbers or other characters, and any accents, spaces between letters, numbers or characters, and punctuation marks, used in either name.

**Words or abbreviations to be included in names**

**31.** **(1)** A close corporation shall have the words “Close Corporation” or the abbreviation “C.C.” as part of and at the end of its name.

**(2)** A description of a close corporation is not inadequate or incorrect merely because of the use of:

(a) the abbreviation “C.C.” instead of the words “Close Corporation” in the name of the corporation;

(b) the symbol “&” instead of the word “and” in the name of the corporation; or

(c) any of those words instead of the corresponding abbreviation or symbol in the name of the corporation.

**Close corporation may have number as its name**

**32.** Where the founding statement lodged for the purposes of the incorporation of a close corporation does not specify a name as the proposed name of the corporation, the Commission shall, upon the incorporation of the corporation, include in its name, in figures, the corporation’s registration number.

**Reservation of name not required in certain circumstances**

**33.** The name by which a proposed close corporation is proposed to be registered under this Act is not required to be reserved if, apart from any words, abbreviation or symbol that is required or permitted by section 31 to be included in that name:

(a) that name consists only of the corporation’s registration number; or

(b) that name is available for registration under this Part in relation to that proposed close corporation by virtue of subsection 30 (3).

**Registration of name without reservation**

**34.** **(1)** Where the Commission incorporates a close corporation under this Act by a name to which subsection 30 (1) or (3) applies, the Commission shall register the name.

**(2)** The registration of a name under this section remains in force until it is cancelled by the Commission.

**Reservation and registration of name of a proposed close corporation**

**35.** **(1)** A person may lodge an application, in a form made available by the Commission and accompanied by the prescribed documents, for the reservation of a name set out in the application as the name of a proposed close corporation.

**(2)** If the name is available for registration under this Part in relation to the proposed close corporation, the Commission shall reserve the name for 2 months after the date of lodgment of the application.

**(3)** Where:

(a) a name is reserved under this section in respect of a proposed close corporation; and

(b) the Commission incorporates the close corporation by that name under this Act;

the Commission shall register the name of the corporation and, where the Commission does so, the name is no longer reserved.

**(4)** Where:

(a) a name is reserved under this section in respect of a proposed close corporation; and

(b) the person who applied for the reservation of the name informs the Commission in writing that the person no longer wishes the name to be reserved;

the Commission shall cancel the reservation of the name.

**(5)** The reservation of a name under this section in respect of a proposed close corporation does not of itself entitle the proposed close corporation to be registered by that name.

**(6)** The registration of a name under this section remains in force until it is cancelled by the Commission.

**Reservation and registration of proposed new name of close corporation**

**36.** **(1)** A close corporation may lodge an application, in a form made available by the Commission and accompanied by the prescribed documents, for the reservation of a name set out in the application as the name to which the corporation proposes to change its name.

**(2)** If the name is available for registration under this Part in relation to the corporation, the Commission shall reserve the name in respect of the corporation for 2 months after the date of lodgment of the application.

**(3)** Where:

(a) a name is reserved under this section in respect of a close corporation; and

(b) the corporation changes its name to that reserved name under section 39;

the Commission shall register the new name of the corporation and, where the Commission does so:

(c) the new name is no longer reserved; and

(d) the Commission shall cancel the registration of the name by which the corporation was registered before it changed its name.

**(4)** Where:

(a) a name is reserved under this section in respect of a close corporation; and

(b) the corporation informs the Commission in writing that it no longer wishes the name to be reserved;

the Commission shall cancel the reservation of the name.

**(5)** The reservation of a name under this section in respect of a close corporation does not of itself entitle the corporation to change its name to that name.

**(6)** The registration of a name under this section remains in force until it is cancelled by the Commission.

**Extension of reservation**

**37.** Where at any time during a period for which a name is reserved under this Part (whether or not pursuant to the exercise on a previous occasion or occasions of a power under this section) an application is lodged for an extension of that period, the Commission may extend that period for a further period of 2 months.

**Cancellation of registration where close corporation is dissolved or converted into a company**

**38.** Where a name is registered under this Part in respect of a close corporation and the corporation is dissolved or converted into a company under the Corporations Act, the Commission shall cancel the registration of that name.

**Change of name**

**39.** **(1)** A close corporation may, with the approval of the Commission, change its name.

**(2)** The Commission shall not approve a change of name of a close corporation under subsection (1) unless the proposed new name is reserved in respect of the corporation under section 36.

**(3)** If the name of a close corporation is (whether through inadvertence or otherwise and whether originally or by change of name) a name that is not available for registration under this Part in relation to the corporation:

(a) the corporation may change its name to a name that is reserved in respect of that corporation under section 36; and

(b) if the Commission so directs, the corporation shall so change its name within 6 weeks after the date of the direction or within such longer period as the Commission allows, unless the Minister, by writing, annuls the direction.

**(4)** A change of name by a close corporation under this section does not:

(a) create a new legal entity;

(b) prejudice or affect the identity of the body corporate constituted by the corporation or its continuity as a close corporation;

(c) affect the property, or the rights or obligations, of the corporation; or

(d) render defective any legal proceedings by or against the corporation;

and any legal proceedings that could have been continued or begun by or against the corporation by its former name may be continued or begun by or against it by its new name.

**(5)** Despite paragraph 30 (1) (a), a name of a close corporation shall not be taken, for the purposes of subsection (3), not to be available for registration under this Part in relation to that corporation merely because the name is registered under this Part in respect of that corporation.

**Restriction on use of name “close corporation”**

**40.** A trading corporation that is not a close corporation, or a body corporate that is incorporated in a Territory, shall not have the words “Close Corporation” or the abbreviation “C.C.” as part of its name.

**Publication of close corporation’s name**

**41.** **(1)** A close corporation shall set out, in legible characters, on its official seal its name followed, unless its registration number is part of its name, by its registration number.

**(2)** A close corporation shall set out its name, in legible characters, on:

(a) every public document of the corporation that is signed, issued or published; and

(b) every eligible negotiable instrument of the corporation that is signed or issued.

**(3)** On:

(a) every public document of a close corporation that is signed, issued or published; and

(b) every eligible negotiable instrument of a close corporation that is signed or issued;

the corporation shall, unless its registration number is part of its name, set out, in legible characters, after the corporation’s name where it first appears, the corporation’s registration number.

**(4)** A person (whether or not an officer of the corporation) shall not, on a close corporation’s behalf:

(a) use, or authorise the use of, a seal that purports to be the official seal of the corporation but contravenes subsection (1); or

(b) issue, sign or publish a public document of the corporation that contravenes subsection (2) or (3).

**(5)** A person (whether an officer of the corporation or not) shall not sign or issue, or authorise to be signed or issued, on a close corporation’s behalf, an eligible negotiable instrument of the corporation that contravenes subsection (2).

**(6)** A person who contravenes subsection (5) is liable to the holder of the eligible negotiable instrument for the amount due on it unless that amount is paid by the close corporation.

**(7)** A close corporation shall paint or affix and keep painted or affixed, in a conspicuous position and in letters easily legible, on the outside of its registered office and of every office and place at which its business is carried on and that is open and accessible to the public:

(a) its name; and

(b) in the case of its registered office—the expression “Registered Office”.

**PART 4—LEGAL CAPACITY AND POWERS**

**Interpretation**

**42.** In sections 43, 44 and 46:

(a) a reference to the doing of an act by a close corporation includes a reference to the making of an agreement by the corporation and a reference to a transfer of property to or by the corporation; and

(b) a reference to legal capacity includes a reference to powers.

**Object of section 44**

**43.** The object of section 44 is to exclude the doctrine of ultra vires in its application to close corporations and that section shall be construed, and has effect, accordingly.

**Legal capacity**

**44.** **(1)** Subject to subsection (2) and to section 46, a close corporation has, both within and outside Australia, the legal capacity of a natural person and, without limiting the generality of the foregoing, has, both within and outside Australia, power:

(a) to allot and issue fully paid shares in the corporation;

(b) to issue debentures of the corporation;

(c) to distribute any of the property of the corporation among the members, in kind or otherwise;

(d) to grant a floating charge on property of the corporation;

(e) to procure the corporation to be registered or recognised as a body corporate in any place outside Australia; and

(f) to do any other act that it is authorised to do by any other law (including a law of a foreign country).

**(2)** A close corporation does not have power to allot or issue shares at a premium or discount or to allot or issue partly paid shares.

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

**Application of certain State and Territory laws**

**45.** **(1)** Despite the foreign companies law of a State or Territory, a close corporation may carry on business in any State or Territory.

**(2)** Except as expressly provided in this Act, nothing in this Act is intended to exclude or limit the application, in relation to a close corporation, of a law of a State or Territory, in so far as that law is capable of so applying concurrently with this Act.

**(3)** In this section:

“foreign companies law”, in relation to a State or Territory, means the law of that State or Territory relating to foreign companies within the meaning of that law.

**Close corporation not to act as trustee**

**46.** **(1)** Except where required by law, a close corporation does not have power to act as trustee under an express trust and a purported appointment of a close corporation as a trustee by any instrument is void.

**(2)** If a person purporting to act on behalf of a close corporation causes another person to believe that the corporation was a trustee under an express trust, any debt or other liability or any other obligation that would, but for this subsection, be incurred by the corporation to the other person as a result of the first-mentioned person causing the other person so to believe is a debt, liability or obligation of the first-mentioned person and not of the corporation.

**Persons having dealings with close corporations**

**47.** **(1)** A person having dealings with a close corporation is, subject to subsection (4), entitled to make, in relation to those dealings, the assumptions referred to in subsection (3) and, in any proceedings in relation to those dealings, any assertion by the corporation that the matters that the person is so entitled to assume were not correct shall be disregarded.

**(2)** A person having dealings with a person who has acquired or purports to have acquired title to property from a close corporation (whether directly or indirectly) is, subject to subsection (5), entitled to make, in relation to the acquisition or purported acquisition of title from the corporation, the assumptions referred to in subsection (3) and, in any proceedings in relation to those dealings, any assertion by the corporation or by the second-mentioned person that the matters that the first-mentioned person is so entitled to assume were not correct shall be disregarded.

**(3)** The assumptions that a person is, by virtue of subsection (1) or (2), entitled to make in relation to dealings with a close corporation, or in relation to an acquisition or purported acquisition from a close corporation of title to property, as the case may be, are:

(a) that, at all relevant times, any association agreement has been complied with;

(b) that a person who appears, from the founding statement of the corporation, as affected by any notice lodged under section 20, to be a member is such a member;

(c) that a person who is held out by the corporation or by a member to be an agent of the corporation has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by an agent of the kind concerned;

(d) that an agent of the corporation who has authority to issue a document on behalf of the corporation has authority to warrant that the document is genuine and that an agent of the corporation who has authority to issue a certified copy of a document on behalf of the corporation has authority to warrant that the copy is a true copy;

(e) that a document has been duly sealed by the corporation if:

(i) it bears what appears to be an impression of the official seal of the corporation; and

(ii) the sealing of the document appears to be attested by a person, being a person who, by virtue of paragraph (b), may be assumed to be a member; and

(f) that the agents of the corporation properly perform their duties to the corporation.

**(4)** Despite subsection (1), a person is not entitled to make an assumption referred to in subsection (3) in relation to dealings with a close corporation if:

(a) the person has actual knowledge that the matter that, but for this subsection, the person would be entitled to assume is not correct; or

(b) the person’s connection or relationship with the corporation is such that the person ought to know that the matter that, but for this subsection, the person would be entitled to assume is not correct;

and where, by virtue of this subsection, a person is not entitled to make a particular assumption in relation to dealings with a corporation, subsection

(1) has no effect in relation to any assertion by the corporation in relation to the assumption.

**(5)** Despite subsection (2), a person is not entitled to make an assumption referred to in subsection (3) in relation to an acquisition or purported acquisition from a close corporation of title to property if:

(a) the person has actual knowledge that the matter that, but for this subsection, the person would be entitled to assume is not correct; or

(b) the person’s connection or relationship with the corporation is such that the person ought to know that the matter that, but for this subsection, the person would be entitled to assume is not correct;

and where, by virtue of this subsection, a person is not entitled to make a particular assumption in relation to dealings with a corporation, subsection (2) has no effect in relation to any assertion by the corporation or by any other person in relation to the assumption.

**Lodgment of documents etc. not to constitute constructive notice**

**48.** **(1)** Subject to subsection (2), a person shall not be taken to have knowledge of:

(a) a close corporation’s founding statement or any of the contents of a close corporation’s founding statement;

(b) a document or the contents of a document; or

(c) any particulars;

merely because of either or both of the following:

(d) the founding statement, the document or the particulars has or have been lodged;

(e) the founding statement, the document or the particulars is or are referred to in any other document that has been lodged.

**(2)** Subsection (1) does not apply in relation to a document, or in relation to the contents of a document, that has been lodged under Part 3.5 of the Corporations Act, to the extent that the document relates to a charge that is registrable under that Part.

**Effect of fraud**

**49.** Section 47 operates:

(a) to entitle a person to make the assumptions referred to in subsection (3) of that section in relation to dealings with a close corporation; or

(b) to entitle a person to make the assumptions referred to in subsection (3) of that section in relation to an acquisition or purported acquisition (whether direct or indirect) of title to property from a close corporation;

even if a person referred to in paragraph 47 (3) (b), (c) or (e) or an agent of the corporation referred to in paragraph 47 (3) (d) or (f):

(c) has acted or is acting fraudulently in relation to the dealings, or in relation to the acquisition or purported acquisition of title to property from the corporation, as the case may be; or

(d) has forged a document that appears to have been sealed on behalf of the corporation;

unless the person referred to in paragraph (a) or (b) of this section has actual knowledge that the person referred to in paragraph 47 (3) (b), (c) or (e), or the agent of the corporation referred to in paragraph 47 (3) (d) or (f), has acted or is acting fraudulently, or has forged a document, as is mentioned in paragraph (c) or (d) of this section.

**Close corporation not to be a holding company**

**50.** **(1)** Subject to subsection (2), a close corporation may hold shares in another body corporate.

**(2)** If a close corporation:

(a) becomes a holding company of another body corporate; and

(b) does not within one month after so becoming a holding company:

(i) commence to be wound up; or

(ii) convert into a company;

the corporation contravenes this subsection.

**Close corporation not to make or issue offers or invitations to the public in respect of its shares**

**51.** **(1)** A close corporation shall not make an offer to the public to accept subscriptions for, or issue to the public an invitation to subscribe for, shares in the corporation.

