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Statutory Rules

1980 No. /

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REGULATIONS UNDER THE NATIONAL COMPANIES AND SECURITIES COMMISSION ACT 1979*

WHEREAS it is provided by sub-section (4) of section 53 of the *National Companies and Securities Commission Act 1979* that the power of the Governor-General to make regulations under that Act shall be exercised only in accordance with advice that is consistent with resolutions of the Ministerial Council for Companies and Securities established under the Agreement made on 22 December 1978 between the Commonwealth and the States:

AND WHEREAS the making of the following Regulations is in accordance with advice that is consistent with those resolutions:

NOW THEREFORE I, the Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *National Companies and Securities Commission Act 1979*.

Dated this

day of *SIXTEENTH* 1980.
JANUARY

Governor-General **ZELMAN COWEN**

By His Excellency's Command,

R. V. GARLAND

Minister of State for Business and Consumer Affairs

NATIONAL COMPANIES AND SECURITIES COMMISSION REGULATIONS

1. These Regulations may be cited as the National Companies and Securities Commission Regulations. Citation

* Notified in the *Commonwealth of Australia Gazette* on */* 1980. 13/21.12.1979
14488/79 Cat. No. —Recommended retail price 20c

23 January /

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*National Companies and Securities
Commission Regulations*

1980

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2. These Regulations shall come into operation on 1 February 1980. **Commencement**

3. (1) In these Regulations, "the Act" means the *National Companies and Securities Commission Act 1979*. **Interpretation**

(2) In these Regulations, a reference to a form by number shall be read as a reference to the form so numbered in Schedule 1.

4. A person has a relevant interest in securities for the purposes of section 19 of the Act if that person has any direct or indirect pecuniary interest in those securities. **Relevant interest for the purposes of section 19 of Act**

5. For the purposes of sub-section 19 (3) of the Act, the Register of Financial Interests shall be in accordance with Form 1. **Register of Financial Interests**

6. A person has a relevant interest in securities for the purposes of section 49 of the Act if that person has any direct or indirect pecuniary interest in those securities. **Relevant interest for the purposes of section 49 of Act**

7. For the purposes of section 49 of the Act, a person is associated with a person or body if— **Associated persons for the purposes of section 49 of Act**
(a) the first-mentioned person is a partner of the second-mentioned person;
(b) that body is a body corporate and the first-mentioned person is an officer of that body corporate; or
(c) that body is a body corporate and the first-mentioned person has a controlling interest in that body corporate.

8. (1) For the purposes of section 49 of the Act, where a body corporate— **Related corporations for the purposes of section 49 of Act**
(a) is the holding company of another body corporate;
(b) is a subsidiary of another body corporate; or
(c) is a subsidiary of the holding company of another body corporate,

that first-mentioned body corporate and that other body corporate are related to each other.

(2) For the purposes of this regulation, a body corporate shall, subject to sub-regulation (4), be deemed to be a subsidiary of another body corporate if—

- (a) that other body corporate—
 - (i) controls the composition of the board of directors of the first-mentioned body corporate;
 - (ii) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the first-mentioned body corporate; or
 - (iii) holds more than one-half of the issued share capital of the first-mentioned body corporate (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) the first-mentioned body corporate is a subsidiary of any body corporate that is that other body corporate's subsidiary (including a body corporate that is that other body corporate's subsidiary by another application or other applications of this paragraph).

(3) For the purposes of sub-regulation (2), the composition of a body corporate's board of directors shall be deemed to be controlled by another body corporate if that other body corporate, by the exercise of some power exercisable by it without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors, and for the purposes of this provision that other body corporate shall be deemed to have power to make such an appointment if—

- (a) a person cannot be appointed as a director without the exercise in his favour by that other body corporate of such a power; or
- (b) a person's appointment as a director follows necessarily from his being a director or other officer of that other body corporate.

