



Corporations Legislation Amendment Act 1991

No. 110 of 1991

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AMENDMENTS OF THE AUSTRALIAN SECURITIES COMMISSION ACT 1989



Corporations Legislation Amendment Act 1991

No. 110 of 1991

**An Act to amend the *Corporations Act 1989* and related
legislation, and for related purposes**

[Assented to 27 June 1991]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Corporations Legislation Amendment Act 1991*.

Commencement

2. (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Subject to subsection (3), the amendments of the *Corporations Act 1989* that are made by section 4 of this Act are taken to have commenced on 1 January 1991.

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(3) The following amendments of the *Corporations Act 1989* that are made by section 4 of this Act commence on a day to be fixed by Proclamation for the purposes of this subsection:

- (a) the insertion of new definitions in subsection 50 (1);
- (b) the amendment of paragraph 50 (2) (a);
- (c) the insertion of new sections 51A, 53A, 53B, 53C, 53D and 61A;
- (d) the repeal and substitution of section 52;
- (e) the amendments of sections 53, 54, 56 and 59.

(4) Subject to subsection (5), sections 7 and 8 commence on a day or days to be fixed by Proclamation.

(5) If section 7 or 8 does not commence under subsection (4) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, that section commences on the first day after the end of that period.

(6) Subject to subsections (7) and (8), the amendments of the *Australian Securities Commission Act 1989* that are made by section 11 of this Act are taken to have commenced on 1 January 1991.

(7) The following amendments of the *Australian Securities Commission Act 1989* that are made by section 11 of this Act commence on the day on which this Act receives the Royal Assent:

- (a) the insertion of new paragraph 6A (ba);
- (b) the amendments of sections 43, 46, 49 and 102.

(8) The following amendments of the *Australian Securities Commission Act 1989* that are made by section 11 of this Act commence on the day on which section 8 of this Act commences:

- (a) the amendment of the heading to Division 3 of Part 7;
- (b) the repeal and substitution of section 128;
- (c) the amendment of section 129.

(9) Part 5 is taken to have commenced on 1 January 1991.

(10) Subject to subsection (11), the provisions of Part 6 commence on a day or days to be fixed by Proclamation.

(11) A Proclamation under subsection (10) must not fix a day for the commencement of section 14 that is earlier than the first day on which all the provisions of Divisions 2 and 3 of Part 6 are in operation.

(12) The provisions of Part 16 of the *Australian Securities Commission Act 1989* (which is added by section 23 of this Act) commence on a day or days to be fixed by Proclamation for the purposes of this subsection.

PART 2—AMENDMENTS OF THE CORPORATIONS ACT 1989

Principal Act

3. In this Part, “**Principal Act**” means the *Corporations Act 1989*¹.

Amendments

4. The Principal Act is amended as set out in Schedule 1.

PART 3—AMENDMENTS OF THE CORPORATIONS LAW

Corporations Law

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

Miscellaneous substantive and technical amendments

6. The Corporations Law is amended as set out in Schedules 2 and 5.

Consolidated accounts of a company and the entities it controls

7. The Corporations Law is amended as set out in Schedule 3.

Insider trading

8. The Corporations Law is amended as set out in Schedule 4.

Commencement and application of certain changes

9. The Corporations Law is amended as set out in Schedule 6.

**PART 4—AMENDMENTS OF THE AUSTRALIAN SECURITIES
COMMISSION ACT 1989**

Principal Act

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

Amendments

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

**PART 5—AMENDMENTS OF THE CROWN DEBTS (PRIORITY)
ACT 1981**

Principal Act

12. In this Part, “**Principal Act**” means the *Crown Debts (Priority) Act 1981*³.

Certain rights of the Crown not affected

13. Section 4 of the Principal Act is amended by omitting “Corporations Law of the Australian Capital Territory” and substituting “*Corporations Act 1989*”.

**PART 6—ABOLITION OF NATIONAL COMPANIES AND
SECURITIES COMMISSION**

Division 1—General

Repeal

14. The *National Companies and Securities Commission Act 1979* is repealed.

Reports and financial statements

15. (1) As soon as practicable after the commencement of this section, the Commission must:

(a) prepare a report of the operations of the NCSC during the period of 6 months ending on 31 December 1990, together with financial statements in respect of that period in such form as the Minister approves; and

(b) submit the financial statements to the Auditor-General.

(2) The Auditor-General must report to the Minister:

(a) whether, in his or her opinion, the statements are based on proper accounts and records; and

(b) whether the statements are in agreement with the accounts and records; and

(c) whether, in his or her opinion, the receipt, expenditure and investment of money, and the acquisition and disposal of assets, by the NCSC during that period have been in accordance with the NCSC Act and this Part; and

(d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(3) The Auditor-General must send to the Commission a report under subsection (2) and the Commission must, as soon as practicable after receiving the report:

(a) submit its report and financial statements, together with the report of the Auditor-General, to the Minister; and

(b) submit to each State Minister a copy of its report and financial statements, together with a copy of the report of the Auditor-General.

(4) The Minister must cause copies of the report and financial statements, together with a copy of the report of the Auditor-General,

to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

(5) The Commission may, in discharging its obligations under this section, rely on accounts and records of the NCSC that are in the possession of the Commission or to which the Commission has access and on any other information provided to the Commission by any person who held an office in, or was employed by, the NCSC.

(6) The Auditor-General may, in discharging his or her obligations under this section, rely on accounts and records of the NCSC that are in the possession of the Commission or to which the Commission has access and on any other information provided to the Commission by any person who held an office in, or was employed by, the NCSC.

(7) As soon as practicable, and in any event within 3 months, after 30 June 1991, the Commission must prepare a report of the operations of the NCSC during the period of 6 months ending on that day, together with financial statements in respect of that period in such form as the Minister approves.

(8) If the NCSC Act has not been repealed by 1 July 1991, the Commission must, within 3 months after the repeal of that Act, prepare a report of the operations of the NCSC during the period starting on 1 July 1991 and ending on the repeal of the NCSC Act, together with financial statements in respect of that period in such form as the Minister approves.

(9) A report and financial statements prepared under subsection (7) or (8) must be dealt with in accordance with this section as if they had been prepared under paragraph (1) (a).

(10) In this section:

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

“**NCSC**” means the National Companies and Securities Commission;

“**NCSC Act**” means the *National Companies and Securities Commission Act 1979*;

“**operations of the NCSC**” includes matters relating to the preparations for the repeal of the NCSC Act or to the disposal of the NCSC’s assets and liabilities;

“**State Minister**” means a person who, for the purposes of the Corporations Law of a jurisdiction, is the Minister for that jurisdiction.

Ombudsman investigations

16. Where:

- (a) before the commencement of this section, a complaint was made to the Ombudsman, or the Ombudsman commenced an investigation, under the *Ombudsman Act 1976* in relation to action taken by the National Companies and Securities Commission; and

- (b) immediately before that commencement, the Ombudsman had not finally disposed of the matter in accordance with the *Ombudsman Act 1976*;
- the *Ombudsman Act 1976* applies after that commencement as if that action had been taken by the Australian Securities Commission.

Division 2—Amendments of the Corporations Law

Corporations Law

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

Amendments

18. (1) Section 577 of the Corporations Law is amended by adding at the end the following subsections:

“(6) Where:

- (a) assets are vested in the Commission by section 254 of the ASC Law; and
- (b) the assets were previously vested in the NCSC because of the previous law of this jurisdiction corresponding to section 576 (and not under section 43 of the *National Companies and Securities Commission Act 1979*) and became so vested before 1 January 1991;

then, despite anything in this Law, the previous law of this jurisdiction corresponding to this section continues to operate in relation to those assets.

“(7) Where:

- (a) assets are vested in the Commission by section 254 of the ASC Law; and
- (b) the assets were previously vested in the NCSC because of the previous law of this jurisdiction corresponding to section 576 (and not under section 43 of the *National Companies and Securities Commission Act 1979*) and became so vested after 31 December 1990 because of section 601 of the Corporations Law of this jurisdiction;

then, despite section 601, this section applies to the assets in the same way as it applies to assets vested in the Commission under the Corporations Law of this jurisdiction.

“(8) Where, at or after the commencement of section 254 of the ASC Law, assets become vested in the Commission because of section 601 of the Corporations Law of this jurisdiction, then, despite section 601, this section applies to the assets in the same way as it applies to assets vested in the Commission under the Corporations Law of this jurisdiction.

“(9) Despite anything in this Law, the previous law of this jurisdiction corresponding to this section continues to operate in relation to money that had been paid to a Minister in relation to this jurisdiction, under that previous law, before the commencement of section 254 of the ASC Law.”.

(2) Section 601 of the Corporations Law is amended by adding at the end of paragraph (b) “and to apply, with such modifications as the circumstances require, as if a reference in that previous law to the NCSC were, except in relation to a time before the commencement of section 254 of the ASC Law, a reference to the Commission”.

Division 3—Amendments of the Australian Securities Commission Act 1989

Principal Act

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

20. After section 6D of the Principal Act the following section is inserted in Part 1:

Liabilities etc. imposed on Commonwealth by other ASC Laws

“6E. (1) Where Part 16 of the ASC Law of another jurisdiction is expressed to transfer liabilities of the NCSC to the Commonwealth, those liabilities become liabilities of the Commonwealth by force of this subsection.

“(2) Where Part 16 of the ASC Law of another jurisdiction is expressed to make the Commonwealth a party to pending proceedings, the Commonwealth becomes a party to those proceedings by force of this subsection.

“(3) Where Part 16 of the ASC Law of another jurisdiction is expressed to create a right of action against the Commonwealth, that right against the Commonwealth is created by this subsection.”.

Confidentiality

21. At the end of section 127 of the Principal Act the following subsection is added:

“(7) This section does not apply in relation to information in relation to which section 127A applies.”.

22. After section 127 of the Principal Act the following section is inserted in Division 2 of Part 7:

Secrecy

“127A. (1) Subject to this section, a person who was at any time:

- (a) appointed for the purposes of a law specified in an application order; or

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- (b) engaged as a member of the staff of the NCSC; or
- (c) authorised to perform or exercise any function or power of the NCSC or any function or power on behalf of the NCSC;

must not, except to the extent necessary to perform his or her official duties, or to perform or exercise such a function or power, either directly or indirectly, make a record of, or disclose to any person, any information that is or was acquired by him or her because of having been so appointed, engaged or authorised, or make use of any such information, for any purpose other than the performance of his or her official duties or the performance or exercise of that function or power. Penalty: \$5,000 or imprisonment for one year, or both.

“(2) Nothing in subsection (1) precludes a person from:

- (a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under the *National Companies and Securities Commission Act 1979* or under a prescribed law or national scheme law of this or any other jurisdiction; or
- (b) disclosing to a court in the course of any proceedings referred to in paragraph (a) any matter or thing that came under his or her notice in the performance of official duties or in the performance of a function or the exercise of a power referred to in that subsection; or
- (c) producing a document or disclosing information to a person to whom, in the opinion of the Commission, it is in the public interest that the document be produced or the information be disclosed; or
- (d) producing a document or disclosing information that is required or permitted by any Act of this or any other jurisdiction to be produced or disclosed, as the case may be; or
- (e) producing a document or disclosing information to the Commission.

“(3) The following table sets out prescribed laws of this and the other jurisdictions for the purposes of paragraph (2) (a):

Acts of the Commonwealth	<i>Companies Act 1981</i> <i>Companies (Acquisition of Shares) Act 1980</i> <i>Futures Industry Act 1986</i> <i>Securities Industry Act 1980</i>
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Acts of New South Wales	<i>Companies Act 1961</i> <i>Companies (Application of Laws) Act 1981</i> <i>Companies (Acquisition of Shares) (Application of Laws) Act 1981</i> <i>Futures Industry (Application of Laws) Act 1986</i> <i>National Companies and Securities Commission (State Provisions) Act 1981</i> <i>Securities Industry Act 1975</i> <i>Securities Industry (Application of Laws) Act 1981</i>
Acts of the Northern Territory	<i>Companies Act 1963</i> <i>Companies (Acquisition of Shares) (Application of Laws) Act 1986</i> <i>Companies (Application of Laws) Act 1986</i> <i>Futures Industry (Application of Laws) Act 1986</i> <i>National Companies and Securities Commission (Northern Territory Provisions) Act 1986</i> <i>Securities Industry (Application of Laws) Act 1986</i>
Acts of Queensland	<i>Companies Act 1961</i> <i>Companies (Application of Laws) Act 1981</i> <i>Companies (Acquisition of Shares) (Application of Laws) Act 1981</i> <i>Company Takeovers Act 1979</i> <i>Futures Industry (Application of Laws) Act 1986</i> <i>National Companies and Securities Commission (State Provisions) Act 1981</i> <i>Securities Industry Act 1975</i> <i>Securities Industry (Application of Laws) Act 1981</i>
Acts of South Australia	<i>Companies Act 1962-1982</i> <i>Companies (Application of Laws) Act 1982</i> <i>Companies (Acquisition of Shares) (Application of Laws) Act 1981</i> <i>Company Take-overs Act 1980</i> <i>Futures Industry (Application of Laws) Act 1986</i> <i>National Companies and Securities Commission (State Provisions) Act 1981</i> <i>Securities Industry Act 1979-1980</i> <i>Securities Industry (Application of Laws) Act 1981</i>

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<p>Acts of Tasmania</p>	<p><i>Companies Act 1962</i> <i>Companies (Application of Laws) Act 1982</i> <i>Companies (Acquisition of Shares) (Application of Laws) Act 1981</i> <i>Futures Industry (Application of Laws) Act 1987</i> <i>National Companies and Securities Commission (State Provisions) Act 1981</i> <i>Securities Industry (Application of Laws) Act 1981</i></p>
<p>Acts of Victoria</p>	<p><i>Companies Act 1961</i> <i>Companies (Application of Laws) Act 1981</i> <i>Companies (Acquisition of Shares) (Application of Laws) Act 1981</i> <i>Futures Industry (Application of Laws) Act 1986</i> <i>National Companies and Securities Commission (State Provisions) Act 1981</i> <i>Securities Industry Act 1975</i> <i>Securities Industry (Application of Laws) Act 1981</i></p>
<p>Acts of Western Australia</p>	<p><i>Companies Act 1961</i> <i>Companies (Application of Laws) Act 1981</i> <i>Companies (Acquisition of Shares) (Application of Laws) Act 1981</i> <i>Company Take-overs Act 1979</i> <i>Futures Industry (Application of Laws) Act 1986</i> <i>Securities Industry Act 1975</i> <i>Securities Industry (Application of Laws) Act 1981</i> <i>Securities Industry (Release of Sureties) Act 1977</i></p>
<p>Acts and Ordinances of the Capital Territory</p>	<p><i>Companies Ordinance 1962</i></p>