**(2)** The reference in subsection (1) to the making of an offer or the issuing of an invitation to the public includes a reference to the making of an offer or the issuing of an invitation to any section of the public, whether selected as clients of the corporation or in any other manner and notwithstanding that the offer is capable of acceptance only by each person to whom it is made or that an offer or application may be made pursuant to the invitation only by a person to whom the invitation is issued, but a genuine offer or invitation shall not be taken to be an offer or invitation to the public if it is made or issued to members of the corporation.

**PART 5—MEMBERSHIP**

**Capacity of shareholding or membership**

**52.** **(1)** A reference in this Part to a person who is or becomes the holder of shares in a close corporation being or becoming a member of the corporation is a reference to the person being or becoming a member in the capacity in which the person holds those shares.

**(2)** A reference in this Part to the capacity in which a person holds shares in a close corporation is a reference to:

(a) the shares being held by the person beneficially;

(b) the shares being held by the person as the executor of the will or administrator of the estate of a particular dead person; or

(c) the shares being held by the person as trustee or nominee for a particular person or persons.

**Membership register**

**53.** A close corporation shall establish and keep a membership register in accordance with this Part.

**Subscribers to become members**

**54.** **(1)** Subject to this Part, if there is only one subscriber to a close corporation’s founding statement, then, on the corporation’s incorporation:

(a) that subscriber becomes a member of the corporation; and

(b) that subscriber’s name and the number of shares held by that subscriber shall be entered in the corporation’s membership register.

**(2)** If there are 2 or more subscribers to a close corporation’s founding statement, they shall be deemed to have agreed to become members of the corporation and, subject to this Part, on the corporation’s incorporation:

(a) each becomes such a member; and

(b) the name of each of them and the number of shares held by each of them shall be entered in the corporation’s membership register.

**Persons becoming members after registration**

**55.** If a person becomes the holder of shares in a close corporation in a particular capacity, and the person does not already hold other shares in the corporation in that capacity, then, subject to this Part:

(a) the person becomes a member of the corporation; and

(b) the person’s name and the number of shares concerned held by the person shall be entered in the corporation’s membership register.

**Change in shareholding**

**56.** If a member who holds shares in a close corporation in a particular capacity becomes the holder of additional shares in that capacity or ceases to hold any of those shares in that capacity, the entry in the corporation’s membership register in relation to the member shall be altered accordingly.

**Members holding shares otherwise than beneficially**

**57.** If a person holds shares in a close corporation otherwise than beneficially, the entry of the name of the person in the corporation’s membership register that is made because of the person’s holding those shares shall specify the capacity in which the person holds those shares.

**Members holding shares in different capacities**

**58.** If a person holds shares in a close corporation in different capacities, the person’s name and shareholding shall be entered separately in the corporation’s membership register in respect of each of those capacities.

**Unregistered members**

**59.** **(1)** If a person holds shares in a close corporation in a particular capacity but the person’s name is not entered in the corporation’s membership register in respect of those shares, the person is not entitled, so long as the person’s name is not so entered, to exercise any power, or to enforce any right, vested in the person because the person holds those shares or is a member in that capacity.

**(2)** Subsection (1) does not apply in relation to the powers and rights conferred on members by section 85 or by Part 3.4 of the Corporations Act.

**Maximum number of members**

**60.** **(1)** The number of members of a close corporation shall not exceed 10.

**(2)** For the purposes of this Act, where any shares in a close corporation are held by 2 or more persons jointly:

(a) if they hold the shares otherwise than beneficially but in the same capacity—they shall be treated as one member in respect of their holding the shares;

(b) if they hold the shares otherwise than beneficially but in different capacities—each of them shall be treated as a separate member in respect of the capacity in which the person concerned holds the shares or, if the person holds the shares in 2 or more capacities, as a separate member in respect of each of those capacities; or

(c) if they hold the shares beneficially—they shall be treated as separate members.

**(3)** For the purposes of this Act, if a person’s name is entered in 2 or more capacities in a close corporation’s membership register, the person shall be treated as a separate member in respect of each of those capacities.

**Only natural persons to be members**

**61.** **(1)** Subject to subsection (2), only a natural person may be a member of a close corporation.

**(2)** Subsection (1) does not prevent a body corporate from becoming a member of a close corporation by will or by operation of law.

**(3)** A purported acquisition (otherwise than by will or by operation of law) by a body corporate of a share in a close corporation is void.

**(4)** A purported acquisition (otherwise than by will or by operation of law) by a body corporate of a unit of a share in a close corporation, whether directly or through one or more interposed trusts, is void.

**Majority of members to be residents**

**62.** **(1)** A majority of the members of a close corporation must be residents of Australia.

**(2)** A member of a close corporation does not cease to be a resident of Australia merely because of a temporary absence from Australia.

**Disqualification**

**63.** **(1)** A person to who is subject to a section 229 prohibition, a section 230 order, a section 599 order, or a section 600 notice, under the Corporations Act cannot become a member of a close corporation unless the Court, on application by the person, otherwise orders.

**(2)** A purported acquisition of a share in a close corporation by a person referred to in subsection (1) is void.

**(3)** If a member of a close corporation becomes a person who is subject to a section 229 prohibition, a section 230 order, a section 599 order, or a section 600 notice, under the Corporations Act, the member is not entitled, unless the Court, on application by the member otherwise orders, to participate in the management of the affairs of the corporation.

**(4)** An order made under this section may be made subject to such conditions as the Court determines.

**(5)** A person shall not contravene a condition to which an order made under this section is subject.

**Effect of death of sole member**

**64.** Where the only member of a close corporation dies, the corporation continues in existence, even though there is no member, until it is wound up or a person becomes a member.

**PART 6—TITLE TO AND TRANSFER OF SECURITIES**

**Transfer of shares**

**65.** **(1)** A member of a close corporation may, with the consent of the other members, by writing in the prescribed form, transfer any of the member’s shares to another person, being another person who may lawfully hold the shares.

**(2)** If as a result of the transfer the transferor ceases to hold shares in the corporation in the capacity in which the transferor held the shares transferred:

(a) the transferor ceases to be a member of the corporation in that capacity; and

(b) the transferor’s name shall be removed from the corporation’s membership register in that capacity.

**(3)** The consent referred to in subsection (1) may not be refused without just cause.

**(4)** The members of a close corporation may agree that a consent is not required to the transfer of shares in the corporation either generally or in particular circumstances or subject to particular conditions.

**(5)** Where a member of a close corporation refuses to consent to the transfer of the shares of another member, the Court may, on application by the other member:

(a) make an order permitting the transfer; or

(b) make such other order as it thinks just and reasonable, which may include an order providing for the purchase of the shares by a specified member or by the corporation.

**Application of Part 7.13 of Corporations Act**

**66.** Subject to section 65, Part 7.13 of the Corporations Act applies in relation to close corporations.

**PART 7—INTERNAL ADMINISTRATION**

***Division 1*—*Mutual rights of members***

**Association agreement**

**67.** **(1)** All the members of a close corporation may enter into a written agreement between themselves relating to the management of the affairs of the corporation.

**(2)** The agreement shall be described in the agreement as an association agreement.

**(3)** An association agreement may be varied at any time by a written supplementary association agreement or written supplementary association agreements.

**(4)** An agreement between members of a close corporation is a supplementary association agreement if the agreement is entered into by a decisive number of members.

**(5)** An association agreement is binding on every person who is from time to time a member, including a person who became a member after the agreement was entered into.

**(6)** A supplementary association agreement is binding on every person who is from time to time a member, even if the person was a member when the agreement was entered into but did not enter into the agreement, and including a person who became a member after the agreement was entered into.

**(7)** An association agreement or a supplementary association agreement is not required to be lodged.

**Model association agreement**

**68.** If the regulations contain provisions for the purposes of this section relating to the management of the affairs of a close corporation:

(a) an association agreement may adopt all or any of those provisions; and

(b) if there is no association agreement between members of a close corporation, those provisions constitute an association agreement between those members.

**This Division subject to contrary agreement**

**69.** The following provisions of this Division apply in relation to a close corporation subject to:

(a) any association agreement between the members; and

(b) any oral or written agreement between all the persons who are members for the time being that is not inconsistent with an association agreement referred to in paragraph (a).

**Indemnity**

**70.** A close corporation shall indemnify every member in respect of any payment made or liability incurred by the member:

(a) in the ordinary and proper conduct of the affairs of the corporation; and

(b) in or about anything necessarily done for the preservation of the business or property of the corporation.

**Loans by members**

**71.** A member of a close corporation who lends money to the corporation is entitled to interest at the prescribed rate from the date on which the money is lent.

**Participation in management**

**72.** Subject to subsection 63 (3), every member of a close corporation may take part in the management of the affairs of the corporation.

**Allotment of shares**

**73.** **(1)** A close corporation may not allot any shares without the consent of all the members.

**(2)** An allotment made in contravention of subsection (1) is void.

**Members not to be remunerated**

**74.** A member of a close corporation is not entitled to remuneration for acting in the affairs of the corporation.

**Resolution of differences**

**75.** Any difference arising as to ordinary matters connected with the affairs of a close corporation may be decided by a majority of the members, but no change may be made in the principal function of the corporation’s business without the consent of all the members.

***Divisioa 2***—***Meetings***

**Convening of meeting of members**

**76.** **(1)** Any member of a close corporation may, by notice in writing to the other member or members, require the convening of a meeting of the members.

**(2)** A notice shall set out the purpose for which the meeting is to be convened.

**(3)** As soon as practicable after a notice is given, the member or members responsible for the management of the affairs of the corporation shall convene a meeting of the members.

***Division 3*—*Obligations of members***

**Members to render accounts**

**77.** Members of a close corporation shall give true accounts and full information of all matters affecting the corporation to any member or a lawyer acting for any member.

**Accountability of members for benefits**

**78.** A member of a close corporation shall account to the corporation for any benefit derived by the member without the consent of the other member or members from any transaction concerning the corporation, or from any use by the member of the corporation’s property, name or business connections.

**Members not to compete with corporation**

**79.** If a member of a close corporation, without the consent of the other member or members, carries on any business of the same nature as, and competing with, a business of the corporation, the member is liable to account for and pay to the corporation all profits made by the member in that business.

**Member to compensate corporation for loss resulting from conduct of member**

**80.** **(1)** If:

(a) a member of a close corporation fails, by act or omission, to exercise a reasonable degree of care and diligence in acting on behalf of the corporation for the purposes of any business of the corporation; and

(b) as a result of the failure the corporation incurs any loss;

the member is liable to compensate the corporation for the loss.

**(2)** A member is not liable for a failure to exercise a reasonable degree of care and diligence if the other member has or all the other members have, whether before or after the relevant act or omission by the member, been informed of the material facts and approved that act or omission.

**(3)** If:

(a) a member of a close corporation fails to act honestly in connection with any business of the corporation; and

(b) as a result of the failure the corporation incurs any loss;

the member is liable to compensate the corporation for the loss.

**(4)** If:

(a) a member or former member of a close corporation makes improper use of information acquired by virtue of being or having been a member; and

(b) as a result of the improper use:

(i) the member or former member or any other person receives any profit, gain or other benefit; or

(ii) the corporation suffers loss;

the member or former member is liable to account to the corporation for the profit, gain or other benefit or to compensate the corporation for the loss, as the case may be.

**(5)** The Court may, on application by the person concerned, if it considers it just and reasonable to do so, make an order relieving a person, in whole or in part, from any liability under this section.

***Division 4*—*Oppressive conduct of affairs***

**Application of Part 3.4 of Corporations Act**

**81.** Part 3.4 of the Corporations Act applies in relation to close corporations.

**PART 8—ACCOUNTS AND CERTIFICATES OF COMPLIANCE**

**Duty to keep accounts**

**82.** A close corporation shall:

(a) keep such accounting records as correctly record and explain the transactions of the corporation and its financial position; and

(b) keep its accounting records in such a manner as will enable the preparation from time to time of true and fair accounts of the corporation.

**Annual certificate of compliance**

**83.** A close corporation shall, within 6 months after the end of each financial year of the corporation, lodge a certificate stating whether the corporation has complied with section 82.

**Annual activities statement**

**84.** **(1)** In this section:

“following period”, in relation to a statement that is included under this section in a close corporation’s certificate of compliance, means the period beginning on the day specified under paragraph (3) (b) in the statement and ending on the day specified under that paragraph in the certificate included under this section in the next certificate of compliance of the corporation to be lodged.

**(2)** A certificate of compliance of a close corporation shall include a statement that complies with this section.

**(3)** The statement shall:

(a) be signed by a member of the corporation; and

(b) specify the day on which it was so signed, being a day that is not more than 28 days before the certificate is lodged.

**(4)** Unless the corporation is dormant at the start of the specified day, the statement shall state whether or not, as at that day, trading activities within the meaning of this Act were the whole or a substantial part of the corporation’s activities.

**(5)** Unless the corporation is dormant at the start of the specified day, the statement shall state to the effect that the corporation:

(a) intends trading activities within the meaning of this Act to be the whole or a substantial part of the activities in which the corporation will engage during the whole or a specified part of the following period; or

(b) does not intend such trading activities to be the whole or a substantial part of the activities in which the corporation will engage during the whole or any part of the following period;

as the case requires.

**(6)** If the corporation is dormant at the start of the specified day, the statement shall:

(a) state to the effect that the corporation was so dormant and specify the day (in this section called the “dormancy day”) on which the corporation last became dormant;

(b) if the dormancy day is more than 3 months after the corporation was incorporated—state whether or not trading activities within the meaning of this Act were the whole or a substantial part of the activities in which the corporation engaged during the 3 months ending on the dormancy day; and

(c) if the dormancy day is less than 3 months before the day specified under paragraph (3) (b)—state whether or not the corporation intends that, within 3 months after the dormancy day:

(i) the corporation will cease to be dormant; and

(ii) trading activities within the meaning of this Act will be the whole or a substantial part of the corporation’s activities.

**PART 9—TRANSACTIONS ON BEHALF OF CLOSE CORPORATION**

**Members to be agents of corporation**

**85.** **(1)** Each member of a close corporation is, as provided by this section, an agent of the corporation for the purposes of any business of the corporation.

**(2)** Subject to subsection (3), an act done by a member of a close corporation in the course of the carrying on in the usual way of a business of the corporation binds the corporation.

**(3)** Subsection (2) does not apply in relation to an act done by a member if:

(a) by virtue of the association agreement or any other agreement between the members the member was not authorised to act on behalf of the corporation in the matter concerned; and

(b) the person with whom the member dealt:

(i) knew that the member was not so authorised; or

(ii) did not know, or did not believe, that the member was a member.