(4) In determining whether one body corporate is a subsidiary of another body corporate—

- (a) any shares held or power exercisable by that other body corporate in a fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable—
 - (i) by any person as a nominee for that other body corporate (except where that other body corporate is concerned only in a fiduciary capacity); or

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(ii) by, or by a nominee for, a subsidiary of that other body corporate, not being a subsidiary that is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other body corporate;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned body corporate, or of a trust deed for securing any issue of such debentures, shall be disregarded; and

(d) any shares held or power exercisable by, or by a nominee for, that other body corporate or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other body corporate if the ordinary business of that other body corporate or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(5) A reference in this regulation to the holding company of a body corporate shall be read as a reference to a body corporate of which that first-mentioned body corporate is a subsidiary.

9. For the purposes of sub-section 38 (3) of the Act, the allowances and expenses to which a person who attends at a hearing before the Commission is entitled are such allowances and expenses as the Chairman allows in accordance with the scale in Schedule 2 to these Regulations.

Allowances
and expenses
payable to
witnesses

10. (1) A summons under sub-section 37 (1) of the Act shall be in accordance with Form 2.

Summons to
witness

(2) A summons under sub-section 37 (1) of the Act shall be served on a person by—

(a) delivering a copy of the summons to the person personally;
or

(b) leaving a copy of the summons at the last known place of residence or business of the person with a person apparently resident or employed at that place and apparently over the age of 16 years.

**SCHEDULE 1
FORM 1**

Regulation 3

5 / No. X

National Companies and Securities Commission Act 1979

REGISTER OF FINANCIAL INTERESTS

Name of member having interest.....
 Address of member.....
 Date of appointment of member.....

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| Date of entry | Company directorships | Description of securities (other than government or semi-government) | Nature of interest in relevant securities | Acquisition or change (including disposal) of interest | | |
|---------------|-----------------------|--|--|--|--------------------------------------|------------------------------|
| | | | | Date of change | Particulars of change in interest | Consideration (all types) |
| | | | | | | |

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SCHEDULE 1—*continued*

FORM 2

National Companies and Securities Commission Act 1979

NATIONAL COMPANIES AND SECURITIES COMMISSION
SUMMONS TO WITNESS
(Description of Hearing)

To

(full name and address of witness)

1. You are hereby summoned to appear before the National Companies and Securities Commission at _____ on _____ 19____, at _____ o'clock in the _____ noon, and thereafter to attend from day to day until the hearing in relation to the abovementioned matter is completed or you are excused or released from further attendance.

2. You are required to appear before the Commission for the purposes of giving evidence at the hearing.

*3. You are required to produce the following documents at the hearing:

(here set out the documents required)

Dated this

day of

19 .

(Signature of
person authorized
to issue summons)

* Insert if applicable

SCHEDULE 2

Regulation 9

Witnesses' Fees and Travelling Expenses

1. A person who attends at a hearing before the Commission to give evidence because of his professional, scientific or other special skill or knowledge shall be paid a fee of not less than \$45 and not more than \$250, for each day on which he so attends.

2. A person, other than a person referred to in Item 1 of this Schedule, who attends at a hearing before the Commission to give evidence or to produce documents shall be paid—

(a) if he is remunerated by wages, salary or fees—

(i) a fee equal to the amount of wages, salary or fees lost by reason of his so attending; or

(ii) a fee of \$50 for each day on which he so attends, whichever is the less; or

(b) if he is not so remunerated—a fee of \$30 for each day on which he so attends.

3. A person attending at a hearing before the Commission to give expert evidence shall be paid, in addition to any other fee payable to him under Item 1 or 2 of this Schedule, a reasonable amount for qualifying to give that evidence.

4. A person attending at a hearing before the Commission to give evidence or to produce documents shall be paid a reasonable amount—

(a) in respect of his conveyance to and from the place at which he so attends; and

(b) if he is required to be absent overnight from his usual place of residence—for meals and accommodation.

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