23. At the end of the Principal Act the following Part is added:

“PART 16—TRANSITIONAL

Interpretation

“253. In this Part, unless the contrary intention appears:

‘assets’ means property of every kind, and includes, but is not limited to:

- (a) choses in action; and
- (b) rights, interests and claims of every kind in or to property, whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing;

‘authorised officer’ means:

- (a) the Minister; or
- (b) the Chairperson; or
- (c) a member of the staff of the Commission authorised by the Minister in writing for the purposes of this Part;

‘commencement’, when used in a provision of this Part, means the commencement of that provision;

‘liabilities’ means liabilities of every kind, and includes, but is not limited to, obligations of every kind, whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing;

‘NCSC Act’ means the *National Companies and Securities Commission Act 1979*;

‘NCSC instrument’ means an instrument:

- (a) to which the NCSC was a party; or
- (b) that was given to or in favour of the NCSC; or
- (c) in which a reference is made to the NCSC; or
- (d) under which money is or may become payable, or any other property is to be, or may become liable to be, transferred, to or by the NCSC;

being an instrument subsisting immediately before the commencement of the provision in which the expression is used;

‘section 462 assets’ means assets held by the NCSC in relation to which section 462 of the *Companies Act 1981* or a corresponding law of this or another jurisdiction applies, whether with modifications or not;

‘trust assets of the NCSC’ means:

- (a) assets received or held by the NCSC as mentioned in section 43 of the NCSC Act; and
- (b) section 462 assets.

Trust assets of NCSC

“254. At the commencement:

- (a) the trust assets of the NCSC become assets of the Commission; and
- (b) subject to any written declaration to the contrary made by the Minister, any liabilities that are associated with those assets become liabilities of the Commission.

Money of NCSC

“255. At the commencement, money held by the NCSC that:

- (a) was paid to the NCSC under section 26 of the NCSC Act; or
- (b) was received by the NCSC in accordance with section 27 of the NCSC Act;

becomes money of the Commonwealth and is to be paid into the Consolidated Revenue Fund.

Other assets and liabilities of NCSC

“256. (1) At the commencement, the remaining assets and liabilities of the NCSC become assets and liabilities of the Commonwealth.

“(2) The Minister may declare in writing that a specified asset or liability covered by subsection (1) does not become an asset or liability of the Commonwealth.

“(3) Where the Minister makes a declaration under subsection (2), the asset or liability concerned becomes an asset or liability of the Commission.

“(4) Where the Minister makes a declaration under subsection (2) in relation to an asset, any liabilities that are associated with the asset and are specified in the direction become liabilities of the Commission.

Effect of transfer of assets and liabilities to Commission

“257. The following provisions apply to assets or liabilities that become assets or liabilities of the Commission because of section 254 or 256:

- (a) an asset that was, immediately before the commencement of the section concerned, held by the NCSC on trust is, after that commencement, to be held by the Commission on trust and subject to the terms of the trust on which the asset was so held by the NCSC;
- (b) liabilities of the NCSC to make payments are, after the commencement of the section concerned, taken to be liabilities incurred by the Commission in the performance of its functions and the exercise of its powers.

NCSC instruments

“258. (1) An NCSC instrument continues to have effect after the commencement but, in its operation in relation to acts, transactions, matters or things done, entered into or occurring after that commencement, has effect as if a reference in the instrument to the NCSC were a reference to the appropriate new body.

“(2) For the purposes of the application of subsection (1) in relation to an NCSC instrument, the appropriate new body is:

- (a) in so far as the instrument relates to an asset or liability that has, because of section 254 or 256, become an asset or liability of the Commission—the Commission; and
- (b) otherwise—the Commonwealth.

Pending proceedings

“259. (1) Subject to this Law, where, immediately before the commencement, proceedings to which the NCSC was a party (not being co-operative scheme proceedings) were pending in any court or tribunal of this jurisdiction, the Commonwealth is, after the commencement, substituted for the NCSC as a party to the proceedings and has the same rights in the proceedings as the NCSC had.

“(2) A right of action in favour of or against the NCSC existing immediately before the commencement (not being a right of action arising under a co-operative scheme law) is, after the commencement, taken to be a right of action in favour of or against the Commonwealth.

“(3) In this section:

‘**co-operative scheme law**’ means a relevant previous law of this or any other jurisdiction;

‘**co-operative scheme proceedings**’ means proceedings arising under a co-operative scheme law, including proceedings relating to trust assets of the NCSC.

Certificates relating to assets, liabilities and instruments

“260. (1) An authorised officer may certify, in writing, that:

- (a) an asset or liability specified or described in the certificate became, because of section 254 or 256 or a corresponding law, an asset or liability of the Commission; or
- (b) an asset or liability specified or described in the certificate became, because of section 256 or a corresponding law, an asset or liability of the Commonwealth; or
- (c) an instrument specified or described in the certificate is an NCSC instrument.

“(2) A certificate under subsection (1) or a corresponding law is, in all courts and for all purposes, evidence of the matter stated in the certificate.

“(3) Where a document purports to be a certificate under subsection (1) or a corresponding law signed by a person purporting to be an authorised officer, judicial notice is to be taken of the signature of the person and of the fact that the person is or was an authorised officer.

Exemption from taxation

“261. An instrument is not subject to stamp duty or any other tax under an Act, or any other law, of this jurisdiction if an authorised officer certifies, in writing, that the instrument was made or given because of, or for a purpose connected with or arising out of, the operation of this Part or a corresponding law.

Pending proceedings etc. by or against the NCSC

“262. (1) Where, immediately before the commencement, co-operative scheme proceedings to which the NCSC was a party were pending in any court or tribunal, the Commission is, after the commencement, substituted for the NCSC as a party to the proceedings and has the same rights in the proceedings as the NCSC had.

“(2) A right of action in favour of or against the NCSC existing immediately before the commencement (being a right of action arising under a relevant previous law of this jurisdiction) is, after the commencement, taken to be a right of action in favour of or against the Commission.

“(3) In this section:

‘co-operative scheme proceedings’ means proceedings arising under a relevant previous law of this jurisdiction, including proceedings relating to trust assets of the NCSC.”.

SCHEDULE 1

Section 4

AMENDMENTS OF THE CORPORATIONS ACT 1989

Subsection 3 (3):

Omit “the Australian Capital” (second occurring), substitute “a”.

Subsection 4 (1) (definition of “Commonwealth law”):

Omit “Acts and unwritten laws of the Commonwealth”, substitute “written or unwritten laws of the Commonwealth, including laws about the exercise of prerogative powers, rights and privileges”.

Subsection 4 (1):

Insert:

“ ‘**ASC Law**’ and ‘**ASC Regulations**’ have the meaning provided for by Division 2 of Part 1 of the *Australian Securities Commission Act 1989*; ‘**Commonwealth administrative laws**’ means the provisions of the following Acts:

- (a) the *Administrative Appeals Tribunal Act 1975*;
- (b) the *Administrative Decisions (Judicial Review) Act 1977*;
- (c) the *Freedom of Information Act 1982*;
- (d) the *Ombudsman Act 1976*;
- (e) the *Privacy Act 1988*;

and the provisions of the regulations under those Acts;”.

Subsections 6 (3), (4), (5) and (6):

Omit the subsections, substitute:

“(3) To the extent that a provision of the Corporations Regulations of the Capital Territory is taken because of a particular application of subsection (2) to have effect, or to have had effect, before the day of notification of the regulations referred to in that subsection, the provision does not operate so as to:

- (a) affect a private person’s rights as at that day so as to disadvantage that person; or
- (b) impose a liability on a private person in respect of anything done or omitted to be done before that day.

“(4) In subsection (3):

‘**private person**’ means a person other than:

- (a) the Commonwealth, a State or the Capital Territory; or
- (b) an authority of the Commonwealth, of a State or of the Capital Territory.

“(5) Subsection (3) does not affect any other operation that the provision has because of subsection (2) or otherwise.

SCHEDULE 1—continued

“(6) Since subsections (3), (4) and (5) deal differently with the topic dealt with by subsection 48 (2) of the *Acts Interpretation Act 1901*, that subsection does not apply in relation to regulations under section 22 of this Act.”.

Before subsection 9 (1):

Insert:

“(1A) In this section:

‘reserved law’ means:

- (a) this Act; or
- (b) the Corporations Law, or Corporations Regulations, of the Capital Territory; or
- (c) the ASC Law, or ASC Regulations, of the Capital Territory.”.

Subsection 9 (1):

Omit all the words after “a provision of”, substitute “a reserved law.”.

Subsection 9 (2):

Omit all the words after “specified”, substitute “provision of a reserved law, or despite any provision of a specified reserved law.”.

Section 39:

Repeal the section, substitute:

Effect of Part

“39. (1) Divisions 2 and 2A have effect subject to this Act (in particular Part 9), the Corporations Law of the Capital Territory and the *Australian Securities Commission Act 1989*.

“(2) The provisions of:

- (a) subsections 42 (2), (3) and (4) and sections 43 and 44; and
 - (b) subsections 45B (2), (3) and (4) and sections 45C and 45D;
- and any other provision of this Act that has effect for the purposes of any of those provisions, extend to each external Territory.

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

Section 40:

Add at the end:

“(2) The purposes for which an offence is to be treated as mentioned in subsection (1) include, for example (but without limitation):

- (a) the investigation and prosecution of offences; and

SCHEDULE 1—continued

- (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences; and
- (c) proceedings relating to a matter referred to in paragraph (a) or (b); and
- (d) appeals and review relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c); and
- (e) the sentencing, punishment and release of persons convicted of offences; and
- (f) fines, penalties and forfeitures; and
- (g) liability to make reparation in connection with offences; and
- (h) proceeds of crime; and
- (i) spent convictions.”.

Section 41:

Repeal the section.

Subsection 42 (1):

Add at the end “and were not laws of that other jurisdiction”.

Subsection 42 (2):

Add at the end “and were not laws of that jurisdiction”.

Subsection 43 (4):

After “In performing” insert “or exercising”.

Subsection 45 (3):

Omit the subsection.

After section 45:

Insert:

“Division 2A—Administrative law

Object

“45A. The object of this Division is to further the object of this Part by providing that the Commonwealth administrative laws apply in the Capital Territory and the external Territories, in relation to the applicable provisions of a jurisdiction other than the Capital Territory, in the same way as if those provisions were laws of the Commonwealth.

Application of Commonwealth administrative laws in relation to applicable provisions of other jurisdictions

“45B. (1) The Commonwealth administrative laws apply, as laws for the government of the Capital Territory, in relation to any act, matter or thing arising under or in respect of the applicable provisions

SCHEDULE 1—continued

of another jurisdiction as if those provisions were laws of the Commonwealth and were not laws of that other jurisdiction.

“(2) The Commonwealth administrative laws that extend to an external Territory apply, as laws for the government of that Territory, in relation to any act, matter or thing arising under or in respect of the applicable provisions of a jurisdiction other than the Capital Territory as if those provisions were laws of the Commonwealth and were not laws of that jurisdiction.

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

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

Functions and powers under Commonwealth administrative laws as applying because of section 45B

“45C. (1) This section applies to a Commonwealth administrative law that confers on an officer or authority of the Commonwealth a function or power in relation to an act, matter or thing arising under or in respect of an applicable provision of the Capital Territory.

“(2) The Commonwealth administrative law, as applying because of subsection 45B(1) or (2), confers on that officer or authority the same function or power in relation to an act, matter or thing arising under or in respect of the corresponding applicable provision of a jurisdiction other than the Capital Territory.

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

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

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

“45D. A reference in a Commonwealth administrative law to a provision of that or another Commonwealth administrative law is taken, for the purposes of the first-mentioned law as applying because

SCHEDULE 1—continued

of subsection 45B (1) or (2), to be a reference to that provision as applying because of that subsection.

How acts etc. under applicable provisions of other jurisdictions are to be treated

“45E. (1) For the purposes of a law of the Commonwealth or of a law of the Capital Territory, an act, matter or thing arising under or in respect of the applicable provisions of a jurisdiction other than the Capital Territory:

- (a) is taken to be an act, matter or thing arising under or in respect of the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth; and
- (b) is taken not to be an act, matter or thing arising under or in respect of the laws of that jurisdiction.

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

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

Subsection 50 (1) (definition of “Full Court”):

After “State” (twice occurring) insert “or Territory”.

Subsection 50 (1):

Insert:

“ ‘Family Court’ means the Family Court of Australia;

‘State Family Court’, in relation to a State, means a court of that State to which section 41 of the *Family Law Act 1975* applies because of a Proclamation made under subsection 41 (2) of that Act;”.

Subparagraph 50 (2) (a) (vii):

Omit the subparagraph, substitute:

- “(vii) rules of court made by the Federal Court, the Supreme Court of the Capital Territory, or the Family Court, because of a provision of this Act; and
- (viii) rules of court applied by the Supreme Court, or a State Family Court, of a State when exercising jurisdiction conferred by this Division (including jurisdiction conferred by virtue of any previous application or applications of this subparagraph); and”.

After section 51:

Insert:

SCHEDULE 1—continued

Jurisdiction of Family Court and State Family Courts

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

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

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

Section 52:

Repeal the section, substitute:

Appeals

“52. (1) An appeal may not be instituted from a decision of the Federal Court to a court of a State or of the Capital Territory, or to the Family Court.

“(2) An appeal may not be instituted from a decision of a court of the Capital Territory to a court of a State or to the Family Court.