**(4)** A reference in this section to the doing of an act includes a reference to making, varying, discharging or ratifying a contract.

**(5)** Any member of a close corporation may appoint a person to be, or hold out a person as being, an agent of the corporation.

**Ratification of contracts made before formation of corporation**

**86.** **(1)** In this section:

(a) a reference to a non-existent close corporation purporting to enter into a contract is a reference to:

(i) a person executing a contract in the name of a close corporation where no such corporation exists; or

(ii) a person purporting to enter into a contract as agent or trustee for a proposed close corporation;

(b) a reference to a person who purports to execute a contract on behalf of a non-existent close corporation is a reference to a person who executes a contract or purports to enter into a contract as mentioned in subparagraph (a) (i) or (ii); and

(c) a reference, in relation to the purported entry into a contract by a non-existent close corporation, to the formation of the close corporation is a reference to:

(i) if a person has executed a contract in the name of a close corporation and no such corporation exists—the registration, under Part 2, of a close corporation that, having regard to all the circumstances, is reasonably identifiable with the close corporation in the name of which the person executed the contract; or

(ii) if a person has purported to enter into a contract as agent or trustee for a proposed close corporation—the registration, under Part 2, of a close corporation that, having regard to all the circumstances, is reasonably identifiable with the proposed close corporation.

**(2)** Where:

(a) a non-existent close corporation purports to enter into a contract; and

(b) the close corporation is formed within a reasonable time after the contract is purported to be entered into;

the corporation may, within a reasonable time after it is formed, ratify the contract.

**(3)** Where a close corporation ratifies a contract as provided by subsection (2), the corporation is bound by, and entitled to the benefit of, that contract as if the corporation had been formed before the contract was entered into and had been a party to that contract.

**(4)** Where a non-existent close corporation purports to enter into a contract and:

(a) the close corporation is not formed within a reasonable time after the contract is purported to be entered into; or

(b) the close corporation is formed within such a reasonable time but does not ratify the contract within a reasonable time after the corporation is formed;

the other party or each of the other parties to the contract may, subject to subsections (6) and (9), recover from the person or any one or more of the persons who purported to execute the contract on behalf of the non-existent close corporation an amount of damages equivalent to the amount of damages for which that party could have obtained a judgment against the close corporation if:

(c) where the corporation has not been formed as mentioned in paragraph (a)—the corporation had ratified the contract as provided by subsection (2); or

(d) where the corporation has been formed as mentioned in paragraph (b)—the corporation had ratified the contract as provided by subsection (2);

and the contract had been discharged by a breach constituted by the refusal or failure of the corporation to perform any obligations under the contract.

**(5)** Where:

(a) proceedings are brought to recover damages under subsection (4) in relation to a contract purported to be entered into by a nonexistent close corporation; and

(b) the close corporation has been formed;

the court in which the proceedings are brought may, if it thinks it just and reasonable to do so, make either or both of the following:

(c) an order directing the corporation to transfer or pay to a specified party to the contract a specified property, or specified amount not exceeding the value of any benefit, received by the corporation as a result of the contract;

(d) an order that the corporation pay the whole or a specified portion of any damages that, in those proceedings, the defendant has been, or is, found liable to pay.

**(6)** Where, in proceedings to recover damages under subsection (4) in relation to a contract purported to be entered into by a non-existent close corporation, the court in which the proceedings are brought makes an order under paragraph (5) (c), the court may refuse to award any damages in the proceedings or may award an amount of damages that is less than the amount that the court would have awarded if the order had not been made.

**(7)** Where:

(a) a non-existent close corporation purports to enter into a contract;

(b) the corporation is formed, and ratifies the contract as provided by subsection (2);

(c) the contract is discharged by a breach of the contract constituted by a refusal or failure of the corporation to perform all or any of its obligations under the contract; and

(d) the other party or any one or more of the other parties to the contract brings or bring proceedings against the corporation for damages for breach of the contract;

the court in which the proceedings are brought may, subject to subsection (9), if it thinks it just and reasonable to do so, order the person or any one or more of the persons who purported to execute the contract on behalf of the corporation to pay to the person or persons by whom the proceedings are brought the whole or a specified portion of any damages that the corporation has been, or is, found liable to pay to the person or persons by whom the proceedings are brought.

**(8)** Where a person purports, whether alone or together with another person or other persons, to execute a contract on behalf of a non-existent close corporation, the other party to the contract, or any of the other parties to the contract, may, by writing signed by that party, release the first-mentioned person from any liability in relation to the contract.

**(9)** Where a person has, as provided by subsection (8), released another person from liability in relation to a contract that the other person purported to execute on behalf of a non-existent close corporation, then:

(a) despite subsection (4), the first-mentioned person is not entitled to recover damages from the other person in relation to that contract; and

(b) a court shall not, in proceedings under subsection, (7), order the other person to pay to the first-mentioned person any damages, or any proportion of the damages, that the corporation has been, or may be, found liable to pay to that first-mentioned person.

**(10)** Where:

(a) a non-existent close corporation purports to enter into a contract;

(b) the corporation is formed; and

(c) the corporation and the other party or other parties to the contract enter into a contract in substitution for the first-mentioned contract;

any liabilities to which the person who purported to execute the first-mentioned contract on behalf of the corporation is subject under this section in relation to the first-mentioned contract (including liabilities under an order made by a court under this section) are, by force of this subsection, discharged.

**(11)** Any rights or liabilities of a person under this section (including rights or liabilities under an order made by a court under this section) in relation to a contract are in substitution for any rights that the person would have, or any liabilities to which the person would be subject, as the case may be, apart from this section, in relation to the contract.

**(12)** Where:

(a) a person purports to enter into a contract as trustee for a proposed close corporation; and

(b) the close corporation is formed within a reasonable time after the person purports to enter into the contract but does not ratify the contract within a reasonable time after the corporation is formed;

then, despite any rule of law or equity, the trustee does not have any right of indemnity against the corporation in respect of the contract.

**PART 10—PROVISIONS RELATING TO SHARES**

***Division 1*—*Acquisition by close corporation of its shares***

**Restriction on acquisition by corporation of its shares or units of its shares**

**87. (1)** Except as provided by this Act, a close corporation shall not acquire any shares or units of shares in the corporation.

**(2)** The validity of an acquisition by a close corporation of any shares or units of shares in the corporation is not affected by a contravention of subsection (1).

**(3)** A corporation that contravenes subsection (1) is not guilty of an offence in respect of the contravention but any person involved in the contravention is guilty of an offence.

**Corporation may acquire shares in accordance with this Division**

**88.** A close corporation may acquire shares in the corporation if the requirements of sections 89 to 92 (inclusive) have been complied with.

**Consent and declaration of solvency by members**

**89.** **(1)** A decisive number of members must have, within 6 months before the acquisition:

(a) consented in writing to the acquisition; and

(b) signed a declaration in writing to the effect that they have made an inquiry into the affairs of the corporation and that they have formed the opinion that the corporation will, after making any payment for the acquisition of the shares, be able to pay its debts as and when they become due.

**(2)** A member shall not sign a declaration of solvency unless the member has reasonable grounds for the opinion expressed in the declaration.

**(3)** If within 5 weeks after the day on which a declaration of solvency is signed or first signed, as the case may be, the corporation becomes unable to pay its debts as and when they become due, it shall be presumed, unless the contrary is proved, that the members who signed the declaration did not have reasonable grounds for the opinion expressed in the declaration.

**(4)** The declaration of solvency must have been lodged.

**(5)** Until the acquisition takes place a copy of the declaration of solvency must be kept at the registered office of the corporation and made available for inspection at any reasonable time by any creditor of the corporation.

**Withdrawal from participation in declaration of solvency**

**90.** **(1)** If, after a declaration of solvency was made, a member who signed the declaration has reason to believe that the corporation is or may be unable to pay its debts as and when they become due, the member shall:

(a) sign an instrument stating that the member has reason so to believe; and

(b) give a copy of the instrument to each other member and lodge a copy of the instrument.

**(2)** Where a member has signed an instrument as mentioned in paragraph (1) (a), then, for the purposes of any acquisition by the corporation of any of its shares after the instrument was signed, the member shall not be

counted in determining whether a decisive number of members signed the declaration of solvency referred to in subsection (1).

**Publication of notice of proposed acquisition of shares**

**91.** **(1)** A close corporation that proposes to acquire any of its shares shall, after the declaration of solvency has been lodged, cause to be published, in each State and Territory in which the corporation carries on business, in a daily newspaper circulating generally in that State or Territory, a notice:

(a) stating that the corporation proposes to acquire the shares after 3 weeks after a date specified in the notice, being a date that is not earlier than 7 days after the publication of the notice;

(b) specifying the amount to be paid for the shares;

(c) stating that a declaration of solvency has been made and is available for inspection at the registered office of the corporation; and

(d) setting out the terms of subsection (2).

**(2)** Any creditor who, at the date provided in the notice, is entitled to any debt or claim which, if the date were the commencement of the winding up of the corporation, would be admitted in proof against the corporation may apply to the Court for an injunction restraining the corporation from acquiring the shares.

**(3)** The corporation must not acquire the shares earlier than 3 weeks after the date specified in the notice or, if an application is made to the Court before the end of that period under subsection (2), until the application, or any appeal from a decision of the Court on the application, is finally disposed of.

**(4)** Where an application is or applications are duly made to the Court under subsection (2):

(a) if the Court is not satisfied in respect of the application or each application that:

(i) the applicant consents to the acquisition;

(ii) the applicant’s debt has been discharged or secured; or

(iii) the applicant’s claim has determined or has been satisfied or secured;

the Court shall grant an injunction restraining the corporation from acquiring the shares; or

(b) otherwise—the Court shall dismiss the application or applications.

**(5)** Section 132 applies in relation to an application under this section for an injunction as if the application were made under that section.

**Corporation to cancel shares acquired**

**92.** **(1)** A close corporation is not entitled to reissue any of its shares that it has acquired under this Division and shall cancel the shares.

**(2)** Any issue of shares in contravention of this section is void.

***Division 2*—*Close corporation financing dealings in its shares etc.***

**Interpretation**

**93. (1)** A reference in this Division to the giving of financial assistance includes a reference to the giving of financial assistance by means of the making of a loan, the giving of a guarantee, the provision of security, the release of an obligation or the forgiving of a debt or otherwise.

**(2)** For the purposes of this Division, a close corporation shall be taken to have given financial assistance for the purpose of an acquisition or proposed acquisition of shares or units of shares in the corporation (in this subsection called the “relevant purpose”) if:

(a) the corporation gave the financial assistance for purposes that included the relevant purpose; and

(b) the relevant purpose was a substantial purpose of the giving of the financial assistance.

**(3)** For the purposes of this Division, a close corporation shall be taken to have given financial assistance in connection with an acquisition or proposed acquisition of shares or units of shares in the corporation if, when the financial assistance was given to a person, the corporation was aware that the financial assistance would financially assist the acquisition by a person of shares or units of shares in the corporation.

**(4)** A reference in this section to an acquisition or proposed acquisition of shares or units of shares is a reference to any acquisition or proposed acquisition whether by way of purchase, subscription or otherwise.

**Prohibition**

**94. (1)** Except as otherwise provided by this Act, a close corporation shall not, whether directly or indirectly:

(a) give any financial assistance for the purpose of, or in connection with:

(i) an acquisition by any person, whether before, or at the same time as, the giving of financial assistance, of shares or units of shares in the corporation; or

(ii) the proposed acquisition by any person of shares or units of shares in the corporation; or

(b) in any way, lend money on the security of shares or units of shares in the corporation.

**(2)** A corporation that contravenes subsection (1) is not guilty of an offence in respect of the contravention but any person involved in the contravention is guilty of an offence.

**Order for compensation**

**95.** Where:

(a) a person is convicted of an offence in respect of a contravention of section 94; and

(b) the court by which the person is convicted is satisfied that the close corporation or another person has suffered loss or damage as a result of the contravention;

the court may, in addition to imposing a penalty in respect of the offence, order the convicted person to pay compensation to the corporation or other person, as the case may be, of such amount as the court specifies, and any such order may be enforced as if it were a judgment of the court.

**Power to grant relief**

**96.** The power of a court under section 131 to relieve a person to whom that section applies, wholly or partly and on such terms as the court thinks fit, from liability referred to in that section extends to relieving a person against whom an order may be made under section 95 from the liability to have such an order made against the person.

**Exceptions**

**97. (1)** Nothing in section 94 prohibits:

(a) the payment of a dividend by a close corporation in good faith and in the ordinary course of commercial dealing; or

(b) the discharge by a close corporation of a liability of the corporation that was incurred in good faith as a result of a transaction entered into on ordinary commercial terms.

**(2)** Nothing in section 94 prohibits:

(a) the making of a loan, the giving of a guarantee or the provision of a security by a close corporation in the ordinary course of its ordinary business where:

(i) that business includes the lending of money, or the giving of guarantees or the provision of security in connection with loans made by other persons; and

(ii) the loan that is made by the corporation, or, where the guarantee is given or the security is provided in respect of a loan, that loan, is made on ordinary commercial terms as to the rate of interest, the terms of repayment of principal and payment of interest, the security to be provided and otherwise; or

(b) the giving by a close corporation of financial assistance for the purpose of, or in connection with, the acquisition or proposed acquisition of shares or units of shares in the corporation to be held by or for the benefit of employees of the corporation where a majority of the members have approved a scheme for the provision of money for such acquisitions and the financial assistance is given in accordance with the scheme.

**Authorisation**

**98. (1)** Nothing in section 94 prohibits the giving by a close corporation of financial assistance for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of shares or units of shares in the corporation if:

(a) a decisive number of members have agreed, by writing signed by each of them, to the corporation giving financial assistance for the purpose of, or in connection with, that acquisition;

(b) the instrument of agreement sets out particulars of the financial assistance proposed to be given and states that the members who signed the instrument are of the opinion, after taking into account the financial position of the corporation (including future liabilities and contingent liabilities of the corporation), that the giving of the financial assistance would not be likely to prejudice materially the interests of the creditors or members of the corporation or any class of those creditors or members;

(c) a copy of the instrument of agreement is lodged;

(d) a copy of the instrument of agreement is given to:

(i) all members of the corporation who did not sign the instrument;

(ii) all trustees for debenture holders of the corporation; and

(iii) if there are no trustees for, or for a particular class of, debenture holders of the corporation—all debenture holders, or all debenture holders of that class, as the case may be, of the corporation whose names are, when the instrument was signed, known to the corporation;

(e) within 21 days after the instrument is signed, a notice:

(i) setting out particulars of the financial assistance proposed to be given; and

(ii) stating that any of the persons referred to in subsection (3) may, within the period referred to in that subsection, apply to the Court opposing the giving of the financial assistance;

is published, in each State and Territory in which the corporation is carrying on business, in a daily newspaper circulating generally in that State or Territory;

(f) no application opposing the giving of the financial assistance is made within the period referred to in subsection (3) or, if such an application or applications has or have been made, the application or each of the applications has been withdrawn or the Court has approved the giving of the financial assistance; and

(g) the financial assistance is given in accordance with the terms of the instrument of agreement and not earlier than:

(i) if an application or applications has or have been made to the Court within the period referred to in subsection (3):

(a) where the application or each of the applications has been withdrawn—the withdrawal of the application or of the last of the applications to be withdrawn; or

(b) otherwise—the decision of the Court on the application or applications; or

(ii) in any other case—the end of the period referred to in subsection (3).

**(2)** Where, on application to the Court by a close corporation, the Court is satisfied that the provisions of subsection (1) have been substantially complied with in relation to a proposed giving by the corporation of financial assistance of a kind mentioned in that subsection, the Court may, by order, declare that the provisions of that subsection have been complied with in relation to the proposed giving by the corporation of financial assistance.

**(3)** Where a decisive number of members of a close corporation have signed an instrument of agreement referred to in subsection (1), an application to the Court opposing the giving of the financial assistance to which the instrument of agreement relates may be made, within the period of 21 days after the publication of the notice referred to in paragraph (1) (e), by:

(a) a member who did not sign the instrument;

(b) a trustee for debenture holders of the corporation;

(c) a debenture holder of the corporation;

(d) a creditor of the corporation; or

(e) the Commission.

**Powers of Court**

**99. (1)** Where an application or applications opposing the giving of financial assistance by a close corporation is or are made to the Court under subsection 98 (3), the Court:

(a) shall, in determining what order or orders to make in relation to the application or applications, have regard to the rights and interests of the members of the corporation or of any class of them as well as to the rights and interests of the creditors of the corporation or of any class of them; and

(b) shall not make an order approving the giving of the financial assistance unless the Court is satisfied that:

(i) all material matters relating to the proposed financial assistance have been disclosed to all the members; and

(ii) the proposed financial assistance would not, after taking into account the financial position of the corporation (including any future or contingent liabilities), be likely to prejudice materially the interests of the creditors or members of the corporation or of any class of those creditors or members;

and may do all or any of the following:

(c) if the Court thinks it to be just and reasonable to do so, make an order for the purchase by the corporation of the interests of dissentient members of the corporation;

(d) if the Court thinks it to be just and reasonable to do so, adjourn the proceedings in order that an agreement may be made to the satisfaction of the Court for the purchase (otherwise than by the corporation) of the interests of dissentient members;

(e) give such ancillary or consequential directions and make such ancillary or consequential orders as it thinks just and reasonable;

(f) make an order disapproving the giving of the financial assistance or, subject to paragraph (b), an order approving the giving of the financial assistance.

**(2)** Where the Court makes an order under this section in relation to the giving of financial assistance by a close corporation, the corporation shall, within 14 days after the order is made, lodge an office copy of the order.

**Members’ duties not affected**

**100.** The signing of an agreement by a decisive number of members of a close corporation for the giving of financial assistance by the corporation for the purpose of, or in connection with, an acquisition or proposed acquisition of shares in the corporation, and the approval by the Court of the giving of the financial assistance, do not relieve a member of any duty to the corporation, and whether of a fiduciary nature or not, in connection with the giving of the financial assistance.

**Consequences of corporation financing dealings in its shares etc.**

**101.** **(1)** Except as provided by this section:

(a) the validity of a contract or transaction is not affected by a contravention of paragraph 94 (1) (a); and

(b) the validity of a contract or transaction is not affected by a contravention of paragraph 94 (1) (b) unless the contract or transaction effects the loan that constitutes the contravention.

**(2)** Where a close corporation makes or performs a contract, or engages in a transaction, that would, but for subsection (1), be invalid because:

(a) the contract was made or performed, or the transaction was engaged in, in contravention of section 94; or

(b) the contract or transaction is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section;

the first-mentioned contract or transaction is, subject to the following provisions of this section, voidable at the option of the corporation by notice in writing given to the other party, or by notices in writing given to each of the other parties, to that contract or transaction.

**(3)** The Court may, on the application of a member of a close corporation, a holder of debentures of a close corporation or a trustee for the holders of debentures of a close corporation, by order, authorise the member, holder of debentures or trustee to give a notice or notices under subsection (2) in the name of the corporation.

**(4)** Where:

(a) a close corporation makes or performs a contract or engages in a transaction;

(b) the contract is made or performed, or the transaction is engaged in, in contravention of section 94 or the contract or transaction is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section; and

(c) the Court is satisfied, on the application of the corporation or of any other person that the corporation or that other person has suffered, or is likely to suffer, loss or damage as a result of:

(i) the making or performance of the contract or the engaging in of the transaction;

(ii) the making or performance of a related contract or the engaging in of a related transaction;

(iii) the contract or transaction being void because of section 94 or having become void, or becoming void, under this section; or

(iv) a related contract or transaction being void because of section 94 or having become void, or becoming void, under this section;

the Court may make such order or orders as it thinks just and reasonable (including, without limiting the generality of the foregoing, all or any of the orders mentioned in subsection (5)) against any party to the contract or transaction or to the related contract or transaction, or against the corporation or against any person involved in the contravention.

**(5)** The orders that may be made under subsection (4) include:

(a) an order directing a person to refund money or return property to the corporation or to another person;

(b) an order directing a person to pay to the corporation or to another person a specified amount not exceeding the amount of the loss or damage suffered by the corporation or other person; and

(c) an order directing a person to indemnify the corporation or another person against any loss or damage that the corporation or other person may suffer as a result of the contract or transaction or as a result of the contract or transaction being or having become void.

**(6)** If a certificate signed by a decisive number of members of a close corporation stating that the requirements of section 98 have been complied with in relation to the proposed giving by the corporation of financial

assistance for the purposes of an acquisition or proposed acquisition by a person of shares or units of shares in the corporation is given to a person:

(a) the person to whom the certificate is given is not under any liability to have an order made against the person under subsection (4) because of any contract made or performed, or any transaction engaged in, by the person in reliance on the certificate; and

(b) any such contract or transaction is not invalid, and is not voidable under subsection (2), because the contract is made or performed, or the transaction is engaged in, in contravention of section 94 or is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section.

**(7)** Subsection (6) does not apply in relation to a person to whom a certificate is given under that subsection in relation to a contract or transaction if the Court, on application by the close corporation concerned or any other person who has suffered, or is likely to suffer, loss or damage as a result of the making or performance of the contract or the engaging in of the transaction, or the making or performance of a related contract or the engaging in of a related transaction, by order, declares that it is satisfied that the person to whom the certificate was given became aware before the contract was made or the transaction was engaged in that the requirements of section 98 had not been complied with in relation to the financial assistance to which the certificate relates.

**(8)** For the purposes of subsection (7), a person shall, unless the contrary is proved, be deemed 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 behalf of the person in relation to the relevant contract or transaction was aware at the time.

**(9)** In any proceeding, a document purporting to be a certificate given under subsection (6) shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly given.

**(10)** A person who has possession of a certificate given under subsection (6) shall, unless the contrary is proved, be deemed to be the person to whom the certificate was given.

**(11)** A person shall not sign a certificate stating that the requirements of section 98 have been complied with in relation to the proposed giving by a close corporation of financial assistance if any of those requirements had not been complied with in respect of the proposed giving of that assistance when the certificate was signed by that person.

**(12)** It is a defence to a prosecution for a contravention of subsection (11) if it is proved that when the defendant signed the certificate the defendant believed on reasonable grounds that all the requirements of section 98 had been complied with in respect of the proposed giving of financial assistance to which the certificate relates.

**(13)** The power of a court under section 131 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.

**(14)** If a close corporation makes a contract or engages in a transaction under which it gives financial assistance as mentioned in paragraph 94 (1) (a) or lends money as mentioned in paragraph 94 (1) (b), any contract or transaction made or engaged in as a result of or by means of, or in relation to, that financial assistance or money shall be deemed for the purposes of this section to be related to the first-mentioned contract or transaction.

**(15)** Any rights or liabilities of a person under this section (including rights or liabilities under an order made by the Court under this section) are in addition to and not in derogation of any rights or liabilities of that person apart from this section but, where there would be any inconsistency between the rights and liabilities of a person under this section or under an order made by the Court under this section and the rights and liabilities of that person apart from this section, the provisions of this section or of the order made by the Court prevail.

**PART 11—CHARGES**

**Application of Part 3.5 of Corporations Act**

**102.** Part 3.5 of the Corporations Act applies in relation to close corporations.

**PART 12—ARRANGEMENTS AND RECONSTRUCTIONS**

**Application of Part 5.1 of Corporations Act**

**103.** Part 5.1 of the Corporations Act applies in relation to close corporations.

**PART 13—RECEIVERS AND MANAGERS**

**Application of Part 5.2 of Corporations Act**

**104.** Part 5.2 of the Corporations Act applies in relation to close corporations.

**PART 14—OFFICIAL MANAGEMENT**

**Application of Part 5.3 of Corporations Act**

**105.** Part 5.3 of the Corporations Act applies in relation to close corporations.

**PART 15—LIABILITY OF MEMBERS FOR CORPORATION’S DEBTS AND LIABILITIES**

**Members generally not liable**

**106.** Except as provided by this Act, a member or former member of a close corporation is not liable to make any contribution towards the corporation’s debts and liabilities.

**Liability if number of members exceeds 10**

**107.** If:

(a) the number of members of a close corporation at any time exceeds 10;

(b) the corporation subsequently commences to be wound up; and

(c) the property of the corporation is insufficient to satisfy the corporation’s liabilities in full;

the persons who were members at a time when the number of members exceeded 10 are jointly and severally liable to discharge those liabilities to the extent of the insufficiency.

**Liability where proper accounting records not kept**

**108.** If:

(a) a close corporation does not duly lodge a certificate of compliance in respect of a financial year; or

(b) a close corporation has lodged a certificate of compliance in respect of a financial year but has not complied with a requirement of section 82 in respect of that financial year;

and the corporation is unable to pay a debt incurred by it during that financial year, the person who was a member when the debt was incurred is liable, or the persons who were members when the debt was incurred are jointly and severally liable, for the payment of the debt.

**Liability if corporation becomes a holding company**

**109.** If:

(a) a close corporation becomes a holding company of another body corporate;

(b) the corporation subsequently commences to be wound up; and

(c) the property of the corporation is insufficient to satisfy the corporation’s liabilities in full;

the person who was a member at the time when the corporation became a holding company is liable, or the persons who were members at that time are jointly and severally liable, to discharge those liabilities to the extent of the insufficiency.

**Liability for unreasonable delay in taking action where corporation insolvent**

**110.** **(1)** Where:

(a) a close corporation becomes unable to pay all its debts as and when they become due; and

(b) none of the following occurs within a reasonable time thereafter:

(i) the corporation ceases to carry on business;

(ii) a meeting of the corporation’s creditors is convened;

(iii) additional capital is provided to the corporation by an issue of shares in the corporation;

(iv) the corporation commences to be wound up voluntarily;

(v) an application is made to the Court for the corporation to be wound up;

the member is liable, or the members are jointly and severally liable, for payment of the corporation’s debts.

**(2)** Subsection (1) does not apply if it is proved that the member or members believed on reasonable grounds that, if the corporation continued to carry on business,’ it would become able to pay all its debts as and when they became due.

**Liability of signatories to declaration of solvency if corporation insolvent**

**111.** **(1)** If:

(a) a close corporation acquires any of its shares in accordance with this Act;

(b) the corporation subsequently commences to be wound up; and

(c) the Court, upon application by the liquidator, declares that it is satisfied that, when the relevant declaration of solvency was made, the corporation was not able, taking into account any payment that had to be made for the acquisition, to pay its debts as and when they became due;

then, subject to subsection (2), the person who signed the declaration of solvency is liable, or the persons who signed that declaration are jointly and severally liable, for payment of the corporation’s debts.

**(2)** Subsection (1) does not apply in relation to a person if it is proved that the person had reasonable grounds for the opinion expressed in the declaration of solvency.

**Liability where insolvency resulted from unlawful acquisition of shares**

**112.** **(1)** If:

(a) a close corporation acquires any of its shares or units of its shares in contravention of this Act; and

(b) as a result of the acquisition the corporation is unable to pay a debt of the corporation;

the person who was a member at the time when the acquisition took place is liable, or the persons who were members at that time are jointly and severally liable, for payment of the debt.

**(2)** Subsection (1) does not apply in relation to a person if the acquisition was preceded by a duly signed declaration of solvency and the person did not sign the declaration.

**Corporation not liable to member who pays debt of corporation**

**113.** Where a provision of this Part renders a person liable to pay a debt or discharge a liability of a close corporation, the payment or discharge by that person of the whole or any part of the debt or liability does not render the corporation liable to the person in respect of the amount so paid.

**PART 16—WINDING UP**

**Application of Parts 5.4, 5.5 and 5.6 of Corporations Act**

**114.** Subject to this Part, Parts 5.4, 5.5 and 5.6 of the Corporations Act apply in relation to close corporations.

**Replacement of sections 459, 460, 461 and 462**

**115.** For the purposes of the application of Part 5.4 of the Corporations Act in relation to close corporations, sections 459, 460, 461 and 462 of that Act shall be deemed to be omitted and the following sections substituted:

**Winding up of close corporation that has ceased to be a trading corporation**

“459. (1) The Court may order the winding up of a close corporation (other than a new close corporation) that is not a trading corporation.

“(2) Subsections (3), (4) and (5) have effect for the purposes of an application made in relation to a close corporation on the ground provided for by subsection (1).