“(3) An appeal may not be instituted from a decision of the Supreme Court of a State to the Federal Court, to a court of the Capital Territory or of another State, to the Family Court or to a State Family Court of that State.

“(4) An appeal may not be instituted from a decision of the Family Court to the Federal Court or to a court of a State or of the Capital Territory.

“(5) An appeal may not be instituted from a decision of a State Family Court of a State to the Federal Court, to a court of the Capital Territory or of another State, or to the Supreme Court of that State.”.

Subsections 53 (3), (4) and (5):

Omit the subsections.

After section 53:

Insert:

Transfer of proceedings by Family Court and State Family Courts

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

“(2) If it appears to the first court that:

SCHEDULE 1—continued

- (a) the proceeding arises out of, or is related to, another proceeding pending in the Federal Court, or in the Supreme Court of a State or of the Capital Territory, and that the court in which the other proceeding is pending is the most appropriate court to determine the first-mentioned proceeding; or
- (b) having regard to:
 - (i) whether, in the first court's opinion, apart from this Division or a law of a State corresponding to this Division, the proceeding, or a substantial part of it, would have been incapable of being instituted in the first court; and
 - (ii) the extent to which, in the first court's opinion, the matters for determination in the proceeding are matters not within the first court's jurisdiction apart from this Division or such a law; and
 - (iii) the interests of justice;the Federal Court, or the Supreme Court of a State or of the Capital Territory, is the most appropriate court to determine the proceeding; or
- (c) it is otherwise in the interests of justice that the Federal Court, or the Supreme Court of a State or of the Capital Territory, determine the proceeding;

the first court must transfer the proceeding to the Federal Court, or to that Supreme Court, as the case may be.

“(3) Subject to subsection (2), if it appears to the first court that:

- (a) the proceeding arises out of, or is related to, another proceeding pending in another court having jurisdiction under section 51A in the matters for determination in the first-mentioned proceeding, and that the other court is the most appropriate court to determine the first-mentioned proceeding; or
- (b) it is otherwise in the interests of justice that the proceeding be determined by another court having jurisdiction under section 51A in the matters for determination in the proceeding;

the first court must transfer the proceeding to the other court.

“(4) If:

- (a) the first court transfers the proceeding to another court; and
- (b) it appears to the first court that:
 - (i) there is another proceeding pending in the first court that arises out of, or is related to, the first-mentioned proceeding; and
 - (ii) it is in the interests of justice that the other court also determine the other proceeding;

the first court must also transfer the other proceeding to the other court.

SCHEDULE 1—continued

Further matters for a court to consider when deciding whether to transfer a proceeding

“53B. In deciding whether to transfer under section 53 or 53A a proceeding or application, a court must have regard to:

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

Transfer may be made at any stage

“53C. A court may transfer under section 53 or 53A a proceeding or application:

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

Transfer of documents

“53D. Where, under section 53 or 53A, a court transfers a proceeding, or an application in a proceeding, to another court:

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

Subsection 54 (1):

Omit “and 61,”, substitute “, 61 and 61A,”.

Subsection 54 (3) (paragraph (a) of the definition of “relevant jurisdiction”):

After “Australia” insert “or the Family Court”.

Subsection 54 (3) (paragraph (b) of the definition of “relevant jurisdiction”):

- (a) After “Australia” insert “or the Family Court”.
- (b) After “Federal Court” (second occurring) insert “or the Family Court, as the case may be,”.

SCHEDULE 1—continued

Subsection 54 (3) (paragraph (d) of the definition of “relevant jurisdiction”):

After “State” insert “, or a State Family Court,”.

Subsection 56 (2):

After “Federal Court” insert “, the Family Court”.

Subsection 59 (1):

After “Federal Court” insert “, the Family Court”.

Paragraph 59 (2) (a):

Omit “or the Supreme Court of the Capital Territory or of a State”, substitute “, the Family Court, the Supreme Court of the Capital Territory or of a State or a State Family Court”.

Subsection 59 (2):

Omit “or the Supreme Court of the Capital Territory” (second occurring), substitute “, the Family Court, the Supreme Court of the Capital Territory or of that State or that State Family Court”.

After section 61:

Insert in Division 1 of Part 9:

Rules of the Family Court

“61A. (1) The power to make rules of court conferred by section 123 of the *Family Law Act 1975* extends to making rules of court, not inconsistent with the Corporations Law of the Capital Territory:

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

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

“(3) When a State Family Court of a State is exercising jurisdiction with respect to matters arising under the Corporations Law of the Capital Territory, being jurisdiction conferred by this Division, that

SCHEDULE 1—continued

Court must apply the rules of court made under the law of the State corresponding to subsection (1), with such alterations as are necessary.

“(4) In this section:

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

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

Paragraphs 64 (1) (a) and (b):

Omit the paragraphs, substitute:

“(a) with respect to:

(i) the summary conviction; or

(ii) the examination and commitment for trial on indictment;
or

(iii) the trial and conviction on indictment;

of offenders or persons charged with offences against the laws of the State or Capital Territory, and with respect to:

(iv) their sentencing, punishment and release; or

(v) their liability to make reparation in connection with their offences; or

(vi) the forfeiture of property in connection with their offences; or

(vii) the proceeds of their crimes; and

(b) with respect to the hearing and determination of:

(i) proceedings connected with; or

(ii) appeals arising out of; or

(iii) appeals arising out of proceedings connected with;

any such trial or conviction or any matter of a kind referred to in subparagraph (a) (iv), (v), (vi) or (vii);”.

Paragraph 76 (1) (a):

Omit “those laws commenced”, substitute “the commencement of this section”.

Subsection 80 (1):

Omit the subsection, substitute:

“(1) In this section:

‘instrument’ has the same meaning as in section 14, but does not include:

(a) a Co-operative Scheme Act; or

(b) regulations under such an Act or under this Act; or

(c) a national scheme law, or national scheme regulations, of the Capital Territory;

SCHEDULE 1—continued

‘national scheme regulations of the Capital Territory’ means the Corporations Regulations, or the ASC Regulations, of the Capital Territory.”.

Subsections 80 (2) and (3):

After “(4)” insert “and to any regulations in force under subsection (6)”.

Subsection 80 (3):

Omit “regulations made under national scheme laws”, substitute “national scheme regulations”.

Subsection 80 (4):

- (a) Omit “A”, substitute “Subject to any regulations in force under subsection (6), a”.
- (b) Omit all the words after “national scheme law”, substitute “, or of national scheme regulations, of the Capital Territory.”.

After subsection 80 (4):

Insert:

“(4A) Subject to any regulations in force under subsection (6), a reference in an instrument to the National Companies and Securities Commission is to be taken to include a reference to the Australian Securities Commission.”.

Paragraph 80 (5) (b):

Omit “regulations under national scheme laws”, substitute “national scheme regulations”.

Subsection 80 (6):

Omit the subsection, substitute:

“(6) Regulations under section 73:

- (a) may declare that subsection (2), (3), (4) or (4A) of this section does not apply in relation to prescribed references in prescribed instruments; and
- (b) may declare that subsection (2), (3), (4) or (4A) of this section has effect in relation to prescribed references in prescribed instruments as if, in that subsection, the words ‘be taken to be’ were substituted for the words ‘be taken to include’.”.

SCHEDULE 2

Section 6

**MISCELLANEOUS SUBSTANTIVE AMENDMENTS OF THE
CORPORATIONS LAW**

Paragraph 8 (5) (c):

Omit “, 2.2 or 3.5,”, substitute “or 2.2, Part 3.5 (except section 273),”.

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

After “section 1209” insert “or a corresponding previous law”.

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

After “in” insert “the definition of ‘financial year’ and”.

Section 9 (definition of “financial statements”):

After “corresponding” insert “previous”.

Section 9 (definition of “prescribed interest”):

Omit all the words after paragraph (b), substitute:
“but does not include:

- (c) a right or interest, or a right or interest included in a class or kind of rights or interests, declared by the regulations to be an exempt right or interest, or a class or kind of exempt rights or interests, for the purposes of Chapter 7; or
- (d) an exempt prescribed interest in relation to this jurisdiction (as defined by section 68A);”.

Section 9 (definition of “securities law”):

After “7” insert “or a corresponding previous law”.

Section 9 (definition of “person”):

Omit the definition, substitute:
“‘person’ has a meaning affected by section 85A;”.

Section 9:

Insert:
“‘exempt prescribed interest’ has the meaning given by section 68A;”.
“‘individual’ means a natural person;”.

After paragraph 66 (3) (a):

Insert:
“(ba) it is an offer of securities for purchase, or an invitation to buy securities, and the amount payable by each person to

SCHEDULE 2—continued

whom the offer is made or the invitation is issued is at least \$500,000; or”.

Subsection 66A (1):

Add at the end:

“; (e) an association, society, club, institution or body incorporated under the *Associations Incorporation Act 1984* of New South Wales.”.

After subsection 66A (1):

Insert:

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

- (a) an incorporated association within the meaning of the *Associations Incorporation Act 1981* of Victoria;
- (b) a building society within the meaning of the *Building Societies Act 1986* of Victoria;
- (c) a society within the meaning of the *Co-operation Act 1981* of Victoria, a foreign society registered under Part XI of that Act and a society in respect of which there is an exemption under subsection 54 (3) of that Act;
- (d) a co-operative housing society within the meaning of the *Co-operative Housing Societies Act 1958* of Victoria;
- (e) a friendly society within the meaning of the *Friendly Societies Act 1986* of Victoria.”.

Subsection 66A (2):

(a) Omit “*The*” (wherever occurring), substitute “the”.

(b) Omit paragraph (b), substitute:

“(b) a building society or foreign building society within the meaning of the *Building Societies Act 1985-1990* of Queensland;”.

(c) Add at the end:

“; (f) a credit society, a foreign credit society, an association of credit societies or a union of associations of credit societies registered under the *Credit Societies Act 1986* of Queensland;

(g) a friendly society or foreign friendly society within the meaning of the *Friendly Societies Act 1991* of Queensland.”.

Paragraph 66A (4) (c):

Omit the paragraph, substitute:

“(c) a co-operative company registered under:

- (i) Part VI of the *Companies (Co-operative) Act 1943* of Western Australia; or

SCHEDULE 2—continued

- (ii) a previous law of Western Australia that corresponds to that Part;”.

Paragraph 66A (4) (e):

Omit “1895”, substitute “1987”.

After section 68:

Insert:

Exempt prescribed interests in relation to a jurisdiction

“68A. Each of the following is an exempt prescribed interest in relation to Western Australia:

- (a) a participation interest, or a right of the kind referred to in paragraph (b) of the definition of ‘prescribed interest’ in section 9, that a body of the kind referred to in paragraph 66A (4) (c) has issued, or proposes to issue, to a member of the body;
- (b) a participation interest, or a right of the kind referred to in paragraph (b) of the definition of ‘prescribed interest’ in section 9, in so far as a body of the kind referred to in paragraph 66A (4) (c):
 - (i) offers the interest or right to a member of the body for subscription or purchase; or
 - (ii) invites such a member to subscribe for or buy the interest or right;
- (c) a participation interest, or a right of the kind referred to in paragraph (b) of the definition of ‘prescribed interest’ in section 9, in so far as:
 - (i) a body of the kind referred to in paragraph 66A (4) (c):
 - (A) offers the interest or right, to a person other than a member of the body, for subscription or purchase; or
 - (B) invites a person other than such a member to subscribe for or buy the interest or right; and
 - (ii) the terms or circumstances of the offer or invitation are such that, if the offer, or an offer that the person makes because of the invitation, as the case may be, is accepted, the acceptance will result in the person becoming a member of the body.”.

After section 85:

Insert:

SCHEDULE 2—continued

Person etc.

“85A. In this law, expressions used to denote persons generally (such as ‘person’, ‘party’, ‘someone’, ‘anyone’, ‘no-one’, ‘one’, ‘another’ and ‘whoever’), include a body politic or corporate as well as an individual.”.

Paragraph 100 (d):

Omit all the words after “accompanied by”, substitute “a written statement, signed by an officer of the body, to the effect that the person who occupies those premises has consented in writing to the address being specified in the notice and has not withdrawn that consent.”.

Section 100:

Add at the end:

“(2) The Commission may require a person who has lodged a statement under paragraph (1) (d) to produce to the Commission the consent referred to in the statement.”.

After section 109D:

Insert:

Exercise of certain powers between passing and commencing of amendments of Law

“109DA. (1) This section applies where an Act (in this section referred to as the Act concerned), being:

- (a) an Act enacted on or after the date of commencement of this section that is not to come into operation immediately upon its enactment; or
- (b) an Act enacted before the date of commencement of this section that did not come into operation on or before that date;

results in the amendment of this Law so that this Law, as amended, will confer power to make an appointment or to make an instrument of a legislative or administrative character (including rules, regulations or by-laws).

“(2) Unless the contrary intention appears, the power so conferred may be exercised, and anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment or instrument into effect, before the Act concerned comes into operation as if it had come into operation.

“(3) An appointment or instrument made under subsection (2) or, if the instrument contains a number of provisions, each of those provisions, takes effect:

- (a) on the day on which the Act concerned comes into operation;
or

SCHEDULE 2—continued

- (b) on the day on which the appointment, instrument or provision, as the case may be, would have taken effect if the Act concerned had been in operation when the appointment or instrument was made;

whichever is later.

“(4) Where a provision of this Law is to come into operation on a date to be fixed by a Proclamation or other instrument, the Proclamation or other instrument may be made and published at any time after the enactment of the originating provision.

“(5) In subsections (1), (2), (3) and (4):

‘Act’ includes a provision or provisions of an Act;

‘Law’ includes a provision or provisions of this Law.

“(6) This section applies in relation to a regulation that results in the amendment of the Corporations Regulations so that those Regulations, as amended, will confer power to make an appointment or to make an instrument of a legislative or administrative character, and so applies as if:

- (a) the first-mentioned regulation were an Act; and
- (b) the Corporations Regulations were this Law.”.