“(3) Unless the contrary is proved, the Court may presume that the corporation is not a trading corporation at a particular time if, as at that time:

(a) the corporation:

(i) has contravened section 26 of the *Close Corporations Act 1989*;and

(ii) has lodged no certificate of compliance under section 83 of that Act; or

(b) the corporation has lodged a notice under subsection 29 (2) of the *Close Corporations Act 1989.*

“(4) Unless the contrary is proved, the Court may presume that the corporation is not a trading corporation at a particular time if, as at that time:

(a) the corporation has contravened section 83 of the *Close Corporations Act 1989* in relation to a particular financial year;

(b) the Commission has given to the corporation a written notice requiring the corporation to lodge its certificate of compliance for that financial year within a specified period of at least 28 days after the notice is so given; and

(c) that period has ended and the corporation has not lodged a certificate of compliance for that financial year that includes a statement complying with section 84 of the *Close Corporations Act 1989.*

“(5) Unless the contrary is proved, the Court may presume that a close corporation is not a trading corporation at a particular time if:

(a) as at that time, the corporation:

(i) has lodged for the purposes of section 26 of the *Close Corporations Act 1989* a statement stating to the effect that the corporation does not intend as mentioned in subsection 26 (3) of that Act; and

(ii) has lodged no certificate of compliance under section 83 of that Act; or

(b) a statement included under section 84 of the *Close Corporations Act 1989* in the last certificate of compliance lodged by the corporation before that time states to the effect that:

(i) as at a particular day, trading activities were not a substantial part of the corporation’s activities;

(ii) the corporation does not intend as mentioned in paragraph 84 (5) (b) of the *Close Corporations Act 1989*;

(iii) the corporation became dormant on a particular day that is not less than 3 months before that time;

(iv) trading activities were not a substantial part of the activities in which the corporation engaged during a particular period; or

(v) the corporation does not intend as mentioned in paragraph 84 (6) (c) of the *Close Corporations Act 1989.*

**Winding up of close corporation on the ground of insolvency**

“460. (1) The Court may order the winding up of a close corporation that is unable to pay its debts.

“(2) For the purposes of an application that is made in relation to a close corporation on the ground provided for by subsection (1), the corporation shall be deemed to be unable to pay its debts if:

(a) a creditor by assignment or otherwise to whom the corporation is indebted in a sum exceeding $1,000 then due has served on the corporation a demand, signed by or on behalf of the creditor, requiring the corporation to pay the sum so due and the corporation has, for 3 weeks after the service of the demand, failed to pay the

sum or to secure or compound for it to the reasonable satisfaction of the creditor;

(b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the corporation is returned unsatisfied in whole or in part; or

(c) the Court, after taking into account any contingent and prospective liabilities of the corporation, is satisfied that the corporation is unable to pay its debts.

**General grounds for winding up of a close corporation**

“461. The Court may order the winding up of a close corporation if:

(a) the corporation becomes a holding company of another body corporate;

(b) because of subsection 63 (3) of the *Close Corporations Act 1989* it has no members who are entitled to participate in the management of the affairs of the corporation;

(c) it has no members and has not had any members for a period exceeding 9 months;

(d) none of the members is a resident of Australia or the number of members that are residents of Australia is less than a majority of the members;

(e) the number of members exceeds 10;

(f) a decisive number of members have decided that it be wound up;

(g) it does not commence business within one year from its incorporation or suspends its business for a whole year;

(h) a member has acted in affairs of the corporation in the member’s own interest rather than in the interests of the members as a whole, or in any other manner whatsoever that appears to be unfair or unjust to other members;

(j) affairs of the corporation are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or in a manner that is contrary to the interests of the members as a whole;

(k) an act or omission, or a proposed act or omission, by or on behalf of the corporation was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or was or would be contrary to the interests of the members as a whole;

(m) the Commission has stated in a report prepared under Division 1 of Part 3 of the Commission Act that, in its opinion:

(i) the corporation cannot pay its debts and should be wound up; or

(ii) it is in the interests of the public, of the members or of the creditors that the corporation should be wound up; or

(n) the Court is of opinion that it is just and equitable that the corporation be wound up.

**Standing to apply for winding up**

“462. (1) Any one or more of the following may apply for an order to wind up a close corporation on the ground provided for by subsection 459 (1):

(a) the Commission;

(b) the Minister;

(c) the corporation.

“(2) Subject to this section, any one or more of the following may apply for an order to wind up a close corporation on a ground provided for by subsection 460 (1) or section 461 (other than paragraph (b)):

(a) the corporation;

(b) a creditor (including a contingent or prospective creditor) of the corporation;

(c) a contributory;

(d) the liquidator of the corporation;

(e) the Commission pursuant to section 453;

(f) an official manager of the corporation appointed under Part 5.3;

(g) a person (other than the Commission) who has been granted leave under section 453.

“(3) The Commission may apply for an order to wind up a close corporation on the ground provided for by paragraph 461 (b).

“(4) The Court shall not hear an application by a person being, or persons including, a contingent or prospective creditor of a close corporation for an order to wind up the corporation unless and until:

(a) such security for costs has been given as the Court thinks reasonable; and

(b) a *prima facie* case for winding up the corporation has been established to the Court’s satisfaction.

“(5) Except as permitted by this section, a person is not entitled to apply for an order to wind up a close corporation.”.

**Voluntary winding up**

**116.** Section 491 of the Corporations Act as it applies in relation to a close corporation has effect subject to section 117 of this Act.

**Decision or notice to constitute special resolution**

**117.** **(1)** A decision to wind up a close corporation voluntarily may be made by such number of members as is specified in the association agreement.

**(2)** If there is no provision in the association agreement specifying a number of members for the purposes of subsection (1), any member may, by notice in writing to each other member, require that the corporation be wound up voluntarily.

**(3)** The making of a decision as mentioned in subsection (1), or the giving of notice as mentioned in subsection (2), constitutes for the purposes of section 491 of the Corporations Act the passing of a special resolution by the corporation for voluntary winding up of the corporation.

**Priority of Commission’s costs**

**118.** Despite section 553 of the Corporations Act as it applies in relation to a close corporation, if a close corporation is wound up on the application of the Commission on the ground provided by paragraph 461 (b) of that Act, the costs, charges and expenses incurred by the Commission in connection with the application shall be paid in priority to any debts to secured creditors and may be made accordingly out of any property comprised in or subject to any of their securities.

**Ranking of claims**

**119.** Despite section 555 of the Corporations Act as it applies in relation to a close corporation, debts due by the corporation to persons who are not members, and were not members when the debts were incurred, shall be paid in priority to any debts due by the corporation in respect of loans made to the corporation by persons who are members or were members when the loans were made.

**Provisional liquidator**

**120.** A majority of the members of a close corporation that is being wound up voluntarily may appoint an official liquidator to be the provisional liquidator of the corporation until a liquidator is appointed.

**Financial assistance to liquidator from recovery trust fund**

**121.** **(1)** If it appears to the Court, on application made *ex parte* by the liquidator of a close corporation, that the liquidator should be granted financial assistance in or towards meeting the cost of investigating the affairs of the corporation or bringing or continuing legal proceedings by the corporation, the Court may order the Commission to pay an amount specified in the order to the liquidator out of the liquidators’ recovery trust fund kept under section 123.

**(2)** If an amount is paid to a liquidator under subsection (1) in or towards meeting the cost of bringing or continuing legal proceedings by the corporation and the liquidator recovers an amount in the proceedings, the liquidator shall pay to the Commission for repayment to the liquidators’ recovery trust fund such amount (not exceeding the amount or the sum of the amounts paid to the liquidator under that subsection in respect of the proceedings) as is determined in accordance with the regulations.

**(3)** In this section:

“liquidator” includes a provisional liquidator.

**PART 17—LIQUIDATORS’ RECOVERY TRUST FUND**

**Definition**

**122.** In this Part:

“fund” means the liquidators’ recovery trust fund kept under section 123.

**Establishment of fund**

**123.** **(1)** The Commission shall establish and keep a liquidators’ recovery trust fund.

**(2)** The assets of the fund are the property of the Commission but shall be kept separate from all other property and shall be held in trust for the purposes of section 121.

**Money constituting fund**

**124.** The fund shall consist of:

(a) money paid into the fund under this Part;

(b) the interest and profits from time to time accruing from the investment of the fund; and

(c) any other money lawfully paid into the fund.

**Investment of fund**

**125.** Money in the fund that is not immediately required for the purposes of the fund may be invested by the Commission:

(a) in any manner in which trustees are for the time being authorised by a law in force in a State or a Territory to invest trust funds; or

(b) on deposit with an eligible money market dealer.

**Fund to be kept in separate bank account**

**126.** The money in the fund, until invested in accordance with this Part or applied in accordance with section 121, shall be kept in a separate account in an Australian bank.

**Registration of corporation subject to corporation contributing to fund**

**127.** **(1)** The Commission shall not register a proposed close corporation unless the subscribers to the founding statement have paid a liquidators’ recovery trust fund contribution.

**(2)** The contribution is payable to the Secretary to the Department on behalf of the Commonwealth.

**(3)** Where a contribution payable under subsection (1) is paid into the Consolidated Revenue Fund, an amount equal to the contribution so paid is payable to the Commission out of the Consolidated Revenue Fund, which is appropriated accordingly.

**(4)** An amount paid to the Commission under subsection (3) shall be paid by the Commission into the fund.

**(5)** This section has effect subject to section 130.

**Additional contributions to fund**

**128.** **(1)** Where the Commission considers that the amount in the fund is inadequate for the purposes of the fund, the Commission may by writing determine that an additional liquidators’ recovery trust fund contribution be paid by each close corporation and, where such a determination is made, an additional liquidators’ recovery trust fund contribution is payable by each close corporation accordingly.

**(2)** An additional contribution under subsection (1) is payable to the Secretary to the Department on behalf of the Commonwealth within the prescribed period and in the prescribed manner.

**(3)** Where an additional contribution payable by a close corporation under subsection (1) is paid into the Consolidated Revenue Fund, an amount equal to the additional contribution so paid is payable to the Commission out of the Consolidated Revenue Fund, which is appropriated accordingly.

**(4)** An amount paid to the Commission under subsection (3) shall be paid by the Commission into the fund.

**(5)** This section has effect subject to section 130.

**Payments out of the fund**

**129.** Money in the fund may be paid out in accordance with orders made by the Court under section 121.

**Contributions not payable unless imposed by another Act**

**130.** A person is not liable to pay a contribution under section 127 or 128 unless the contribution is imposed by an Act other than this Act.

**PART 18—GENERAL**

***Division 1a*—*Review by Administrative Appeals Tribunal of certain decisions***

**Interpretation**

**130a.** In this Division:

“decision” has the same meaning as in the *Administrative Appeals Tribunal Act 1975.*

**Applications for review**

**130b.** Subject to this Division, applications may be made to the Administrative Appeals Tribunal for review of a decision made under this Act by:

(a) the Minister; or

(b) the Commission.

**Excluded decisions**

**130c.** Section 130b does not apply in relation to:

(a) a decision in respect of which any provision in the nature of an appeal or review is expressly provided by this Act;

(b) a decision that is declared by this Act to be conclusive or final or is embodied in a document declared by this Act to be conclusive evidence of an act, matter or thing;

(c) a decision made by the Commission in the performance of a function, or in the exercise of a power, under Division 8 of Part 5.6 of the Corporations Act as that Division applies by virtue of section 114 of this Act; or

(d) a decision by the Commission to refuse to exercise a power under that Division as so applying.

***Division 1*—*Powers of Courts***

**Power to grant relief**

**131. (1)** If, in any civil proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty in a capacity as such a person, it appears to the court before which the proceedings are taken that the person is or may be liable in respect of the negligence, default or breach but has acted honestly and, having regard to all the circumstances of the case, including those connected with the person’s appointment, ought fairly to be excused for the negligence, default or breach, the court may relieve the person, either wholly or partly, from the person’s liability on such terms as the court thinks just and reasonable.

**(2)** Where a person to whom this section applies has reason to apprehend that any claim will or might be made against the person in respect of any negligence, default, breach of trust or breach of duty in a capacity as such a person, the person may apply to the Court for relief, and the Court has the same power to relieve the person as it would have had under subsection (1) if it had been a court before which proceedings against the person for negligence, default, breach of trust or breach of duty had been brought.

**(3)** Where a case to which subsection (1) applies is. being tried by a judge with a jury, the judge after hearing the evidence may, if satisfied that the defendant ought pursuant to that subsection to be relieved either wholly or partly from the liability sought to be enforced against the person, withdraw the case in whole or in part from the jury and immediately direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge thinks just and reasonable.

**(4)** This section applies to a person who is:

(a) an officer of a close corporation;

(b) an expert in relation to a matter:

(i) relating to a close corporation; and

(ii) in relation to which the civil proceeding has been taken or the claim will or might arise; or

(c) a receiver, receiver and manager, liquidator or other person appointed or directed by the Court to carry out any duty under this Act in relation to a close corporation.

**(5)** For the purposes of this section, “officer”, in relation to a close corporation, means:

(a) a member or employee of the corporation;

(b) a receiver, or receiver and manager, of property of the corporation;

(c) an official manager or deputy official manager of the corporation;

(d) a liquidator of the corporation; and

(e) a trustee or other person administering a compromise or arrangement made between the corporation and another person or other persons.

**Injunctions**

**132. (1)** Where a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute:

(a) a contravention of this Act;

(b) attempting to contravene this Act;

(c) aiding, abetting, counselling or procuring a person to contravene this Act;

(d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act;

(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or

(f) conspiring with others to contravene this Act;

the Court may, on the application of the Commission, or of any person whose interests have been, are or would be affected by the conduct, grant an injunction on such terms as the Court thinks just and reasonable.

**(2)** Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Act to do, the Court may, on the application of the Commission, or of any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing, grant an injunction, on such terms as the Court thinks just and reasonable, requiring the first-mentioned person to do that act or thing.

**(3)** Where an application for an injunction under subsection (1) or (2) has been made, the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that the subsection applies.

**(4)** Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

**(5)** The Court may discharge or vafy an injunction granted under subsection (1), (2) or (4).

**(6)** The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind;

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

**(7)** The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;

(b) whether or not the person has previously refused or failed to do that act or thing; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

**(8)** Where the Commission applies to the Court for the grant of an injunction under this section, the Court shall not require the applicant or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

**(9)** The powers of the Court under the preceding provisions of this section may be exercised in a proceeding for the prosecution of a person for an offence in respect of a contravention of this Act.

**(10)** In proceedings under this section against a person the Court may make an order under section 134 in respect of the person.

**Other orders**

**133. (1)** Without limiting the generality of section 132, where, in a proceeding instituted under, or for an offence against, this Act, the Court finds that a person who is a party to the proceeding has suffered, or is likely to suffer, loss or damage by conduct of another person that was engaged in in contravention of a provision of this Act, the Court may, whether or not it grants an injunction under section 132, or makes an order under section 134, make such order or orders as it thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders mentioned in subsection (5)) if the Court considers that the order or orders concerned will compensate the first-mentioned person in whole or in part for the loss or damage or will prevent or reduce the loss or damage.

**(2)** Without limiting the generality of section 132, the Court may, on the application of a person who has suffered, or is likely to suffer, loss or damage by conduct of another person that was engaged in in contravention of a provision of this Act or on the application of the Commission in accordance with subsection (3) on behalf of such a person or 2 or more such persons, make such order or orders as the Court thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders mentioned in subsection (5)) if the Court considers that the order or orders concerned will compensate the person who made the application, or the person or any of the persons on whose behalf the application was made, in whole or in part for the loss or damage, or will prevent or reduce the loss or damage suffered, or likely to be suffered, by such a person.

**(3)** Where, in a proceeding instituted for an offence against this Act or instituted by the Commission under section 132, a person is found to have engaged in conduct in contravention of a provision of this Act, the Commission may make an application under subsection (2) on behalf of one or more persons identified in the application who have suffered, or are likely to suffer, loss or damage by the conduct, but the Commission shall not make such an application except with the consent in writing given before the application is made by the person, or by each of the persons, on whose behalf the application is made.

**(4)** An application under subsection (2) may be begun within 3 years after the day on which the cause of action arose.

**(5)** The orders referred to in subsections (1) and (2) are:

(a) an order declaring the whole or any part of a contract made between the person who suffered, or is likely to suffer, the loss or damage and the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, or of a collateral arrangement relating to such a contract, to be void and, if the Court thinks just and reasonable, to have been void *ab initio* or at all times on and after such date before the date on which the order is made as is specified in the order;

(b) an order varying such a contract or arrangement in such manner as is specified in the order and, if the Court thinks just and reasonable, declaring the contract or arrangement to have had effect as so varied on and after such date before the date on which the order is made as is so specified;

(c) an order refusing to enforce any or all of the provisions of such a contract;

(d) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to refund money or return property to the person who suffered the loss or damage; and

(e) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to pay to the person who suffered the loss or damage the amount of the loss or damage.

**(6)** Where an application is made for an order under this section against a person, the Court may make an order under section 134 in respect of the person.

**Power to prohibit payment or transfer of money or property**

**134. (1)** Where:

(a) an investigation is being carried out under the Commission Act in relation to any act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act;

(b) a prosecution has been instituted against a person for a contravention of this Act; or

(c) a civil proceeding has been instituted against a person under this Act;

and the Court considers it just and reasonable to do so for the purpose of protecting the interests of a person (in this section called a “person concerned”) to whom the person referred to in paragraph (a), (b) or (c), as the case may be (in this section called the “relevant person”), is liable or may be or become liable to pay any money, whether in respect of a debt, by way of damages or compensation or otherwise, or to account for any securities or other property, the Court may, on application by the Commission or by a person concerned, make one or more of the following orders:

(d) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the relevant person or to any associate of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;

(e) an order prohibiting, either absolutely or subject to conditions, a person holding money, or securities or other property, on behalf of the relevant person or on behalf of any associate of the relevant person from paying all or any of the money, or transferring, or otherwise parting with possession of, the securities or other property, to, or to another person at the direction or request of, the person on whose behalf the money, or the securities or other property, is or are held;

(f) an order prohibiting, either absolutely or subject to conditions, the taking or sending out of Australia by a person of money of the relevant person or of an associate of the relevant person;

(g) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer by a person of securities or other property of the relevant person or of an associate of the relevant person 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);

(h) an order appointing:

(i) where the relevant person is a natural person—a receiver or trustee, having such powers as the Court orders, of the property or of part of the property of that person; or

(ii) where the relevant person is a body corporate—a receiver, or receiver and manager, having such powers as the Court orders, of the property or of part of the property of that person;

(j) where the relevant person is a natural person—an order requiring that person to deliver up to the Court his or her passport and such other documents as the Court thinks fit;

(k) where the relevant person is a natural person—an order prohibiting that person from leaving Australia without the consent of the Court.

**(2)** Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is just and reasonable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

**(3)** Where the Commission or a person concerned makes an application to the Court for the making of an order under subsection (1), the Court shall not require the Commission, or person concerned, or any other person, as a condition of granting an interim order under subsection (2), to give any undertakings as to damages.

**(4)** Where the Court has made an order under this section, the Court may, on application by the Commission, a person concerned, or any person affected by the order, make a further order discharging or varying the first-mentioned order.

**(5)** An order made under subsection (1) or (4) may be expressed to operate for a specified period or until the order is discharged by a further order under this section.

**(6)** Nothing in this section affects the powers that the Court has apart from this section.

**(7)** This section has effect subject to the *Bankruptcy Act 1966.*

**(8)** A person shall not contravene an order by the Court under this section.

**Power to punish for contempts**

**135.** Nothing in a provision of this Act that provides that a person shall not contravene an order of the Court affects the powers of the Court in relation to punishments of contempts of the Court.

**Power to give directions with respect to meetings**

**136.** Where, under this Act, the Court orders a meeting to be convened, the Court may, subject to this Act, give such directions with respect to the convening, holding or conduct of the meeting, and such ancillary or consequential directions in relation to the meeting, as it thinks just and reasonable.

**Appeals from decisions of receivers, liquidators etc.**

**138.** A person aggrieved by any act, omission or decision of:

(a) a person administering, in relation to a close corporation, a compromise, arrangement or scheme referred to in Part 5.1 of the Corporations Act;

(b) a receiver, or a receiver and manager, of property of a close corporation;

(c) an official manager or a deputy official manager of a close corporation; or

(d) a liquidator or provisional liquidator of a close corporation;

may appeal to the Court in respect of the act, omission or decision and the Court may confirm, reverse or modify the act or decision, or remedy the omission, as the case may be, and make such orders and give such directions as it thinks just and reasonable.

**Irregularities**

**139.** **(1)** In this section, unless the contrary intention appears:

(a) a reference to a proceeding under this Act is a reference to any proceeding whether a legal proceeding or not; and

(b) a reference to a procedural irregularity includes a reference to:

(i) the absence of a quorum at a meeting of the members of a close corporation, at a meeting of creditors of a close corporation or at a joint meeting of creditors and members of a close corporation; and

(ii) a defect, irregularity or deficiency of notice or time.

**(2)** A proceeding under this Act is not invalidated because of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.

**(3)** A meeting held for the purposes of this Act, or a meeting notice of which is required to be given in accordance with the provisions of this Act, or any proceeding at such a meeting, is not invalidated merely because of the accidental omission to give notice of the meeting or the non-receipt by any person of notice of the meeting, unless the Court, on the application of the person concerned, a person entitled to attend the meeting or the Commission, declares proceedings at the meeting to be void.

**(4)** Subject to the following provisions of this section and without limiting the generality of any other provision of this Act, the Court may, on

application by any interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the Court imposes:

(a) an order declaring that any act, matter or thing purporting to have been done, or any proceeding purporting to have been instituted or taken, under this Act or in relation to a close corporation is not invalid because of any contravention of a provision of this Act or a provision of an association agreement;

(b) an order directing the rectification of any register kept by the Commission under this Act;

(c) an order relieving a person in whole or in part from any civil liability in respect of a contravention of a kind referred to in paragraph (a);

(d) an order extending the period for doing any act, matter or thing or instituting or taking any proceeding under this Act or in relation to a close corporation (including an order extending a period where the period concerned ended before the application for the order was made) or shortening the period for doing such an act, matter or thing or instituting or taking such a proceeding;

and may make such consequential or ancillary orders as the Court thinks just and reasonable.

**(5)** An order may be made under paragraph (4) (a) or (c) even if the contravention referred to in the paragraph concerned resulted in the commission of an offence.

**(6)** The Court shall not make an order under this section unless it is satisfied:

(a) in the case of an order referred to in paragraph (4) (a):

(i) that the act, matter or thing, or the proceeding, referred to in that paragraph is essentially of a procedural nature;

(ii) that the person or persons involved in the contravention acted honestly; or

(iii) that it is in the public interest that the order be made;

(b) in the case of an order referred to in paragraph (4) (c)—that the person subject to the civil liability concerned acted honestly; and

(c) in every case—that no substantial injustice has been or is likely to be caused to any person.

**Power to compel compliance**

**140.** If any person in contravention of this Act refuses to permit the inspection of any book or to supply a copy of any book, the Court may by order compel an immediate inspection of the book or order the copy to be supplied.

***Division 2***—***Legal proceedings***

**Power of Commission to intervene in proceedings**

**141.** **(1)** The Commission may intervene in any legal proceeding relating to a matter arising under this Act.

**(2)** Where the Commission intervenes in any proceeding referred to in subsection (1), the Commission shall be deemed to be a party to the proceeding with all the rights, duties and liabilities of such a party.

**(3)** Without limiting the generality of subsection (2), the Commission may appear and be represented in any proceeding in which it wishes to intervene under subsection (1):

(a) by a staff member of the Commission;

(b) by a natural person to whom, or by an officer or employee of a person to whom or to which, the Commission has delegated its functions and powers under this Act or such of those functions and powers as relate to a matter to which the proceeding relates; or

(c) by solicitor or counsel.

**Proceedings, how taken**

**142.** **(1)** Subject to this Act, in any proceedings for an offence against this Act, any information, charge or application may be laid or made by:

(a) the Commission;

(b) a Commission delegate; or

(c) another person authorised in writing by the Minister to institute the proceedings.

**(2)** A delegation for the purposes of paragraph (1) (b), or an authorisation for the purposes of paragraph (1) (c), may relate to all offences, or to specified offences, against this Act.

**(3)** Nothing in this section affects the operation of the *Director of Public Prosecutions Act 1983.*

**Time for instituting criminal proceedings**

**143.** Despite anything in any other law, proceedings for an offence against this Act may be instituted within the period of 5 years after the act or omission alleged to constitute the offence or, with the Minister’s consent, at any later time.

**Standard of proof**

**145.** Where, in proceedings other than proceedings for an offence, it is necessary to establish, or for the Court to be satisfied, for any purpose relating to a matter arising under this Act, that:

(a) a person has contravened a provision of this Act;

(b) default has been made in complying with a provision of this Act;

(c) an act or omission was unlawful by virtue of a provision of this Act; or

(d) a person has been involved in a contravention of, or has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to a default in complying with, a provision of this Act;

it is sufficient if the matter referred to in paragraph (a), (b), (c) or (d) is established or the Court is so satisfied, as the case may be, on the balance of probabilities.

**Evidence of convictions**

**146.** For the purposes of this Act, a certificate that:

(a) purports to be signed by the Registrar or other proper officer of an Australian court; and

(b) states:

(i) that a person was convicted by that court on a specified day of a specified offence; or

(ii) that a person charged before that court with a specified offence was, on a specified day, found by that court to have committed the offence but that the court did not proceed to convict the person of the offence;

is, unless it is proved that the conviction was quashed or set aside, or that the finding was set aside or reversed, as the case may be, conclusive evidence:

(c) if subparagraph (b) (i) applies—that the person was convicted of the offence on that day; and

(d) if the offence was constituted by a contravention of a provision of a law—that the person contravened that provision.

**Costs**

**147.** **(1)** Where a close corporation is plaintiff in any action or other legal proceeding, the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the corporation will be unable to pay the costs of the defendant if the defence is successful, require sufficient security to be given for those costs and stay all proceedings until the security is given.

**(2)** The costs of any proceeding before a court under this Act shall be borne by such party to the proceeding as the court, in its discretion, directs.

**Civil proceedings not to be stayed**

**148.** No civil proceedings under this Act shall be stayed merely because the proceedings disclose, or arise out of, the commission of an offence.

**Form and evidentiary value of books**

**149.** **(1)** A book that is required by this Act to be kept or prepared may be kept or prepared:

(a) by making entries in a bound or looseleaf book;

(b) by recording or storing the matters concerned by means of a mechanical, electrical or other device; or

(c) in any other manner approved by the Commission.

**(2)** Subsection (1) does not authorise a book to be kept or prepared by a mechanical, electronic or other device unless:

(a) the matters recorded or stored will be capable, at any time, of being reproduced in a written form; or

(b) a reproduction of those matters is kept in a written form approved by the Commission.

**(3)** A close corporation shall take all reasonable precautions, including such precautions (if any) as are prescribed, for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, any book or part of a book required by this Act to be kept or prepared by the corporation.

**(4)** Where a close corporation records or stores any matters by means of a mechanical, electronic or other device, any duty imposed by this Act to make a book containing those matters available for inspection or to provide copies of the whole or part of a book containing those matters shall be construed as a duty to make the matters available for inspection in written form or to provide a document containing a clear reproduction in writing of the whole or part of them, as the case may be.

**(5)** Where:

(a) by virtue of this Act a book that is required by this Act to be kept or prepared is *prima facie* evidence of any matters; and

(b) the book is kept or prepared by recording or storing the matters concerned by means of a mechanical, electronic or other device;

any writing that reproduces matters so recorded or stored is *prima facie* evidence of those matters.

**(6)** A writing that purports to reproduce matters recorded or stored by means of a mechanical, electronic or other device shall, unless the contrary is proved, be deemed to be a reproduction of those matters.

**Admissibility of books in evidence**

**150.** **(1)** A book kept by a close corporation under a requirement of this Act is admissible in evidence in any proceeding and is *prima facie* evidence of any matter stated or recorded in the book.

**(2)** A document purporting to be a book kept by a close corporation shall, unless the contrary is proved, be deemed to be a book kept as mentioned in subsection (1).

**Admissions and representations by members**

**151.** An admission or representation made by a member of a close corporation in the ordinary course of its business is evidence against the corporation.

***Division 3*—*Offences and civil liability for contraventions***

**Interpretation**

**152. (1)** Sections 153 to 156 (inclusive) apply to a close corporation:

(a) that has been wound up or is in the course of being wound up;

(b) that has been in the course of being wound up, where the winding up has been stayed or terminated by an order under section 482 of the Corporations Act;

(c) that has at any time been, or is, under official management;

(d) in respect of property of which a receiver, or a receiver and manager, has at any time been appointed, whether by the Court or pursuant to the powers contained in any instrument, whether or not the appointment has been terminated;

(e) that has ceased to carry on business or is unable to pay its debts; or

(f) that has entered into a compromise or arrangement with its creditors.

**(2)** For the purposes of this section, a close corporation:

(a) shall be deemed to have ceased to carry on business if, and only if, the Commission has:

(i) sent to the corporation by post a letter pursuant to the provisions of subsection 572 (1) of the Corporations Act and has not, within the next succeeding period of one month from the date of the letter, received an answer to the effect that the corporation is carrying on business; or

(ii) published in the *Gazette* a notice pursuant to the provisions of subsection 572 (3) of the Corporations Act; and

(b) shall be deemed to be unable to pay its debts if, and only if, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the corporation is returned unsatisfied in whole or in part.