Section 109P:

Omit “are not taken to imply that references in this Law to persons do not also include references to”, substitute “do not imply that expressions in this Law of the kind mentioned in section 85A do not include”.

Section 109Q:

Add at the end:

“(2) For the purposes of this section, none of the following is an Act providing for the administration or government of a Territory:

- (a) the *Corporations Act 1989*;
- (b) the Corporations Law of the Capital Territory;
- (c) the *Australian Securities Commission Act 1989*.”.

After section 109ZB:

Insert:

Power to make instruments etc. may be exercised by reference to classes

“109ZBA. Where this Law confers upon an authority power to make an instrument (including rules, regulations or by-laws) or a resolution:

- (a) specifying, declaring or prescribing a matter or thing; or

SCHEDULE 2—continued

(b) doing anything in relation to a matter or thing;
then, in exercising the power, the authority may identify the matter or thing by referring to a class or classes of matters or things.”.

After section 111G:

Insert in Part 1.3:

Effect of certain instruments made before 1 January 1991

“111H. (1) This section applies where:

- (a) before 1 January 1991, a Minister made an instrument that purported to be an application order specifying a matter for the purposes of a provision of this Law, or for the purposes of a provision of the Corporations Law of each of 2 or more jurisdictions including this jurisdiction; and
- (b) the instrument was expressed to take effect on 1 January 1991; and
- (c) if a law of this jurisdiction in force at the commencement of this section provides that an order under section 111A may only be made with the consent of the Minister for this jurisdiction—the person who was, when the instrument was made, the Minister for this jurisdiction within the meaning of that law as so in force, consented to the making of the instrument; and
- (d) a notice of the instrument having been made was published in the *Gazette*.

“(2) The instrument has effect, and is taken always to have had effect, as an application order duly made under section 111A.

“(3) The requirements of this Division are taken to have been complied with in relation to the instrument.

“(4) The instrument is taken to have taken effect on 1 January 1991.

“(5) The effect that the instrument has, or is taken to have had, because of this section does not prejudice any other effect of the instrument, whether under a law corresponding to this section or otherwise.”.

Subsection 186 (2):

Add at the end “or a recognised company”.

Subsection 187 (1):

Omit all the words before “lodge a return”, substitute “Within one month after making an allotment of its shares, a company must”.

SCHEDULE 2—continued

Subsection 187 (6):

Omit all the words after “take”, substitute “are to be disregarded”.

After subsection 219 (2):

Insert:

“(2A) On every public document of a company that, when it is signed, issued or published:

(a) is intended to be lodged; or

(b) is required by or under this Law or the ASC Law to be lodged; the company must, unless its registration number is part of its name, set out in legible characters, after the company’s name where it first appears, the expression ‘Australian Company Number’ and the company’s registration number.”.

Subsection 219 (3):

Omit “the company shall”, substitute “after 31 December 1991, the company must”.

Subsection 219 (4):

After “(2)” insert “, (2A)”.

Paragraph 219 (5) (b):

After “(2)” insert “, (2A)”.

Paragraphs 242 (7) (a) and (b):

Add at the end “and”.

Subsection 242 (7):

Add at the end:

“; and (e) within 1 month after making, because of a change in:

(i) the present Christian or given name or surname;
or

(ii) the usual residential address;

of a director, principal executive officer or secretary of the company, a change in the particulars specified in the register in relation to that director, principal executive officer or secretary—a return in the prescribed form notifying the Commission of the change in that name or address and containing those particulars as changed.”.

After section 242:

Insert:

SCHEDULE 2—continued

Retiring directors to notify Commission

“242A. (1) This section applies where, at the end of a particular day:

- (a) a person (in this section called the ‘**retiring director**’) who, at the start of that day, was the only director, or was one of the only 2 directors, of a company is no longer a director of the company; or
- (b) persons (in this section called the ‘**retiring directors**’) who, at the start of that day, together made up at least half of the directors of a company are no longer directors of the company.

“(2) If paragraph (1) (a) applies, the retiring director must, within 1 month after that day, lodge a written notice, in the prescribed form, stating that he or she ceased on that day to be a director of the company.

“(3) If paragraph (1) (b) applies, each of the retiring directors must, within 1 month after that day, lodge a written notice, in the prescribed form, setting out the names of all the retiring directors and stating that they ceased on that day to be directors of the company.

“(4) However, if one of the retiring directors complies with subsection (3), no-one else needs to do so.

“(5) Nothing in this section affects the company’s obligations under subsection 242 (7).”.

After section 276:

Insert:

Charges of recognised companies and certain foreign companies

“276A. Part 3.5 (except section 276A) of the Corporations Law of another jurisdiction applies in and in relation to this jurisdiction:

- (a) in relation to property (within the meaning of that Part) of a body corporate that, because of the definition of ‘company’ in section 9 of that Law, is a company for the purposes of section 9 of that Law; or
- (b) in relation to property in Australia or an external Territory of a foreign company that is registered under Division 2 of Part 4.1 of that Law.”.

Subsection 289 (2):

After “corresponding” insert “previous”.

Subsection 304 (7):

After “corresponding” insert “previous”.

SCHEDULE 2—continued

Subsection 305 (7):

After “corresponding” insert “previous”.

After subsection 362 (3):

Insert:

“(3A) On every public document of the body that, when it is signed, issued or published:

(a) is intended to be lodged; or

(b) is required by or under this Law or the ASC Law to be lodged; the body must set out in legible characters, after the body’s name where it first appears, the expression ‘Australian Registered Body Number’ and the body’s registration number.”.

Subsection 362 (4):

(a) Omit “the body shall”, substitute “after 31 December 1991, the body must”.

(b) Omit “when”, substitute “where”.

Subsection 362 (5):

Before “(4)” insert “(3A) or”.

Subsection 362 (6):

After “(2)” insert “, (3A)”.

Subsection 383 (10):

After “corresponding” insert “previous”.

Subsection 414 (15):

After “corresponding” insert “previous”.

Paragraphs 530 (a) and (b):

Before “law” insert “previous”.

Section 750 (clause 12 of Part B):

After “corresponding” insert “previous”.

Section 750 (clause 11 of Part D):

After “corresponding” insert “previous”.

Subsection 770 (3):

Before “law” insert “previous”.

Paragraph 911 (2) (b):

After “corresponding” insert “previous”.

SCHEDULE 2—continued

Subsection 988 (7):

After “corresponding” (first occurring) insert “previous”.

Paragraph 1015 (1) (a):

After “corresponding” insert “previous”.

Subsection 1065 (3):

Omit “previous corresponding”, substitute “corresponding previous”.

Before subsection 1073 (1):

Insert:

“(1A) A person must not contravene a covenant contained, or taken to be contained, in a deed that is, or has at any time been, an approved deed.

“(1B) A person who contravenes subsection (1A) is not guilty of an offence.”.

Paragraphs 1224 (1) (b) and (c):

After “corresponding” insert “previous”.

Paragraph 1243 (2) (b):

After “corresponding” insert “previous”.

Paragraph 1265 (3) (b):

After “corresponding” insert “previous”.

Paragraph 1305 (1) (b):

Before “law” insert “previous”.

After section 1313B:

Insert:

Offences committed partly before and partly after the commencement of this Law

“1313C. (1) Where:

- (a) a person did or omitted to do an act before the commencement of this Law and did or omitted to do another act after the commencement of this Law; and
- (b) if the person had done or omitted to do both acts after the commencement of this Law, the person would have been guilty of an offence against a provision of this Law; and
- (c) if the person had done or omitted to do both acts before the commencement of this Law, the person would have been guilty of an offence under the corresponding provision of a previous law;

SCHEDULE 2—continued

the person is guilty of an offence against the provision of this Law referred to in paragraph (b).

“(2) A person is not liable to be punished for an offence against a provision of this Law constituted by the acts or omissions referred to in subsection (1) if the person has been punished for an offence under the corresponding provision of a previous law constituted by the same acts and omissions.”.

Paragraphs 1317C (a) and (b):

Add at the end “or”.

Paragraph 1317C (c):

Omit the paragraph.

Section 1317C:

Add at the end:

“; or (f) a decision by the Commission to make an application under subsection 597 (2) for an order under section 597.”.

Subsection 1335 (1):

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

(b) Omit “under this Law”.

SCHEDULE 3

Section 7

**AMENDMENTS OF THE CORPORATIONS LAW:
CONSOLIDATED ACCOUNTS OF A COMPANY
AND THE ENTITIES IT CONTROLS**

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

Omit “74,”.

Section 9 (definition of “financial year”):

Omit all the words after the end of paragraph (f), substitute:

“and:

- (g) in relation to an entity within the meaning of Parts 3.6 and 3.7 that is not a body corporate—means a period in respect of which:
 - (i) a profit and loss account of the entity was made out; or
 - (ii) a law of the Commonwealth or of a State or Territory required a profit and loss account of the entity to be made out; and
- (h) in relation to a deed within the meaning of Division 5 of Part 7.12—means a period of 12 months ending on 30 June or on such other day as the deed specifies instead of 30 June;”.

Section 9 (paragraph (b) of the definition of “profit or loss”):

Omit the paragraph, substitute:

- “(b) in relation to an entity within the meaning of Parts 3.6 and 3.7—the profit or loss resulting from operations of the entity; and
- (c) in relation to 2 or more such entities, or in relation to an economic entity, within the meaning of Parts 3.6 and 3.7, constituted by 2 or more such entities—the profit or loss resulting from operations of those entities;”.

Section 9 (definitions of “accounts”, “executive officer”, “financial statements” and “officer”):

Omit the definitions, substitute:

“‘accounts’, in relation to an entity within the meaning of Parts 3.6 and 3.7, means, in this Part and those Parts, all of the following:

- (a) a profit and loss account of the entity for a period;
- (b) a balance-sheet of the entity as at the end of that period;
- (c) statements, reports and notes, other than a directors’ report or an auditor’s report, attached to, or intending to be read with, that profit and loss account or balance-sheet;

SCHEDULE 3—continued

‘executive officer’, in relation to:

- (a) a body corporate; or
- (b) an entity within the meaning of Parts 3.6 and 3.7;

means a person, by whatever name called and whether or not a director of the body or entity, who is concerned, or takes part, in the management of the body or entity;

‘financial statements’ means:

- (a) in relation to a financial year of a body corporate—the accounts, and the consolidated accounts or group accounts (if any), of the body that Part 3.6 or a corresponding previous law required to be made out in relation to that financial year; and
- (b) in relation to a body corporate (but not in relation to a financial year of a body corporate)—the body’s financial statements (as defined by paragraph (a)) for a financial year;

‘officer’ has the meaning given by section 82A;”.

Section 9 (definitions of “group”, “group accounts” and “group holding company”):

Omit the definitions.

Section 9:

Insert:

“ **‘chief entity’** has the meaning given by subsection 295 (2);

‘consolidated accounts’, in relation to a company, means all of the following:

- (a) a consolidated profit and loss account that section 295A requires to be made out in relation to a financial year of the company;
- (b) a consolidated balance-sheet that section 295B requires to be made out in relation to that financial year;
- (c) statements, reports and notes, other than a directors’ report or an auditor’s report, attached to, or intended to be read with, that consolidated profit and loss account or consolidated balance-sheet;

but does not include accounts that, because of paragraph 409A (1) (b), are attached to that consolidated profit and loss account or consolidated balance-sheet;

‘control’, in relation to an entity, has in Parts 3.6 and 3.7 the meaning given by section 294B;

‘economic entity’, in Parts 3.6 and 3.7, has the meaning given by section 294A;

‘entity’, in Parts 3.6 and 3.7, has the meaning given by section 294A;

‘parent entity’, in Parts 3.6 and 3.7, has the meaning given by section 294A;

SCHEDULE 3—continued

‘reporting entity’, in Parts 3.6 and 3.7, has the meaning given by section 294A.”.

Subsection 62 (1):

- (a) After “body corporate” insert “, or an entity within the meaning of Parts 3.6 and 3.7,”.
- (b) After “the body” insert “or entity”.

Paragraphs 62 (1) (a) to (h), inclusive:

Add at the end “and”.

After paragraph 62 (1) (k):

Insert:

“; and (1) in the case of such an entity that is not a body corporate—
did no act prescribed for the purposes of this paragraph.”.

Subsection 62 (2):

- (a) Omit “shall not be taken”, substitute “, or an entity within the meaning of Parts 3.6 and 3.7, is not taken”.
- (b) After “the body” insert “or entity”.

Paragraph 62 (2) (a):

After “body’s” insert “or entity’s”.

Paragraphs 62 (2) (c) and (d):

After “body” (wherever occurring) insert “or entity”.

Subsection 62 (3):

- (a) After “body corporate” insert “, or an entity within the meaning of Parts 3.6 and 3.7,”.
- (b) After “body” (second occurring) insert “or entity”.

Section 74:

Repeal the section.

After section 82:

Insert:

Officers of bodies corporate and other entities

“82A. (1) Subject to subsection (2), **‘officer’**, in relation to:

- (a) a body corporate; or
- (b) an entity within the meaning of Parts 3.6 and 3.7;

includes:

- (c) a director, secretary, executive officer or employee of the body or entity; and

SCHEDULE 3—continued

- (d) a receiver and manager, appointed under a power contained in an instrument, of property of the body or entity; and
- (e) an official manager, or deputy official manager, of the body or entity; and
- (f) a liquidator of the body or entity appointed in a voluntary winding up of the body or entity; and
- (g) a trustee or other person administering a compromise or arrangement made between the body or entity and any other person or persons.

“(2) None of the following is an officer of a body corporate, or of an entity within the meaning of Parts 3.6 and 3.7:

- (a) a receiver who is not also a manager;
- (b) a receiver and manager appointed by a court;
- (c) a liquidator appointed by a court.”.

Section 287:

Repeal the section, substitute:

Board may require copy of company’s financial statements

“287. Where an auditor of a company has sent to the Board under section 332A a copy of a report on the company’s financial statements for a financial year, the Board may, by written notice given to the company, require it to give to the Board, within 7 days after the notice is given, a copy of the financial statements.”.

Heading to Division 3 of Part 3.6:

Omit the heading, substitute:

“Division 3—Financial years of a company and the entities it controls”.