**(3)** In this section and in sections 153 to 156 (inclusive):

“appropriate officer” means:

(a) in relation to a close corporation that has been, has been being or is being wound up—the liquidator;

(b) in relation to a close corporation that has been or is under official management—the official manager;

(c) in relation to a close corporation affairs of which have been or are under investigation—the Commission;

(d) in relation to a close corporation in respect of property of which a receiver, or a receiver and manager, has been appointed—the receiver or the receiver and manager;

(e) in relation to a close corporation that has ceased to carry on business or is unable to pay its debts—the Commission; and

(f) in relation to a close corporation that has entered into a compromise or arrangement with its creditors—the person appointed by the Court to administer the compromise or arrangement;

“relevant day” means:

(a) in relation to a close corporation that has been, has been being or is being wound up—the day upon which under the provisions of the Corporations Act the winding up commenced or is deemed to have commenced;

(b) in relation to a close corporation that has been or is under official management—the day upon which it was determined that the corporation should be placed under official management;

(c) in relation to a close corporation affairs of which have been or are under investigation—the day upon which the Commission decides, or a direction was given to the Commission, to arrange for the investigation of those affairs;

(d) in relation to a close corporation in respect of property of which a receiver, or a receiver and manager, has been appointed—the day upon which the receiver, or the receiver and manager, was appointed;

(e) in relation to a close corporation that is unable to pay its debts—the day upon which the execution or other process was returned unsatisfied in whole or in part;

(f) in relation to a close corporation that has ceased to carry on business—the day on which a letter was first sent to the corporation, or a notice was first published in the *Gazette* in relation to the corporation, as the case may be, under section 572 of the Corporations Act; or

(g) in relation to a close corporation that has entered into a compromise or arrangement with its creditors—the day upon which the compromise or arrangement was approved by the Court.

**Offences relating to property, books etc.**

**153. (1)** A person who, being a past or present officer of a close corporation to which this section applies:

(a) does not, so far as the person is capable of doing so, disclose to the appropriate officer all the property of the corporation, and how and to whom and for what consideration and when any part of the property of the corporation was disposed of within 5 years immediately before the relevant day, except such part as has been disposed of in the ordinary course of the business of the corpora on;

(b) does not deliver up to, or in accordance with the directions oi the appropriate officer:

(i) all the property of the corporation in the person’s custody or under the person’s control; or

(ii) all books in the person’s custody or under the person’s control belonging to the corporation;

(c) has, within 5 years immediately before the relevant day or at a time on or after that day:

(i) concealed or removed any part of the property of the corporation to the value of $100 or upwards;

(ii) concealed any debt due to or by the corporation;

(iii) fraudulently parted with, altered or made any omission in, or been privy to fraudulent parting with, altering or making any omission in, any book affecting or relating to affairs of the corporation;

(iv) by any false representation or other fraud, obtained on credit, for or on behalf of the corporation, any property that the corporation has not subsequently paid for; or

(v) pawned, pledged or disposed of, otherwise than in the ordinary course of the business of the corporation, property of the corporation that has been obtained on credit and has not been paid for;

(d) makes any material omission in any statement or report relating to affairs of the corporation;

(e) knowing or believing that a false debt has been proved by a person, fails for a period of one month to inform the appropriate officer of that knowledge or belief;

(f) prevents the production to the appropriate officer of any book affecting or relating to affairs of the corporation;

(g) has, within 5 years next before the relevant day or at a time on or after that day, attempted to account for any part of the property of the corporation by making entries in the books of the corporation showing fictitious transactions, losses or expenses; or

(h) has, within 5 years next before the relevant day or at a time on or after that day, been guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the corporation or any of them to an agreement with reference to affairs of the corporation or to the winding up;

contravenes this subsection.

**(2)** It is a defence to a prosecution arising under subparagraph (1) (c) (i) in relation to the removal of property of a corporation, or under subparagraph (1) (c) (v) in relation to property of a corporation, if it is proved that the defendant had no intent to defraud.

**(3)** It is a defence to a prosecution arising under paragraph (1) (d) if it is proved that the defendant had no intent to defraud.

**(4)** It is a defence to a prosecution arising under paragraph (1) (f) if it is proved that the defendant had no intent to conceal the state of affairs of the corporation.

**(5)** Where a person pawns, pledges or disposes of any property in circumstances that amount to a contravention of subparagraph (1) (c) (v), any person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances contravenes this subsection.

**(6)** A person who takes in pawn or pledge or otherwise receives property in circumstances mentioned in subsection (5) and with the knowledge mentioned in that subsection shall be deemed to hold the property as trustee for the close corporation concerned and is liable to account to the corporation for the property.

**(7)** Where, in proceedings under subsection (6), it is necessary to establish that a person has taken property in pawn or pledge, or otherwise received property:

(a) in circumstances mentioned in subsection (5); and

(b) with the knowledge mentioned in that subsection;

the matter referred to in paragraph (b) of this subsection may be established On the balance of probabilities.

**Offence where proper accounts not kept**

**154.** **(1)** If:

(a) a requirement of section 82 was not complied with, in respect of a close corporation to which this section applies, during the whole or any part of the period of 2 years immediately before the relevant day or the period between the incorporation of the corporation and the relevant day, whichever is the shorter; and

(b) the corporation was at any time during that period, or became at a later time, a corporation to which this section applies;

a member who was entitled to participate in the management of the affairs of the corporation and failed to take all reasonable steps to secure compliance by the corporation with the provision throughout that period contravenes this section.

**(2)** In any proceedings against a person for failure to take all reasonable steps to secure compliance by a corporation with a requirement of section 82, it is a defence if it is proved that the person had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that that requirement was complied with and was in a position to discharge that duty.

**Incurring of debts or fraudulent conduct**

**155.** **(1)** If:

(a) a close corporation incurs a debt;

(b) immediately before the time when the debt is incurred:

(i) there are reasonable grounds to expect that the corporation will not be able to pay all its debts as and when they become due; or

(ii) there are reasonable grounds to expect that, if the corporation incurs the debt, it will not be able to pay all its debts as and when they become due; and

(c) the corporation is, at the time when the debt is incurred, or becomes at a later time, a corporation to which this section applies;

the members who participated in the management of the affairs of the corporation when the debt was incurred contravene this subsection and the corporation and those members are jointly and severally liable for the payment of the debt.

**(2)** In any proceedings against a person under subsection (1), it is a defence if it is proved:

(a) that the debt was incurred without the person’s express or implied authority or consent; or

(b) that when the debt was incurred, the person did not have reasonable cause to expect:

(i) that the corporation would not be able to pay all its debts as and when they became due; or

(ii) that, if the corporation incurred that debt, it would not be able to pay all its debts as and when they became due.

**(3)** Proceedings may be brought under subsection (1) for the recovery of a debt whether or not the person against whom the proceedings are brought, or any other person, has been convicted of an offence for a contravention of subsection (1) in respect of the incurring of that debt.

**(4)** In proceedings brought under subsection (1) for the recovery of a debt, the liability of a person under that subsection in respect of the debt may be established on the balance of probabilities.

**(5)** Where subsection (1) renders a person or persons liable to pay a debt incurred by a close corporation, the payment by that person or either or any of those persons of the whole or any part of that debt does not render the corporation liable to the person concerned in respect of the amount so paid.

**(6)** If:

(a) a close corporation does any act (including the making of a contract or the entering into of a transaction) with intent to defraud creditors of the corporation or of any other person or for any other fraudulent purpose; and

(b) the corporation is at the time when it does the act, or becomes at a later time, a corporation to which this section applies;

the corporation contravenes this subsection.

**(7)** A close corporation that contravenes subsection (6) is not guilty of an offence but any member who is involved in the contravention is guilty of an offence.

**(8)** A certificate issued by the proper officer of a court stating that a person specified in the certificate:

(a) was convicted of an offence in respect of a contravention of subsection (1) in relation to a debt specified in the certificate incurred by a close corporation so specified; or

(b) was convicted of an offence in respect of a contravention of subsection (6) in relation to a close corporation specified in the certificate;

is, in any proceedings, *prima facie* evidence of the matters stated in the certificate.

**(9)** A document purporting to be a certificate issued under subsection (8) shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly issued.

**Court may impose personal liability**

**156. (1)** Where a person has been convicted of an offence in respect of a contravention of subsection 155 (1) in respect of the incurring of a debt, the Court, on the application of the Commission or the person to whom the debt is payable, may, if it thinks it just and reasonable to do so, declare that the first-mentioned person is personally responsible without any limitation of liability for the payment to the person to whom the debt is payable of an amount equal to the whole of the debt or such part of it as the Court thinks just and reasonable.

**(2)** Where a person has been convicted of an offence in respect of a contravention of subsection 155 (6), the Court, on the application of the Commission or of a prescribed person, may, if it thinks it just and reasonable to do so, declare that the first-mentioned person is personally responsible without any limitation of liability for the payment to the corporation of the amount required to satisfy so much of the debts of the corporation as the Court thinks just and reasonable.

**(3)** In relation to a close corporation to which a conviction referred to in subsection (2) relates:

(a) the appropriate officer;

(b) a creditor or contributory of the corporation authorised by the Commission to make an application under that subsection; and

(c) if the corporation was a corporation to which section 155 applied because of paragraph 152 (1) (c)—a member of the corporation;

are prescribed persons for the purposes of that subsection.

**(4)** Where the Court makes a declaration under subsection (1) in relation to a person, it may give such further directions as it thinks just and reasonable for the purpose of giving effect to that declaration.

**(5)** In particular, the Court may order that the liability of the person under the declaration shall be a charge:

(a) on a debt or obligation due from the corporation to the person; or

(b) on a right or interest under a charge on any property of the corporation held by or vested in the person liable or a person on behalf of the person liable, or a person claiming as assignee from or through the person liable or a person acting on behalf of the person liable.

**(6)** The Court may, from time to time, make such further order as it thinks just and reasonable for the purpose of enforcing a charge imposed under subsection (5).

**(7)** For the purposes of subsection (5), “assignee” includes a person to whom or in whose favour, by the directions of the person liable, the debt, obligation or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without actual knowledge of any of the matters upon which the conviction or declaration was made.

**(8)** On the hearing of an application under subsection (1) or (2), the appropriate officer or other applicant may give evidence personally and call witnesses.

**Certain rights not affected**

**157.** Except as provided by subsection 155 (5), nothing in subsection 155 (1) or 156 (1) or (2) affects any rights of a person to indemnity, subrogation or contribution.

**Inducement to be appointed liquidator or official manager**

**158.** A person who gives, or agrees or offers to give, to a member or creditor of a close corporation any valuable consideration with a view to securing the appointment or nomination of the person, or to securing or preventing the appointment or nomination of some other person, as the liquidator, provisional liquidator or official manager of the corporation, as receiver, or receiver and manager, of property of the corporation or as a trustee or other person administering a compromise or arrangement in relation to the corporation contravenes this section.

**Falsification of books**

**159.** **(1)** An officer or former officer of a close corporation who conceals, destroys, mutilates or falsifies any securities of or belonging to the corporation or any books affecting or relating to affairs of the corporation contravenes this subsection.

**(2)** Where matter that is used or intended to be used in connection with the keeping of any books affecting or relating to affairs of a close corporation is recorded or stored in an illegible form by means of a mechanical device, an electronic device or any other device, a person who:

(a) records or stores by means of that device matter that the person knows to be false or misleading in a material particular;

(b) destroys, removes or falsifies matter that is recorded or stored by means of that device, or has been prepared for the purpose of being recorded or stored, or for use in compiling or recovering other matter to be recorded or stored, by means of that device; or

(c) having a duty to record or store matter by means of that device, fails to record or store the matter by means of that device:

(i) with intent to falsify any entry made or intended to be compiled, wholly or in part, from matter so recorded or stored; or

(ii) knowing that the failure so to record or store the matter will render false or misleading in a material particular other matter so recorded or stored;

contravenes this subsection.

**(3)** It is a defence to a prosecution for a contravention of subsection (1) or (2) if it is proved that the defendant acted honestly and that in all the circumstances the act or omission constituting the contravention should be excused.

**(4)** In this section, “officer”, in relation to a close corporation, includes a receiver of property of the corporation who is not also a manager.

**Frauds by officers**

**160.** A person who, while an officer of a close corporation:

(a) by false pretences or by means of any other fraud, induces a person to give credit to the corporation;

(b) with intent to defraud the corporation or members or creditors of the corporation, makes or purports to make, or causes to be made or to be purported to be made, any gift or transfer of or charge on, or causes or connives at the levying of any execution against, the property of the corporation; or

(c) with intent to defraud the corporation or members or creditors of the corporation, conceals or removes any part of the property of the corporation on or after, or within 2 months before, the date of any unsatisfied judgment or order for payment of money obtained against the corporation;

contravenes this section.

**False or misleading statements**

**161.** **(1)** A close corporation that advertises, issues or publishes any statement of the amount of its capital that is false or misleading contravenes this subsection.

**(2)** A person who, in a document required by or for the purposes of this Act or lodged, makes or authorises the making of a statement that to the person’s knowledge is false or misleading in a material particular, or

omits or authorises the omission of any matter or thing without which the document is to the person’s knowledge misleading in a material respect, contravenes this subsection.

**(3)** A person who makes or authorises the making of a statement that is based on information that to the person’s knowledge:

(a) is false or misleading in a material particular; or

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

shall, for the purposes of subsection (2), be deemed to have made or authorised the making of a statement that to the person’s knowledge was false or misleading in a material particular.

**(4)** A person who, in a document required by or for the purposes of this Act or lodged:

(a) makes or authorises the making of a statement that is false or misleading in a material particular; or

(b) omits or authorises the omission of any matter or thing without which the document is misleading in a material respect;

without having taken reasonable steps to ensure that the statement was not false or misleading or to ensure that the statement did not omit any matter or thing without which the document would be misleading, as the case may be, contravenes this subsection.

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

(a) was not false or misleading in a material particular; and

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

shall, for the purposes of subsection (4), be deemed to have made or authorised the making of a statement without having taken reasonable steps to ensure that the statement was not false or misleading.

**(6)** For the purposes of subsections (2) and (4), where:

(a) a person approves, at a meeting or otherwise, a document required by or for the purposes of this Act or required to be lodged; and

(b) the document contains a statement that, to the person’s knowledge, is false or misleading in a material particular, or omits any matter or thing without which the document is, to the person’s knowledge, misleading in a material respect;

the person shall be deemed to have authorised the making of the statement or the omission of the matter or thing.

**False information etc.**

**162. (1)** An officer of a close corporation who makes available or gives information, or authorises or permits the making available or giving of information, to a member, debenture holder or trustee for debenture holders

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

(a) is false or misleading in a material particular; or

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

contravenes this subsection.

**(2)** An officer of a close corporation who makes available or gives information, or authorises or permits the making available or giving of information, to a member, debenture holder or trustee for debenture holders of the corporation, being information, whether in documentary or any other form, relating to the affairs of the corporation that:

(a) is false or misleading in a material particular; or

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

without having taken reasonable steps to ensure that the information:

(c) was not false or misleading in a material particular; and

(d) did not have omitted from it a matter or thing the omission of which rendered the information misleading in a material respect;

contravenes this subsection.

**(3)** The references in subsections (1) and (2) to a person making available or giving or authorising or permitting the making available or giving of, information relating to the affairs of a close corporation include references to a person making available or giving, or authorising or permitting the making available or giving of, information as to the state of knowledge of that person with respect to the affairs of the corporation.

**(4)** Where information is made available or given to a person referred to in subsection (1) or (2) in response to a question asked by that person, the question and the information shall be considered together in determining whether the information was false or misleading.

**General penalty provisions**

**163. (1)** A person who:

(a) does an act or thing that the person is forbidden to do by or under a provision of this Act;

(b) does not do an act or thing that the person is required or directed to do by or under a provision of this Act; or

(c) otherwise contravenes a provision of this Act;

is, unless that provision or another provision of this Act provides that the person is guilty of an offence or provides that a contravention of the provision, or a contravention of the provision by the person, is not an offence, guilty of an offence by virtue of this subsection.

**(2)** A person who is guilty of an offence against this Act, whether by virtue of subsection (1) or otherwise, is punishable, on conviction, by a penalty not exceeding the penalty applicable to the offence.

**(3)** Where:

(a) subsection (1) operates in relation to a provision of this Act so as to make a person guilty of an offence; or

(b) a provision of this Act (other than this section) provides that a person is, in circumstances referred to in the provision, guilty of an offence;

and a penalty, pecuniary or otherwise, is set out in column 2 of the Schedule opposite to a reference to that provision, or to a provision in which that provision is included, in column 1 of the Schedule, the penalty applicable to the offence is:

(c) in the case of a natural person—the penalty so set out; or

(d) in the case of a body corporate—five times the pecuniary penalty so set out.

**(4)** Where a provision of this Act (other than this section) provides that the penalty applicable to a contravention of a particular provision of this Act is a specified penalty, pecuniary or otherwise, the penalty applicable to an offence constituted by a contravention of the particular provision is the specified penalty.

**(5)** Except as provided in subsection (3) or (4) or in a provision of this Act (other than this section), the penalty applicable to an offence against this Act is:

(a) in the case of a natural person—$500; or

(b) in the case of a body corporate—$2,500.

**(6)** The penalty applicable to an offence against a provision of the Corporations Act in its application in relation to a close corporation by virtue of this Act is the penalty that is applicable under that Act to an offence against that provision in its application otherwise than in relation to a close corporation.

**Penalty notices**

**164. (1)** Where the Commission has reason to believe that a person has committed a prescribed offence, the Commission may, subject to subsection (2), give to the person a notice in the prescribed form:

(a) alleging that the person has committed the prescribed offence and giving the prescribed particulars in relation to the prescribed offence;

(b) setting out the prescribed penalty in respect of the prescribed offence; and

(c) stating:

(i) in the case of a prescribed offence constituted by a failure to do a particular act or thing:

(a) that the obligation to do the act or thing continues despite the giving of the notice or the payment of the prescribed penalty;

(b) that if, within the period specified in the notice (being a period of at least 21 days), the person pays the prescribed penalty to the authority specified in the notice and does the act or thing, no further action will be taken against the person in relation to the prescribed offence; and

(c) that if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice or has not done the act or thing, proceedings may be instituted against the person; or

(ii) in the case of a prescribed offence, not being an offence constituted by a failure to do a particular act or thing:

(a) that if, within the period specified in the notice (being a period of at least 21 days), the person pays the prescribed penalty to the authority specified in the notice, no further action will be taken against the person in relation to the prescribed offence; and

(b) that if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice, proceedings may be instituted against the person.

**(2)** Subsection (1) does not empower the Commission:

(a) to give to a person more than one notice under that subsection in relation to an alleged commission by that person of a particular prescribed offence; or

(b) to give to a person a notice under that subsection in relation to a prescribed offence unless proceedings could be instituted against that person for that offence.

**(3)** A notice under subsection (1) may be given to a natural person either personally or by post.

**(4)** Where a notice under subsection (1) is given to a person in relation to a prescribed offence constituted by a failure to do a particular act or thing:

(a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice, and does the act or thing—no proceedings may be instituted against the person in respect of the prescribed offence;

(b) if, at the end of the period specified in the notice, the person has paid the prescribed penalty to the authority specified in the notice but has not done the act or thing—no proceedings may be instituted against the person in respect of the prescribed offence, but the

obligation to do that act or thing continues, and section 165 applies in relation to the continued failure to that act or thing as if, on the day on which the person so paid the prescribed penalty, the person had been convicted of an offence constituted by a failure to do that act or thing;

(c) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice but has done the act or thing—proceedings may be instituted against the person in respect of the prescribed offence; or

(d) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice but has done the act or thing—the obligation to do that act or thing continues, and proceedings may be instituted against the person in respect of the prescribed offence.

**(5)** Where a notice under subsection (1) is given to a person in relation to a prescribed offence, not being an offence constituted by a failure to do a particular act or thing:

(a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice—no proceedings may be instituted against the person in respect of the prescribed offence; or

(b) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice—proceedings may be instituted against the person in respect of the prescribed offence.

**(6)** The payment of an amount by a person pursuant to a notice given to the person under this section in relation to a prescribed offence shall not be taken for any purpose to be an admission by that person of any liability in connection with the alleged commission of the prescribed offence.

**(7)** Except as provided by paragraphs (4) (a) and (b) and (5) (a), this section does not affect the operation of any provision of this Act, of the rules or of any other Act in relation to the institution of proceedings in respect of offences that are prescribed offences for the purposes of this section.

**(8)** In this section:

“authority” includes a person.

**Continuing offences**

**165. (1)** Where:

(a) by or under a provision, an act is required to be done within a particular period or before a particular time;

(b) failure to do the act within that period or before that time constitutes an offence; and

(c) the act is not done within that period or before that time;

then:

(d) the obligation to do the act continues, after that period has ended or that time has passed, and whether or not a person is convicted of a primary substantive offence in relation to failure to do the act, until the act is done; and

(e) subsections (3) and (4) apply.

**(2)** Where:

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

(b) failure to do the act constitutes an offence; and

(c) a person is convicted of a primary substantive offence in relation to failure to do the act;

then:

(d) the obligation to do the act continues, despite the conviction, until the act is done; and

(e) subsections (3) and (4) apply.

**(3)** Where:

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

(b) the failure to do the act continues after that time;

then:

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

(d) for the purposes of this Act and of the *Crimes Act 1914*,the further offence shall be deemed to be constituted by failure to do the act during so much of the period as so elapses.

**(4)** Where:

(a) a person is guilty of an offence because of being involved in a contravention of a provision referred to in paragraph (1) (a) or (2) (a), being a contravention constituted by the failure to do an act; and

(b) throughout a particular period (in this subsection called the “relevant period”):

(i) the failure to do the act continues; and

(ii) a person (in this subsection called the “derivative offender”) is involved in the contravention constituted by the failure to do the act;

then:

(c) in a case where either or both of the following events occurs or occur:

(i) a person is convicted, before or during the relevant period, of a primary substantive offence in relation to failure to do the act;

(ii) the derivative offender is convicted, before or during the relevant period, of a primary derivative offence in relation to failure to do the act;

the derivative offender is, in relation to failure to do the act, guilty of an offence (in this paragraph called the “relevant offence”) in respect of so much (if any) of the relevant period as elapses:

(iii) after the conviction referred to in subparagraph (i) or (ii), or after the earlier of the convictions referred to in subparagraphs (i) and (ii), as the case may be; and

(iv) before the relevant day in relation to the relevant offence; and

(d) in a case where, at a particular time during the relevant period, the derivative offender is first convicted of a secondary derivative offence, or is convicted of a second or subsequent secondary derivative offence, in relation to failure to do the act:

(i) the derivative offender is, in relation to failure to do the act, guilty of a further offence in respect of so much of the relevant period as elapses after that time and before the relevant day in relation to the further offence; and

(ii) for the purposes of this Act and of the *Crimes Act 1914*,the further offence shall be deemed to be constituted by the derivative offender being involved in the failure to do the act during so much of the relevant period as so elapses.

**(5)** Where a person is guilty, by virtue of subsection (3) or (4), of an offence in respect of the whole or a part of a particular period, the penalty applicable to the offence is a fine of the amount obtained by multiplying $50 in the case of a natural person, or $250 in the case of a body corporate, by the number of days in that period, or in that part of that period, as the case may be.

**(6)** In this section:

“act” includes thing;

“primary derivative offence”, in relation to failure to do an act, means an offence (other than an offence of which a person is guilty by virtue of this section) of which a person is guilty by virtue of being involved in the contravention constituted by failure to do the act;

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

“provision” means a section, or a subsection of a section, of this Act;

“relevant day”, in relation to an offence of which a person is guilty by virtue of this section, means:

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

(b) otherwise—the day on which the information relating to the offence is laid;

“required” includes directed;

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

“substantive offence”, in relation to failure to do an act, means:

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

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

***Division 4*—*Miscellaneous***

**Dividends**

**166.** **(1)** A close corporation may pay a dividend to a member if, and only if:

(a) the value of all the assets of the corporation exceeds, and would after payment of the dividend continue to exceed, the total liabilities of the corporation; and

(b) there are reasonable grounds to believe that the corporation is able, and would after payment of the dividend continue to be able, to pay its debts as and when they became due.

**(2)** If a close corporation pays a dividend in contravention of subsection (1) and the corporation subsequently commences to be wound up on the ground of its inability to pay its debts, the liquidator may recover the amount of the dividend.

**Service of documents**

**167.** **(1)** A document may be served on a close corporation:

(a) by delivering the document to any member; or

(b) by leaving the document at, or sending the document by post to, the corporation’s registered office.

**(2)** Where a liquidator of a close corporation has been appointed, a document may be served on the corporation by leaving it at, or by sending it by post to, the last address of the office of the liquidator notice of which has been lodged.

**(3)** Where an official manager of a close corporation has been appointed, a document may be served on the corporation by leaving it at, or sending it by post to, the last address of the office of the official manager notice of which has been lodged.

**(4)** Nothing in this section affects:

(a) the power of the Court to authorise a document to be served on a close corporation in a manner not provided for by this section; or

(b) the operation of any provision of a law in force in Australia, or of the rules, authorising a document to be served on a close corporation in a manner not provided for by this section.

**Vesting of property**

**168. (1)** Where an order is made by a court under this Act vesting property in a person:

(a) subject to subsection (2), the property immediately vests in the person named in the order without any conveyance, transfer or assignment; and

(b) the person who applied for the order shall, within 7 days after the passing and entering of the order, lodge an office copy of the order with such person (if any) as is specified for the purpose in the order.

**(2)** Where:

(a) the property to which an order referred to in subsection (1) relates is property the transfer or transmission of which may be registered under a law of the Commonwealth, of a State or of a Territory; and

(b) that law enables the registration of such an order;

the property, even if it vests in equity in the person named in the order, does not vest in that person at law until the requirements of the law referred to in paragraph (a) have been complied with.

**(3)** Where:

(a) a property vests in a person by force of this Act;

(b) the property is property the transfer or transmission of which may be registered under a law of the Commonwealth, of a State or of a Territory; and

(c) that law enables the person to be registered as the owner of that property;

that property, even if it vests in equity in that person by force of this Act, does not vest in that person at law until the requirements of the law referred to in paragraph (b) have been complied with.

***Division 5—Rules and regulations***

**Rules**

**169.** 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 this Act:

(a) with respect to proceedings, and the practice and procedure, of the Federal Court of Australia under this Act;

(b) with respect to any matter or thing that is required or permitted by this Act to be prescribed by rules or is necessary or convenient to be prescribed by rules for carrying out or giving effect to this Act; and

(c) without limiting the generality of the foregoing, with respect to costs and with respect to rules as to meetings ordered by the Court.

**Regulations**

**170.** **(1)** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

(a) required or permitted by this Act to be prescribed by regulations; or

(b) necessary or convenient to be prescribed by regulations for carrying out or giving effect to this Act;

and, in particular, prescribing penalties not exceeding $500 for contraventions of the regulations.

**(2)** The regulations may be of general or specially limited application or may differ according to differences in time, locality, place or circumstance.

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**SCHEDULE** Section 163

PENALTIES FOR OFFENCES COMMITTED BY NATURAL PERSONS

|  |  |
| --- | --- |
| Column 1 | Column 2 |
| Provision | Penalty |
| Section 40 | $1,000 or imprisonment for 3 months, or both |
| Section 41 | $1,000 or imprisonment for 3 months, or both |
| Subsection 50 (2) | $1,000 or imprisonment for 3 months, or both |
| Section 51 | $2,500 or imprisonment for 6 months, or both |
| Subsection 87 (3) | $10,000 or imprisonment for 2 years, or both |
| Subsection 89 (2) | $5,000 or imprisonment for 1 year, or both |
| Subsection 94 (2) | $10,000 or imprisonment for 2 years, or both |
| Subsection 101 (11) | $2,500 or imprisonment for 6 months, or both |
| Subsection 134 (8) | $2,500 or imprisonment for 6 months, or both |
| Subsection 153 (1) | $10,000 or imprisonment for 2 years, or both |
| Subsection 153 (5) | $5,000 or imprisonment for 1 year, or both |
| Subsection 154 (1) | $5,000 or imprisonment for 1 year, or both |
| Subsection 155 (1) | $5,000 or imprisonment for 1 year, or both |
| Subsection 155 (7) | $10,000 or imprisonment for 2 years, or both |
| Section 158 | $1,000 or imprisonment for 3 months, or both |
| Section 159 | $10,000 or imprisonment for 2 years, or both |
| Section 160 | $10,000 or imprisonment for 2 years, or both |
| Subsection 161 (2) | $10,000 or imprisonment for 2 years, or both |
| Subsection 161 (4) | $5,000 or imprisonment for 1 year, or both |
| Subsection 162 (1) | $10,000 or imprisonment for 2 years, or both |
| Subsection 162 (2) | $5,000 or imprisonment for 1 year, or both |

[*Minister’s second reading speech made in—*

*House of Representatives on 25 May 1988*

*Senate on 14 October 1988*]