Subsections 290 (1), (2) and (3):

Omit the subsections, substitute:

“(1) Subject to this section, a company’s directors must do whatever is necessary to ensure that the financial year of each entity that the company controls coincides with the financial year of the company.

“(2) Subsection (1) must be complied with in relation to a particular entity within 12 months after:

- (a) if the entity was a subsidiary of the company at the commencement of section 7 of the *Corporations Legislation Amendment Act 1991*—the entity became such a subsidiary; or
- (b) if paragraph (a) does not apply but the company controlled the entity at that commencement—that commencement; or
- (c) otherwise—the company began to control the entity.

SCHEDULE 3—continued

“(3) Subject to any order by the Commission under this section, where the financial year of a company coincides with the financial year of an entity that the company controls, the company’s directors must do whatever is necessary to prevent either financial year from being changed in such a way that those financial years no longer coincide.”.

Subsection 290 (4):

- (a) Omit “holding” (wherever occurring).
- (b) Omit “any of its subsidiaries”, substitute “an entity that the company controls”.
- (c) Omit “the subsidiary”, substitute “the entity”.

Subsections 290 (5) and (6):

Omit “holding” (wherever occurring).

Subsection 290 (6):

Omit “and of any related corporation,”, substitute “of any related body corporate, or of any entity that the company controls, or has controlled, during a financial year of the company,”.

Subsections 290 (8), (9) and (10):

Omit “holding” (wherever occurring).

Subsection 290 (10):

Omit “a subsidiary”, substitute “an entity”.

Paragraphs 290 (10) (a) and (b):

Omit “the subsidiary”, substitute “the entity”.

Subsection 290 (11):

Add at the end “or of that Act as it applies as a law of this jurisdiction”.

Subsection 290 (12):

- (a) Omit “a subsidiary of a holding company”, substitute “an entity controlled by a company”.
- (b) Omit “holding” (second occurring).
- (c) Omit “the subsidiary”, substitute “the entity”.

Subsection 290 (13):

- (a) Omit “holding” (wherever occurring).
- (b) Omit “a subsidiary”, substitute “an entity”.
- (c) Omit “the subsidiary”, substitute “the entity”.

SCHEDULE 3—continued

Paragraph 290 (14) (c):

Omit “holding”.

Heading to Division 4 of Part 3.6:

Omit the heading, substitute:

“Division 4—Accounts of a company”.

Section 295:

Repeal the section, substitute:

“Division 4A—Consolidated accounts of a company and the entities it controls

Entities, parent entities, economic entities and reporting entities

“294A. (1) The regulations may define the expression ‘entity’, ‘parent entity’, ‘economic entity’, or ‘reporting entity’, for the purposes of this Part and Part 3.7 as they apply in relation to a company in relation to prescribed financial years.

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

“(3) Subject to subsection (2), where an accounting standard:

- (a) deals with the making out of consolidated accounts by companies; and
- (b) applies to a financial year of a company; and
- (c) defines the expression ‘entity’, ‘parent entity’, ‘economic entity’ or ‘reporting entity’;

the definition in the accounting standard also has effect for the purposes of this Part and Part 3.7 as they apply in relation to the company in relation to that financial year.

“(4) Despite subsections (2) and (3), each of the following is an entity for the purposes of this Part and Part 3.7:

- (a) a company;
- (b) a recognised company;
- (c) any other corporation;
- (d) a partnership;
- (e) an unincorporated body;
- (f) a person in a capacity as trustee of a trust that has only one trustee.

“(5) Despite subsections (2) and (3), where a trust has 2 or more trustees, those trustees, in their capacity as such, together constitute an entity.

SCHEDULE 3—continued

When one entity controls another

“294B. (1) The regulations may make provision for or in relation to determining, for the purposes of this Part and Part 3.7 as they apply in relation to a company in relation to prescribed financial years, whether or not an entity controls another entity.

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

“(3) Subject to subsection (2), where, because of a provision of an accounting standard that:

(a) deals with the making out of consolidated accounts by companies; and

(b) applies to a financial year of a company;

an entity is taken for the purposes of that accounting standard to control another entity, the first-mentioned entity is also taken to control the other entity for the purposes of this Part and Part 3.7 as they apply in relation to the company in relation to that financial year.

Application of Division

“295. (1) The later provisions of this Division apply where a company:

(a) controlled another entity during all or part of a financial year of the company; or

(b) controls another entity at the end of a financial year of the company;

and, for the purposes of this Part as it applies in relation to the company in relation to that financial year, the company is the parent entity in an economic entity that is a reporting entity.

“(2) The company is a chief entity in relation to that financial year for the purposes of this Law.

Consolidated profit and loss account

“295A. (1) The company’s directors must cause to be made out, before the deadline after that financial year, a consolidated profit and loss account that gives a true and fair view of the profit or loss, for that financial year, of the economic entity constituted by the company and the entities it controlled from time to time during that financial year (even if the company did not control the same entities throughout that financial year).

“(2) To avoid doubt, if the company did not control a particular entity throughout that financial year, the consolidated profit and loss account must relate to the entity’s profit or loss for each part of that financial year throughout which the company controlled the entity, but not to the entity’s profit or loss for any other part.

SCHEDULE 3—continued

Consolidated balance-sheet

“295B. The company’s directors must cause to be made out, before the deadline after that financial year, a consolidated balance-sheet, as at the year’s end, that gives a true and fair view of the state of affairs, as at the year’s end, of the economic entity constituted by the company and the entities that it controls at the year’s end.

“Division 4B—Requirements for financial statements”.

Subsection 296 (2):

Omit “332”, substitute “331A”.

Subsection 297 (2):

Omit the subsection.

Subsection 298 (2):

Omit the subsection.

Section 299:

Repeal the section, substitute:

Additional information to give a true and fair view

“299. (1) If a company’s financial statements for a financial year, as prepared in accordance with sections 297 and 298, would not otherwise give a true and fair view of the matters with which this Part requires them to deal, the directors must add such information and explanations as will give a true and fair view of those matters.

“(2) Nothing in subsection (1), or in section 297 or 298, limits the generality of a provision of this Division or of Division 4 or 4A, other than this section or section 297 or 298.”.

Subsection 301 (6):

Omit the subsection.

Subsection 301 (7):

(a) Before “include” insert “in relation to the accounts”.

(b) Omit “in relation”.

Subsection 301 (8):

Omit the subsection.

Subsections 302 (1), (2) and (3):

Omit the subsections, substitute:

“(1) Where Division 4A requires consolidated accounts to be made out in relation to a financial year of a company, the company’s directors

SCHEDULE 3—continued

must cause to be attached to them a statement that complies with this section and subsection 303 (2).

“(2) The statement must state whether or not, in the directors’ opinion, the consolidated accounts:

- (a) have been made out in accordance with Divisions 4A and 4B; and
- (b) in particular, give a true and fair view of the matters with which they deal.

“(3) In forming their opinion for the purposes of subsection (2), the directors must have regard to circumstances that have arisen, and information that has become available, since the end of that financial year and that would, if the consolidated accounts had been made out when the statement is made, have affected the determination of an amount or a particular in them.”.

Subsection 302 (4):

Omit “group” (wherever occurring), substitute “consolidated”.

Subsection 302 (5):

Omit the subsection.

Subsection 302 (6):

- (a) Before “include” insert “in relation to the consolidated accounts”.
- (b) Omit “in relation”.

Subsection 302 (7):

Omit the subsection.

Subsection 302 (8):

Omit “group”, substitute “consolidated”.

Paragraph 302 (9) (b):

Omit the paragraph, substitute:

- “(b) each entity that the company controlled during all or part of, or at the end of, the financial year has been dormant throughout so much of each period during which the company controlled it as falls within the period referred to in paragraph (a);”.

Subsection 302 (9):

Omit “each such body corporate”, substitute “each such entity”.

SCHEDULE 3—continued

Subsection 304 (1):

Omit “group holding company at the end of”, substitute “chief entity in relation to”.

Subsection 305 (1):

Omit “group holding company at the end of”, substitute “chief entity in relation to”.

Paragraph 305 (2) (b):

Omit the paragraph, substitute:

- “(b) each entity that the company controls during all or part of, or at the end of, the financial year is dormant throughout so much of each period during which the company controls it as falls within the period referred to in paragraph (a).”.

Subsections 305 (4) and (5):

Omit the subsections, substitute:

“(4) The report must state:

- (a) the principal activities, during the financial year, of the economic entity constituted by the company and the entities it controlled from time to time during the financial year (even if the company did not control the same entities throughout the financial year); and
- (b) any significant change in the nature of those activities that occurred during the financial year.

“(5) The report must state the net amount of the consolidated profit or loss, for the financial year, of the economic entity referred to in paragraph (4) (a), after:

- (a) provision for income tax; and
- (b) deducting any amounts that should properly be attributed to an entity that is neither the company nor an entity that the company controlled at the relevant time.”.

Subsections 305 (8), (9), (10) and (11):

Omit the subsections, substitute:

“(8) The report must contain a review of:

- (a) the operations, during the financial year, of the economic entity referred to in paragraph (4) (a); and
- (b) the results of those operations.

“(9) The report must give particulars of any significant change in the state of affairs of the economic entity referred to in paragraph (4) (a) that occurred during the financial year.

SCHEDULE 3—continued

“(9A) To avoid doubt, if the company controlled a particular entity throughout some, but not all, of the financial year, the report need not relate to the entity’s activities, operations or state of affairs during a period throughout which the company did not control the entity, or to the results of such operations.

“(10) The report must give particulars of any matter or circumstance that has arisen since the end of the financial year and has significantly affected, or may significantly affect:

- (a) the operations, in financial years after the financial year, of the economic entity constituted by the company and the entities it controls from time to time; or
- (b) the results of those operations; or
- (c) the state of affairs, in financial years after the financial year, of that economic entity.

“(11) The report must refer to:

- (a) likely developments in the operations referred to in paragraph (10) (a); and
- (b) the expected results of those operations.”.

Subsection 308 (2):

Omit the subsection, substitute:

“(2) If subsection 305 (1) applies, this section applies in relation to each body corporate that:

- (a) is the company or a body corporate that the company controlled at the end of the financial year; and
- (b) has at any time granted to a person an option to have shares in the body issued to the person.”.

Subsection 309 (1):

Omit the subsection, substitute:

“(1) The report must set out whether or not, during or since the financial year, a director has received, or has become entitled to receive, a benefit because of a contract that:

- (a) the director; or
 - (b) a firm of which the director is a member; or
 - (c) an entity in which the director has a substantial financial interest;
- has made (during that or any other financial year) with:
- (d) the company; or
 - (e) an entity that the company controlled, or a body corporate that was related to the company, when the contract was made or when the director received, or became entitled to receive, the benefit (if any).”.

SCHEDULE 3—continued

Section 309:

Add at the end:

“(3) Subsections (1) and (2) do not apply to:

- (a) a benefit included in the aggregate amount of emoluments received, or due and receivable, by directors shown, in accordance with the regulations in force for the purposes of section 297, in the company’s financial statements for the financial year; or
- (b) the fixed salary of a full-time employee of:
 - (i) the company; or
 - (ii) an entity that the company controlled, or a body corporate that was related to the company, at a relevant time.”.

Section 311:

After “accounts” (twice occurring) insert “, consolidated accounts”.

Subsection 312 (1):

- (a) Omit “group holding company at the end of”, substitute “chief entity in relation to”.
- (b) Omit “group accounts referred to in section 295,”, substitute “consolidated accounts referred to in Division 4A,”.
- (c) Omit “, in relation to each subsidiary,”, substitute “about each entity that the company controlled during all or part of, or at the end of, the financial year”.

Paragraph 312 (1) (a):

Omit the paragraph, substitute:

“(a) that the consolidated accounts:

- (i) will be made out in accordance with Divisions 4A and 4B; and
- (ii) in particular, will give a true and fair view of the matters with which they must deal; and”.

Subsection 312 (2):

- (a) Omit “The directors of a subsidiary shall,”, substitute “The reporting officers of an entity that a company controlled during all or part of, or at the end of, a particular financial year of the company must,”.
- (b) Omit “group”, substitute “consolidated”.

Subsection 312 (3):

- (a) Omit “directors of a subsidiary”, substitute “reporting officers of an entity”.

SCHEDULE 3—continued

- (b) Omit “holding” (wherever occurring).
- (c) Omit “group” (wherever occurring), substitute “consolidated”.
- (d) Omit “those accounts”, substitute “those consolidated accounts”.

Paragraph 312 (3) (a):

Omit “subsidiary”, substitute “entity”.

Paragraph 312 (3) (b):

Omit “directors of the subsidiary”, substitute “reporting officers of the entity”.

Subparagraph 312 (3) (b) (i):

Omit “the directors of the subsidiary”, substitute “those reporting officers”.

Subparagraph 312 (3) (b) (ii):

Omit “shareholder”, substitute “member of the company”.

Section 312:

Add at the end:

“(4) In this section:

‘reporting officers’, in relation to an entity, means:

- (a) in the case of a corporation—the corporation’s directors; or
- (b) otherwise—the entity’s officers.”.

Subsections 313 (1) and (2):

Omit “group”, substitute “consolidated”.

Subsection 313 (4):

Omit “and of any related body corporate,”, substitute “of any related body corporate, or of any entity that the company controls, or has controlled, during a financial year of the company,”.

Subsections 313 (6), (7), (9) and (10):

Omit “group” (wherever occurring), substitute “consolidated”.

Subparagraphs 313 (10) (b) (iii) and (iv):

Omit the subparagraphs, substitute:

- “(iii) the profit or loss of a company and any other entity or entities in relation to a financial year of the company; or
- (iv) the state of affairs of a company and any other entity or entities as at the end of a financial year of the company;”.

Subparagraph 313 (11) (a) (i):

Omit “group”, substitute “consolidated”.

SCHEDULE 3—continued

Subsection 315 (3):

Omit “group” (wherever occurring), substitute “consolidated”.

Paragraph 316 (d):

Omit “332”, substitute “331A”.

Section 316:

Add at the end:

“(2) If a member so requires, the directors must cause the auditor’s report to be read aloud to the meeting.”.

Subsection 318 (3):

- (a) Omit “group” (wherever occurring), substitute “consolidated”.
- (b) After “Division 4” insert “or 4A”.

Subsections 318 (4) and (5):

Omit the subsections, substitute:

“(5) After the end of the period within which Division 4, 4A, 5 or 6 requires a company’s directors to cause a document to be made out, the Commission may require the company’s directors to produce the document on a specified day, at a specified place, to a specified person.

“(6) A request under subsection (5) must be made by writing given to each of the company’s directors.

“(7) In a proceeding for a contravention of Division 4, 4A, 5 or 6, proof of contravention of a requirement made under subsection (5) is *prima facie* evidence that the document was not made out within the period referred to in that subsection.”.

Before section 324:

Insert in Part 3.7:

“Division 1—Appointment and removal of auditors”.

Paragraph 324 (1) (e):

Omit “or to a related body corporate”, substitute “, to a related body corporate or to an entity that the company controls”.

Paragraph 324 (2) (f):

Omit “or to a related body corporate”, substitute “, to a related body corporate or to an entity that the company controls”.

Subsection 324 (3):

After “body corporate” (wherever occurring), insert “or entity”.

SCHEDULE 3—continued

Paragraph 324 (4) (a):

After “body corporate”, insert “or of an entity that the company controls”.

Paragraph 324 (4) (b):

Omit “or of a related body corporate”, substitute “, of a related body corporate or of an entity that the company controlled at that time”.

Subsection 324 (5):

Omit “or of a related body corporate”, substitute “, of a related body corporate or of an entity that that company controls or has controlled”.

Subsection 324 (6):

Omit the subsection, substitute:

“(6) For the purposes of this section, a person is not taken to be an officer of a company merely because of one or more of the following:

- (a) having been appointed as auditor of the company, of a related body corporate or of an entity that the company controls or has controlled;
- (b) having been appointed, for any purpose relating to taxation, as public officer of a body corporate, an unincorporated body or a trust estate;
- (c) being or having been authorised to accept, on behalf of the company, a related body corporate or an entity that the company controls or has controlled, service of process or notices.”.

Subsection 324 (13):

Omit “, if it is a holding company for which group accounts are required, group accounts”, substitute “consolidated accounts (if any),”.

Paragraphs 326 (5) (c) and (d) and (6) (b):

Omit “group” (wherever occurring), substitute “consolidated”.

Subsection 327 (15):

- (a) Omit “becomes a subsidiary of a corporation shall,”, substitute “begins to be controlled by a corporation must,”.
- (b) Omit “that subsidiary next held after it becomes such a subsidiary”, substitute “the company next held after it begins to be controlled by the corporation”.

After section 331:

Insert:

SCHEDULE 3—continued

“Division 2—The auditor’s report on the company’s financial statements

Auditor must report

“331A. (1) A company’s auditor must report to the company’s members on:

- (a) the financial statements that must be laid before the company’s annual general meeting; and
- (b) the company’s accounting records and other records relating to those financial statements.

“(2) The auditor must give the report to the company’s directors soon enough for them to comply with subsection 315 (2).

Are the financial statements properly drawn up?

“331B. (1) The report must state whether or not, in the auditor’s opinion, the financial statements are properly drawn up:

- (a) so as to give a true and fair view of the matters with which Divisions 4, 4A and 4B of Part 3.6 require them to deal (or, in the case of a prescribed corporation as defined by section 408A, with which Part 3.6 requires them to deal); and
- (b) in accordance with this Law; and
- (c) in accordance with applicable accounting standards.

“(2) If, in the auditor’s opinion, the financial statements are not drawn up in accordance with a particular applicable accounting standard, the report must give particulars of the quantified financial effect on the financial statements of failing to draw them up in accordance with that accounting standard.

“(3) If the auditor is not satisfied about a matter referred to in subsection (1) or (2), the report must state why not.

Matters affecting consolidated accounts

“331C. (1) If the financial statements include consolidated accounts, the report must specify each entity that the company controlled during all or a part of, or at the end of, the financial year, but of which the auditor has not acted as auditor.

“(2) If:

- (a) the financial statements include consolidated accounts prepared on the basis of information derived from accounts of an entity of the kind referred to in subsection (1); and
- (b) the auditor has not examined those accounts and the auditor’s report (if any) on those accounts;

the report on the financial statements must specify that entity.

“(3) If:

SCHEDULE 3—continued

- (a) the financial statements include consolidated accounts prepared on the basis of information derived from accounts of an entity that the company controlled during all or part of, or at the end of, the financial year; and
 - (b) the auditor's report on those accounts was made subject to any qualification, or included any comment made under section 331E or a corresponding previous law;
- the report on the financial statements must:
- (c) specify the entity; and
 - (d) give particulars of the qualification or comment.

Defects, irregularities and omissions

“331D. The report must describe:

- (a) any defect or irregularity in the financial statements; and
- (b) any matter that the financial statements do not set out and to which one must have regard in order to obtain a true and fair view of the matters with which the financial statements deal.

Are the financial statements, and the auditor's report, based on adequate information?

“331E. (1) It is the auditor's duty to form an opinion about each of the matters set out in subsection (2), and the report must set out particulars of any deficiency, failure or shortcoming in respect of any of those matters.

“(2) These are the matters:

- (a) whether the auditor has obtained all the information and explanations he or she needed;
- (b) whether the company has kept proper accounting records, and other records (including registers), as required by this Law;
- (c) whether the returns received from branch offices of the company are adequate;
- (d) if the company is a chief entity in relation to the financial year concerned:
 - (i) whether the accounts of entities that were used in preparing the consolidated accounts of the company in relation to the financial year are in form and content appropriate and proper for such use;
 - (ii) whether the auditor has received satisfactory information and explanations as required by the auditor for the purposes of forming an opinion about the matter referred to in subparagraph (i);
 - (iii) whether the procedures and methods used in arriving at the amounts taken into the consolidated accounts were

SCHEDULE 3—continued

appropriate to the circumstances of preparing the consolidated accounts.

Members entitled to inspect auditor's report

“331F. A member of the company is entitled to inspect the report at any reasonable time.

“Division 3—Certain powers and duties of auditors”.

Subsections 332 (1), (2), (3) and (4):

Omit the subsections.

Subsections 332 (6) and (7):

Omit the subsections, substitute:

“(6) Where Division 4A of Part 3.6 requires consolidated accounts to be made out in relation to a financial year of a company:

- (a) the company's auditor has a right of access at all reasonable times to the accounting records and other records, including registers, of each entity that the company controlled during all or part of, or at the end of, that financial year, even if the company no longer controls the entity; and
- (b) the auditor is entitled to require from any officer or auditor of such an entity (at the company's expense), such information and explanations about the entity's affairs as the first-mentioned auditor needs in order to report on the consolidated accounts.”.

Subsections 332 (9) and (10):

Omit “accounts or group accounts” (wherever occurring), substitute “financial statements”.

Paragraph 332 (10) (b):

Omit “a subsidiary, of the directors of any body corporate of which the company is a subsidiary;”, substitute “an entity controlled by another corporation, of the directors of that corporation;”.

Subsection 332 (11):

Omit the subsection.

After section 332:

Insert:

Board to be informed of non-compliance with accounting standard

“332A. Where an auditor of a company:

- (a) is not satisfied that the company's financial statements for a

SCHEDULE 3—continued

financial year have been drawn up in accordance with a particular applicable accounting standard; or

- (b) is of the opinion that the company's financial statements for a financial year have not been drawn up in accordance with a particular applicable accounting standard;

the auditor must, within 7 days after the auditor gives to the company's directors the auditor's report under Division 2 on the financial statements, send by post to the Board a copy of the report.”.

Section 333:

Repeal the section, substitute:

Obstruction of auditor

“333. (1) An officer of a company must not, without lawful excuse, obstruct an auditor of the company.

“(2) An officer or auditor of an entity must not, without lawful excuse, obstruct an auditor of a company that controls the entity, or has controlled the entity but no longer controls it.

“(3) For the purposes of this section, a person obstructs an auditor of a company if, and only if, the person:

- (a) refuses or fails to allow the auditor access in accordance with this Law to accounting records or other records, including registers, that:
 - (i) if the person is an officer of the company or of an entity—are records of the company or entity and are in the person's possession; or
 - (ii) if the person is an auditor of an entity—are records of the entity and are in the person's custody or control; or
- (b) refuses or fails to give the auditor information or an explanation as and when required under this Law; or
- (c) otherwise hinders, obstructs or delays the auditor in performing or exercising any of his or her duties and powers.”.

Before section 409:

Insert in Part 4.5:

Interpretation

“408A. (1) In this Part:

‘prescribed corporation’ means:

- (a) an Australian bank; or
- (b) a body corporate that is registered under the *Life Insurance Act 1945*.

SCHEDULE 3—continued

“(2) Sections 294A and 294B have effect for the purposes of this Part as if the provisions of this Part were provisions of Part 3.6.

Application of Parts 3.6 and 3.7

“408B. (1) Subject to this Part, Parts 3.6 and 3.7 apply in relation to a prescribed corporation that is a company.

“(2) Subject to this Part, Parts 3.6 and 3.7, as they apply in relation to a company (including one that is a prescribed corporation), in relation to a financial year of the company, apply in relation to an entity that is a prescribed corporation.”.

Subsections 409 (1) and (2):

Omit the subsections.

Subsection 409 (6):

Omit “Subsection 332 (3) does not apply”, substitute “Neither of sections 331B and 331D applies”.

Subsection 409 (7):

Omit the subsection.

Subsection 409 (8):

- (a) Omit “accounts or”.
- (b) Omit “accounts and”.
- (c) Omit “this section”, substitute “this Part”.

After section 409:

Insert in Part 4.5:

Consolidated accounts where the chief entity or a controlled entity is a prescribed corporation

“409A. (1) A company that is a chief entity in relation to a financial year, and its directors and auditors, do not contravene the provisions of Chapter 3 relating to consolidated accounts of companies merely because consolidated accounts of the company made out in relation to that financial year do not comply with those provisions, if:

- (a) those consolidated accounts would so comply if:
 - (i) a reference in subsection 295A (1) to an economic entity constituted as mentioned in that subsection were a reference to an economic entity constituted by such of the following as are not prescribed corporations at the end of that financial year:
 - (A) the company;
 - (B) the entities that the company controlled from time to time during that financial year (even if the

SCHEDULE 3—continued

company did not control the same entities throughout that financial year); and

- (ii) a reference in section 295B to an economic entity constituted as mentioned in that section were a reference to an economic entity constituted by such of the following as are not prescribed corporations at the end of that financial year:

- (A) the company;

- (B) the entities that the company controlled at the end of that financial year; and

- (b) there are attached to those consolidated accounts a copy of the accounts of each corporation that:

- (i) is a prescribed corporation at the end of that financial year; and

- (ii) is the company or an entity that the company controlled during all or part of, or at the end of, that financial year;

being accounts that relate to the corresponding financial year of that prescribed corporation and:

- (iii) in any case—comply with a law of the Commonwealth relating to the preparation of annual accounts of that prescribed corporation; or

- (iv) in the case of a prescribed corporation registered under the *Life Insurance Act 1945*—comply with such conditions as are specified by the Commission.

“(2) Where, because of paragraph (1) (b), accounts of a prescribed corporation are attached to consolidated accounts of a company, the first-mentioned accounts do not form part of the consolidated accounts.

“(3) A company that is a chief entity in relation to a financial year, and its directors and auditors, do not contravene section 305 merely because a directors’ report made out under that section in relation to that financial year does not relate to one or more of such of the following as are prescribed corporations at the end of that financial year:

- (a) the company;

- (b) the entities controlled by the company from time to time.

“(4) A company that is a chief entity in relation to a financial year, and its directors and auditors, do not contravene any of sections 296 and 331A to 332A, inclusive, merely because the section is not complied with in relation to one or more of such of the following as are registered under the *Life Insurance Act 1945* at the end of that financial year:

- (a) the company;

- (b) the entities controlled by the company from time to time.”.

SCHEDULE 3—continued

Subsection 1058 (12):

- (a) After “4,” insert “4A, 4B,”.
- (b) Omit “, 309 and 310”, substitute “and 309”.
- (c) Omit “section 313,”, substitute “of sections 313 and 331A to 331F (inclusive), of”.
- (d) Omit “and section 409”, substitute “of section 332A and of Part 4.5”.

Subsection 1058 (13):

Omit “section 295 or 305 or with section 332 (as it relates to group accounts)”, substitute “Division 4A of Part 3.6, with section 305, or with sections 331A to 332A (inclusive) so far as they relate to consolidated accounts,”.

Subsection 1058 (14):

- (a) After “4,” insert “4A, 4B,”.
- (b) Omit “, 309 and 310”, substitute “and 309”.
- (c) Omit “section 313,”, substitute “of sections 313 and 331A to 331F (inclusive), of”.
- (d) Omit “and section 409”, substitute “of section 332A and of Part 4.5”.

Paragraph 1058 (14) (b):

Omit “group”, substitute “consolidated”.

Subsection 1058 (15):

Omit all the words before “apply”, substitute “The provisions of Divisions 4, 4B, 5 and 6 of Part 3.6 (other than sections 305, 307, 308 and 309), of section 313, of sections 331A to 332A (inclusive) except so far as they relate to consolidated accounts, and of Part 4.5”.

Subsection 1058 (23):

Omit the subsection.

Paragraph 1289 (1) (c):

After “group accounts” insert “, consolidated accounts”.

Paragraph 1309 (1) (b):

Omit the paragraph, substitute:

- “(b) if the corporation is taken for the purposes of Parts 3.6 and 3.7 to be controlled by another corporation—an auditor of the other corporation; or”.

SCHEDULE 3—continued

Paragraph 1309 (2) (b):

Omit the paragraph, substitute:

- “(b) if the corporation is taken for the purposes of Parts 3.6 and 3.7 to be controlled by another corporation—an auditor of the other corporation; or”.
-

SCHEDULE 4

Section 8

**AMENDMENTS OF THE CORPORATIONS LAW:
INSIDER TRADING**

Section 1002:

Repeal the section.

Before Division 3 of Part 7.11:

Insert:

“Division 2A—Insider trading

Application of Division

“1002. This Division applies to:

- (a) acts and omissions within this jurisdiction in relation to securities of any body corporate, whether formed or carrying on business in this jurisdiction or in Australia or not; and
- (b) acts and omissions outside this jurisdiction, whether in Australia or not, in relation to securities of a body corporate that is formed or carries on business in this jurisdiction.

Securities

“1002A. (1) In this Division and in section 1013:

‘information’ includes:

- (a) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public; and
- (b) matters relating to the intentions, or the likely intentions, of a person;

‘purchase’, in relation to securities, includes, in the case of an option contract under which a party acquires an option or right from another party, acquire the option or right under the contract, or take an assignment of the option or right, whether or not on another’s behalf;

‘securities’, in relation to a body corporate, means any of the following:

- (a) shares in the body corporate;
- (b) debentures (including convertible notes) issued by the body corporate;
- (c) prescribed interests made available by the body corporate;
- (d) units of shares or of prescribed interests referred to in paragraph (a) or (c);
- (e) an option contract under which a party acquires from another party an option or right, exercisable at or before a specified time, to buy from, or sell to, that other party a number of securities of a kind referred to in paragraph (a), (b), (c) or (d)

SCHEDULE 4—continued

at a price specified in, or to be determined in accordance with, the contract;

but does not include a futures contract or an excluded security;

‘sell’, in relation to securities, includes, in the case of an option contract under which a party acquires an option or right from another party:

- (a) grant or assign the option or right; or
- (b) take, or cause to be taken, such action as releases the option or right;

whether or not on another’s behalf.

“(2) A provision of this Division or of section 1013 that applies in relation to securities of a body corporate:

- (a) also applies in relation to securities (as defined by subsection 92 (1)) issued by a government, an unincorporated body or any other person; and
- (b) applies, in relation to securities so issued, in the same way, as nearly as practicable, as if the government, body or person were a body corporate.

Information generally available

“1002B. (1) This section has effect for the purposes of this Division and section 1013.

“(2) Information is generally available if:

- (a) it consists of readily observable matter; or
- (b) without limiting the generality of paragraph (a), both the following subparagraphs apply:
 - (i) it has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in securities of bodies corporate of a kind whose price or value might be affected by the information; and
 - (ii) since it was so made known, a reasonable period for it to be disseminated among such persons has elapsed.

“(3) Information is also generally available if it consists of deductions, conclusions or inferences made or drawn from either or both of the following:

- (a) information referred to in paragraph (2) (a);
- (b) information made known as mentioned in subparagraph (2) (b) (i).

Material effect on price or value of securities

“1002C. For the purposes of this Division and section 1013, a reasonable person would be taken to expect information to have a material effect on the price or value of securities of a body corporate if

SCHEDULE 4—continued

the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy or sell the first-mentioned securities.

Trading, and procuring trading, in securities

“1002D. (1) Trading in securities of a body corporate that is ordinarily permitted on the stock market of a securities exchange is taken for the purposes of this Division to be permitted on that stock market even though trading in any such securities on that stock market is suspended by action taken by that securities exchange or is prohibited by a notice given to that securities exchange by the Commission under subsection 775 (2).

“(2) For the purposes of this Division and section 1013 but without limiting the meaning that the expression ‘procure’ has apart from this section, if a person incites, induces, or encourages an act or omission by another person, the first-mentioned person is taken to procure the act or omission by the other person.

Information in possession of officer of body corporate

“1002E. For the purposes of this Division and section 1013:

- (a) a body corporate is taken to possess any information which an officer of the body corporate possesses and which came into his or her possession in the course of the performance of duties as such an officer; and
- (b) if an officer of a body corporate knows or ought reasonably to know any matter or thing because he or she is an officer of the body corporate, it is to be presumed that the body corporate knows or ought reasonably to know that matter or thing.

Information in possession of partner or employee of partnership

“1002F. For the purposes of this Division and section 1013:

- (a) a member of a partnership is taken to possess any information:
 - (i) which another member of the partnership possesses and which came into the other member’s possession in the other member’s capacity as a member of the partnership; or
 - (ii) which an employee of the partnership possesses and which came into his or her possession in the course of the performance of duties as such an employee; and
- (b) if a member or employee of a partnership knows or ought reasonably to know any matter or thing because the member or employee is such a member or employee, it is to be presumed that every member of the partnership knows or ought reasonably to know that matter or thing.

SCHEDULE 4—continued

Prohibited conduct by person in possession of inside information

“1002G. (1) Subject to this Division, where:

- (a) a person (in this section called the “insider”) possesses information that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities of a body corporate; and
- (b) the person knows, or ought reasonably to know, that:
 - (i) the information is not generally available; and
 - (ii) if it were generally available, it might have a material effect on the price or value of those securities;

the following subsections apply.

“(2) The insider must not (whether as principal or agent):

- (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities; or
- (b) procure another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities.

“(3) Where trading in the securities referred to in subsection (1) is permitted on the stock market of a securities exchange, the insider must not, directly or indirectly, communicate the information, or cause the information to be communicated, to another person if the insider knows, or ought reasonably to know, that the other person would or would be likely to:

- (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities; or
- (b) procure a third person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities.

Exception for redemption of prescribed interest under buy-back covenant

“1002H. Subsection 1002G (2) does not apply in respect of the redemption by the trustee under a deed relating to prescribed interests of a prescribed interest in accordance with a buy-back covenant contained or deemed to be contained in the deed at a price that is required by the deed to be calculated, so far as is reasonably practicable, by reference to the underlying value of the assets of the financial or business undertaking or scheme, common enterprise, investment contract or time-sharing scheme to which the interest relates less any reasonable charge for purchasing the interest.

Exception for underwriters

“1002J. (1) Subsection 1002G (2) does not apply in respect of:

- (a) subscribing for securities under an underwriting agreement or a sub-underwriting agreement; or

SCHEDULE 4—continued

- (b) entering into an agreement referred to in paragraph (a); or
- (c) selling securities subscribed for under an agreement referred to in paragraph (a).

“(2) Subsection 1002G (3) does not apply in respect of:

- (a) the communication of information in relation to securities to a person solely for the purpose of procuring the person to enter into an underwriting agreement in relation to any such securities; or
- (b) the communication of information in relation to securities by a person who may be required under an underwriting agreement to subscribe for any such securities if the communication is made to another person solely for the purpose of procuring the other person to do either or both of the following:
 - (i) enter into a sub-underwriting agreement in relation to any such securities;
 - (ii) subscribe for any such securities.

Exception for purchase pursuant to legal requirement

“1002K. Subsection 1002G (2) does not apply in respect of the purchase of securities pursuant to a requirement imposed by this Law.

Exception for information communicated pursuant to a legal requirement

“1002L. Subsection 1002G (3) does not apply in respect of the communication of information pursuant to a requirement imposed by the Commonwealth, a State, a Territory or any regulatory authority.

Chinese wall arrangements by bodies corporate

“1002M. A body corporate does not contravene subsection 1002G (2) by entering into a transaction or agreement at any time merely because of information in the possession of an officer of the body corporate if:

- (a) the decision to enter into the transaction or agreement was taken on its behalf by a person or persons other than that officer; and
- (b) it had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision and that no advice with respect to the transaction or agreement was given to that person or any of those persons by a person in possession of the information; and
- (c) the information was not so communicated and no such advice was so given.

SCHEDULE 4—continued

Chinese wall arrangements by partnerships, etc.

“1002N. (1) The members of a partnership do not contravene subsection 1002G (2) by entering into a transaction or agreement at any time merely because one or more (but not all) of the members, or an employee or employees of the partnership, are in actual possession of information if:

- (a) the decision to enter into the transaction or agreement was taken on behalf of the partnership by any one or more of the following persons:
 - (i) a member or members who are taken to have possessed the information merely because another member or other members, or an employee or employees of the partnership, were in possession of the information;
 - (ii) an employee or employees of the partnership who was not or were not in possession of the information; and
- (b) the partnership had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision and that no advice with respect to the transaction or agreement was given to that person or any of those persons by a person in possession of the information; and
- (c) the information was not so communicated and no such advice was so given.

“(2) A member of a partnership does not contravene subsection 1002G (2) by entering into a transaction or agreement otherwise than on behalf of the partnership merely because the member is taken to possess information that is in the possession of another member or an employee of the partnership.

Exception for knowledge of person’s own intentions or activities

“1002P. A natural person does not contravene subsection 1002G (2) by entering into a transaction or agreement in relation to securities of a body corporate merely because the person is aware that he or she proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to securities of that body corporate.

Exception for bodies corporate

“1002Q. (1) A body corporate does not contravene subsection 1002G (2) by entering into a transaction or agreement in relation to securities of another body corporate merely because the first-mentioned body corporate is aware that it proposes to enter into or has previously entered into, one or more transactions or agreements in relation to securities of the other body corporate.

SCHEDULE 4—continued

“(2) Subject to subsection (3), a body corporate does not contravene subsection 1002G (2) by entering into a transaction or agreement in relation to securities of another body corporate merely because an officer of the first-mentioned body corporate is aware that the first-mentioned body corporate proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to securities of the other body corporate.

“(3) Subsection (2) does not apply unless the officer of the body corporate first-mentioned in that subsection became aware of the matters referred to in that subsection in the course of the performance of duties as such an officer.

Exception for officers or agents of body corporate

“1002R. (1) Subject to subsection (2), a person does not contravene subsection 1002G (2) by entering into a transaction or agreement on behalf of a body corporate in relation to securities of another body corporate merely because the person is aware that the first-mentioned body corporate proposes to enter into, or has previously entered into, one or more transactions or agreements in relation to securities of the other body corporate.

“(2) Subsection (1) does not apply unless the person became aware of the matters referred to in that subsection in the course of the performance of duties as an officer of the first-mentioned body corporate or in the course of acting as an agent of the first-mentioned body corporate.

Transactions by holder of dealers licence or a representative of the holder of such a licence

“1002S. A person (in this section called the ‘agent’) does not contravene subsection 1002G (2) by subscribing for, purchasing or selling, or entering into an agreement to subscribe for, purchase or sell, securities of a body corporate that are permitted by a securities exchange to be traded on the stock market of that securities exchange if:

- (a) the agent is the holder of a dealers licence or a representative of the holder of such a licence; and
- (b) the agent entered into the transaction or agreement concerned on behalf of another person (in this section called the ‘principal’) under a specific instruction by the principal to enter into that transaction or agreement; and
- (c) the holder of the dealers licence had in operation at the time when that transaction or agreement was entered into arrangements that could reasonably be expected to ensure that any information in the possession of the holder or of any representative of the holder as a result of which the person in possession of the information would be prohibited by subsection

SCHEDULE 4—continued

1002G (2) from entering into that transaction or agreement was not communicated to the agent and that no advice with respect to the transaction or agreement was given to the principal or to the agent by a person in possession of the information; and

- (d) the information was not so communicated and no such advice was so given; and
- (e) the principal is not an associate of the holder or of any representative of the holder;

but nothing in this section affects the application of subsection 1002G (2) in relation to the principal.

Prosecutions and defences

“1002T. (1) In a prosecution of a person for an act or omission that is alleged to constitute a contravention of subsection 1002G (2) or (3), it is not necessary for the prosecution to prove the non-existence of facts or circumstances which, if they existed, would, by virtue of section 1002H, 1002J, 1002K, 1002L, 1002M, 1002N, 1002P, 1002Q, 1002R or 1002S, preclude the act or omission from constituting a contravention of subsection 1002G (2) or (3), as the case may be, but it is a defence if the Court is satisfied that the facts or circumstances existed.

“(2) In a prosecution brought against a person for an offence against subsection 1002G (2) because the person entered into, or procured another person to enter into, a transaction or agreement at a time when certain information was in the first-mentioned person’s possession:

- (a) it is a defence if the Court is satisfied that the information came into the first-mentioned person’s possession solely as a result of the information having been made known as mentioned in subparagraph 1002B (2) (b) (i); and
- (b) it is a defence if the Court is satisfied that the other party to the transaction or agreement knew, or ought reasonably to have known, of the information before entering into the transaction or agreement.

“(3) In a prosecution against a person for an offence against subsection 1002G (3) because the person communicated information, or caused information to be communicated, to another person:

- (a) it is a defence if the Court is satisfied that the information came into the first-mentioned person’s possession solely as a result of the information having been made known as mentioned in subparagraph 1002B (2) (b) (i); and
- (b) it is a defence if the Court is satisfied that the other person knew, or ought reasonably to have known, of the information before the information was communicated.

SCHEDULE 4—continued

Powers of court

“1002U. Where, in a proceeding instituted under this Law, the Court finds that a contravention of section 1002G has occurred, the Court may, in addition to any other orders that it may make under any other provision of this Law, make such order or orders as it thinks just, including, but without limiting the generality of the above, any one or more of the following orders:

- (a) an order restraining the exercise of any voting or other rights attached to shares;
- (b) an order restraining the exercise of any rights attached to securities other than shares;
- (c) an order restraining the issue or allotment of shares;
- (d) an order restraining the issue of securities other than shares;
- (e) an order restraining the acquisition or disposal of securities;
- (f) an order directing the disposal of securities;
- (g) an order vesting securities in the Commission;
- (h) an order cancelling an agreement for the acquisition or disposal of securities;
- (j) an order cancelling a securities licence;
- (k) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing a specified act.”.

Section 1005 (2)

Omit “paragraph 1013 (1) (d)”, substitute “subsection 1013 (5)”.

Section 1013:

Omit the section, substitute:

Liability for insider trading

“1013. (1) Where:

- (a) a person (in this section called the ‘insider’) possesses information that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities of a body corporate (other than an option contract); and
 - (b) the person knows, or ought reasonably to know, that:
 - (i) the information is not generally available; and
 - (ii) if the information were generally available, it might have a material effect on the price or value of those securities;
- and

SCHEDULE 4—continued

(c) the insider (whether as principal or agent) in contravention of subsection 1002G (2):

- (i) subscribes for, purchases or sells, or enters into an agreement to subscribe for, purchase or sell, any such securities; or
- (ii) procures another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities;

the following subsections apply.

“(2) Where the insider subscribed for or agreed to subscribe for, or procured another person to subscribe for or to agree to subscribe for, the securities, the body corporate that issued the securities may, by action under section 1005 against the insider, the other person or any other person involved in the contravention, recover, as a loss suffered by the body corporate, the amount (if any) by which the price at which the securities were subscribed for, or agreed to be subscribed for, by the insider or the other person was less than the price at which they would have been likely to have been sold in a sale made at the time of the subscription or the time of the agreement, as the case may be, if the information had been generally available.

“(3) Where the insider purchased or agreed to purchase, or procured another person to purchase or to agree to purchase, the securities from a person (in this subsection and subsection (5) called the ‘**seller**’) who did not possess the information, the seller may, by action under section 1005 against the insider, the other person or any other person involved in the contravention, recover, as a loss suffered by the seller, the amount (if any) by which the price at which the securities were purchased, or agreed to be purchased, by the insider or the other person from the seller was less than the price at which they would have been likely to have been purchased in a purchase made at the time of the first-mentioned purchase or the time of the agreement, as the case may be, if the information had been generally available.

“(4) Where the insider sold or agreed to sell, or procured another person to sell or to agree to sell, the securities to a person (in this subsection and subsection (5) called the ‘**buyer**’) who did not possess the information, the buyer may, by action under section 1005 against the insider, the other person or any other person involved in the contravention, recover, as a loss suffered by the buyer, the amount (if any) by which the price at which the securities were sold, or agreed to be sold, by the insider or the other person to the buyer was greater than the price at which they would have been likely to have been sold at the time of the first-mentioned sale or the time of the agreement, as the case may be, if the information had been generally available.

“(5) In addition to any action that may be brought by a person as provided by subsection (3) or (4), the body corporate may, in the case

SCHEDULE 4—continued

of a purchase or sale of, or an agreement to purchase or sell, securities by the insider or another person in the circumstances mentioned in that subsection, by action under section 1005 against the insider, the other person or any other person involved in the contravention, recover:

- (a) in the case of a purchase or agreement to purchase securities—the amount (if any) by which the price at which the securities were purchased, or agreed to be purchased, by the insider or other person from the seller was less than the price at which they were likely to have been purchased in a purchase made at the time of the first-mentioned purchase or the time of the agreement, as the case may be, if the information had been generally available; or
- (b) in the case of a sale or an agreement to sell securities—the amount (if any) by which the price at which the securities were sold, or agreed to be sold, by the insider or other person to the buyer was greater than the price at which they would have been likely to have been sold at the time of the first-mentioned sale or the time of the agreement, as the case may be, if the information had been generally available.

“(6) The Commission may, if it considers that it is in the public interest to do so, bring an action in accordance with subsection (2) or (5) in the name of, and for the benefit of, a body corporate for the recovery of an amount that the body is entitled to recover by virtue of that subsection.

“(7) In an action brought against a person in accordance with this section because the person entered into, or procured another person to enter into, a transaction or agreement at a time when certain information was in the first-mentioned person’s possession, it is a defence if the Court is satisfied that the information came into the first-mentioned person’s possession solely as a result of the information having been made known as mentioned in subparagraph 1002B (2) (b) (i).

“(8) Where:

- (a) a body corporate that is the management company in relation to a deed relating to prescribed interests; or
- (b) the Commission in the name of, and for the benefit of, such a body corporate;

brings an action:

- (c) in accordance with subsection (2) in respect of a subscription for, or an agreement to subscribe for, any such prescribed interests; or
- (d) in accordance with subsection (5) in respect of a purchase or sale of, or an agreement to purchase or sell, any such prescribed interests;

SCHEDULE 4—continued

any amount recovered in the action is to be held by the body corporate on behalf of the persons who, at the time of the subscription or agreement referred to in paragraph (c) or the sale, purchase or agreement referred to in paragraph (d), as the case may be, had rights or interests in the relevant financial or business undertaking or scheme, common enterprise, investment contract or time-sharing scheme, and is to be held on their behalf in the respective proportions that, at that time, their individual rights or interests bore to the total of all those rights or interests.

“(9) Any right of action that a person has by virtue of this section is in addition to any right that any other person has under section 1005.”.

Schedule 3:

Omit:

“Section 1002:

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

“Section 1002G:

Penalty: \$200,000 or imprisonment for 5 years, or both.”.

SCHEDULE 5

Section 6

TECHNICAL AMENDMENTS OF THE CORPORATIONS LAW

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

Omit “and” (last occurring), substitute “or”.

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

After “Board” insert “established by section 202 of the *Australian Securities Commission Act 1989*”.

Section 9 (definition of “Chapter 8 agreement”):

Omit the definition and re-insert it immediately before the definition of “Chapter 8 obligation”.

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

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

Section 9 (definition of “eligible communications service”):

Omit “telephonic”, substitute “telephonic,”.

Section 9 (definition of “new company”):

Omit the definition.

Section 9 (paragraph (c) of the definition of “proprietary company”):

After “subsection” insert “129 (4),”.

Section 9 (definition of “sign”):

Omit “, 125 (1) or (4) or 153 (1) or (7)”, substitute “or 125 (1) or (4)”.

Paragraph 103 (2) (a):

Omit “113,”.

Subsection 103 (3):

Omit the subsection.

Section 107:

Repeal the section.

Section 206BM:

Repeal the section.

Paragraph 242 (7) (a):

Omit “this Act”, substitute “Division 3 of Part 2.2, as the case requires”.

SCHEDULE 5—continued

Subsection 242 (11):

Omit the subsection.

Subsection 301 (10):

Omit “The statement shall”, substitute “If subsection (9) applies, the statement must also”.

Subparagraph 307 (c) (ii):

Omit “subsection”, substitute “Division”.

Paragraph 324 (1) (c):

Omit “Act”, substitute “Law”.

Paragraph 324 (2) (c):

Omit “Act”, substitute “Law”.

Subsections 324 (11), (12) and (13):

Omit “Act”, substitute “Law”.

Subparagraph 326 (5) (a) (iii):

Omit “Act”, substitute “Law”.

Subsection 326 (9):

Omit “Act”, substitute “Law”.

Subsection 327 (13):

Omit “Act”, substitute “Law”.

Paragraph 332 (10) (a):

Omit “Act”, substitute “Law”.

Subsections 334 (1) and (2):

Omit “Act”, substitute “Law”.

Subsections 747 (1) and (2):

Omit “, or of a regulation made for the purposes of subsection 748 (1) or (2),”.

Subsection 1067 (4):

Omit “(2)”, substitute “(3)”.

Paragraph 1292 (1) (d):

Omit “that”.

Paragraph 1292 (7) (a):

Omit “300”, substitute “230”.

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SCHEDULE 5—continued

Schedule 1 (subregulation 95 (4) of Table A):

Omit “within the Territory”, substitute “in Australia”.

SCHEDULE 6

Section 9

**COMMENCEMENT AND APPLICATION OF CERTAIN CHANGES
TO THE CORPORATIONS LAW**

After Part 9.10:

Insert:

**“PART 9.11—COMMENCEMENT AND APPLICATION OF
CERTAIN CHANGES TO THIS LAW**

***“Division 1—Changes resulting from the Corporations Legislation
Amendment Act 1991***

Commencement of certain changes

“1363. The following provisions of this Law, as in force immediately after the commencement of section 6 of the *Corporations Legislation Amendment Act 1991*, are taken to have commenced on 1 January 1991:

- (a) paragraph 8 (5) (c);
- (b) paragraph (a) of the definition of ‘company’ in section 9;
- (c) the definition of ‘prescribed interest’ in section 9;
- (d) paragraph (c) of the definition of ‘proprietary company’ in section 9;
- (e) paragraph 66 (3) (ba);
- (f) paragraph 66A (4) (c);
- (g) section 68A;
- (h) subsection 186 (2);
- (i) subsections 219 (2A), (3), (4) and (5);
- (j) section 276A;
- (k) subsections 362 (3A), (4), (5) and (6).

Application of changes to Parts 3.6 and 3.7

“1364. (1) Parts 3.6 and 3.7, as in force after the commencement of section 7 of the *Corporations Legislation Amendment Act 1991*, apply in relation to a company in relation to:

- (a) the first financial year of the company that ends on or after 31 December 1991; and
- (b) each later financial year of the company.

“(2) Parts 3.6 and 3.7, as in force before that commencement, continue to apply in relation to a company in relation to a financial year of the company that ended before 31 December 1991.”.

SCHEDULE 7

Section 11

**AMENDMENTS OF THE AUSTRALIAN SECURITIES
COMMISSION ACT 1989**

Subsection 1 (4):

Omit “the Australian Capital”, substitute “a”.

Subsection 5 (1) (definition of “agency”):

Omit the definition.

Subsection 5 (1) (definition of “Director”):

Omit “Review”, substitute “Standards”.

Subsection 5 (1) (paragraph (a) of the definition of “eligible person”):

After “corresponding” insert “previous”.

Subsection 5 (1) (paragraph (d) of the definition of “meeting”):

Omit “Review”, substitute “Standards”.

Subsection 5 (1) (paragraphs (a) and (e) of the definition of “member”):

Omit “Review” (wherever occurring), substitute “Standards”.

Subsection 5 (1):

Insert:

“ ‘Corporations Law’ and ‘Corporations Regulations’ have the meaning provided for by Parts 2 and 3 of the *Corporations Act 1989*,”.

After paragraph 6A (b):

Insert:

“(ba) in the case of an appointment to act in a vacant office—the appointee must not continue to act in the office for more than 12 months;”.

Subsection 43 (1):

After “Law” (wherever occurring) insert “of this jurisdiction”.

Paragraph 46 (1) (a):

After “Law” insert “of this jurisdiction”.

Subparagraph 46 (1) (b) (i):

After “Law” insert “of this jurisdiction”.

Subsection 49 (5):

Add at the end “or that Act as it applies as a law of this jurisdiction”.

SCHEDULE 7—continued

Subsection 88 (1A):

Omit the subsection, substitute:

“(1A) For the purposes of a national scheme law of this jurisdiction:

- (a) an offence under Part III of the *Crimes Act 1914* as it applies in relation to an examination or hearing is taken to be an offence against this section; and
- (b) an offence under Part III of the *Crimes Act 1914* as it applies, in relation to an examination or hearing held under the ASC Law of another jurisdiction, as a law of that jurisdiction is taken to be an offence against Part 3 of the ASC Law of that jurisdiction.”.

Subsection 102 (7):

Omit “34A of the *Acts Interpretation Act 1901*”, substitute “109ZF of the Corporations Law”.

Heading to Division 3 of Part 7:

Omit “*securities and*”.

Section 128:

Repeal the section, substitute:

Certain persons not to deal on the basis of certain information

“128. Where:

- (a) because of being, or having at any time been, or acting as, or having at any time acted as, a member or staff member; or
- (b) because of being, or having at any time been, a Commission delegate; or
- (c) in the course of assisting, or because of assisting, or having at any time assisted, a Commission delegate;

a person has acquired information that is not generally available but that, if it were, would be likely to affect materially the price for dealing in a futures contract, the person must not deal in, or procure another person to deal in, that futures contract or a futures contract of the same kind as that futures contract.

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

Subsection 129 (1):

Omit the subsection, substitute:

“(1) A person who contravenes section 128 is liable to compensate any other party to the transaction for any loss sustained by that party because of any difference between the price at which the dealing in the futures contract took place and the price at which it would be likely to have taken place if the information had been generally available.”.

SCHEDULE 7—continued

Subparagraph 135 (1) (a) (iv):

Omit “Review”, substitute “Standards”.

Section 174:

Add at the end:

“(2) The Panel has power to do acts in the Capital Territory in the performance or exercise of any function or power expressed to be conferred on the Panel by a national scheme law of another jurisdiction.”.

Paragraph 203 (1) (c):

Before “Accountants” insert “Certified Practising”.

Section 204:

Add at the end:

“(2) The Disciplinary Board has power to do acts in the Capital Territory in the performance or exercise of any function or power expressed to be conferred on the Disciplinary Board by a national scheme law of another jurisdiction.”.

NOTES

1. No. 109, 1989, as amended. For previous amendments, see No. 110, 1990.
2. No. 90, 1989, as amended. For previous amendments, see Nos. 41 and 110, 1990.
3. No. 93, 1981, as amended. For previous amendments, see No. 18, 1983; No. 154, 1986; and No. 110, 1990.

ADDITIONAL NOTES

1. On the commencement of section 4 of this Act, headings of sections of the *Corporations Act 1989* are altered as follows:
 - (a) the heading to section 9 is altered by omitting all the words before “not” and substituting “**Certain laws**”; and
 - (b) the heading to section 53 is altered by adding “**by the Federal Court and State and Territory Supreme Courts**”.
2. On the commencement of section 7 of this Act, headings of sections of the Corporations Law set out in section 82 of the *Corporations Act 1989* are altered as follows:
 - (a) the heading to section 62 is altered by omitting “**bodies corporate**” and substituting “**entities**”; and
 - (b) the heading to section 302 is altered by omitting “**group**” and substituting “**consolidated**”; and

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NOTES—continued

- (c) the heading to section 304 is altered by omitting “**other than group holding company**” and substituting “**that is not a chief entity**”; and
- (d) the heading to section 305 is altered by omitting “**group holding company**” and substituting “**company that is a chief entity**”; and
- (e) the heading to section 312 is altered by omitting “**holding company**” and substituting “**chief entity**”; and
- (f) the heading to section 332 is omitted and the following heading is substituted:
“**Auditor may obtain information and attend company meetings, and must report certain breaches to Commission**”; and
- (g) the heading to section 409 is omitted and the following heading is substituted:
“**Accounts, and directors’ reports, of a prescribed corporation**”.

[*Minister’s second reading speech made in—
House of Representatives on 29 May 1991
Senate on 6 June 1991*]