

EXPLANATORY STATEMENT

STATUTORY RULES 1982 No.123

Issued by the authority of the Attorney-General.

NATIONAL COMPANIES AND SECURITIES COMMISSION REGULATIONS
(AMENDMENT)

On 22 December 1978 the Commonwealth and the States executed a Formal Agreement that provides the framework for a co-operative Commonwealth-State scheme for a uniform system of law and administration in relation to company law and the regulation of the securities industry in the six States and the Australian Capital Territory.

Under clause 32 of the Formal Agreement, the National Companies and Securities Commission (NCSC) is to have responsibility for the entire area of policy and administration with respect to company law and the regulation of the securities industry, subject to directions by the Ministerial Council for Companies and Securities. The Ministerial Council consists of Commonwealth and State Ministers responsible for administering the law relating to companies and the regulation of the securities industry, or their delegates, or the Ministers acting in their office (Formal Agreement, clauses 19 and 20).

Under sub-clause 45(1) of the Formal Agreement, the Ministerial Council may consider a proposal for the amendment of regulations made under the Commonwealth Acts enacted for the purposes of the co-operative scheme. Should the Ministerial Council approve any draft amending regulation which gives effect to such a proposal, the Commonwealth is then required, under sub-clause 45(2) of the Agreement, to submit the draft regulation to the Federal Executive Council for making by the Governor-General.

The Ministerial Council has passed the following resolutions:

"1. The Ministerial Council resolved unanimously pursuant to paragraph 8(1)(b) of the Formal Agreement that:-

Commonwealth

(A) Companies Regulations (Amendment)

The draft Companies Regulations (Amendment) being as set out in the print dated 10th May, 1982;

and

(B) Companies (Transitional Provisions) Regulations

The draft Companies (Transitional Provisions) Regulations being as set out in the print dated 10th May, 1982;

be approved.

2. The Ministerial Council resolved pursuant to clause 45 of the Formal Agreement that:-

Commonwealth

- (A) National Companies and Securities Commission Regulations (Amendment) (S.R. No. 73/82)

The draft National Companies and Securities Commission Regulations (Amendment) (S.R. No. 73/82) being as set out in the print dated 11th May, 1982;

- (B) Securities Industry Regulations (Amendment) (S.R. No. 394/81)

The draft Securities Industry Regulations (Amendment) (S.R. No. 394/81) being as set out in the print dated 11th May, 1982;

and

- (C) Securities Industry Regulations (Amendment) (S.R. No. 50/82)

The draft Securities Industry Regulations (Amendment) (S.R. No. 50/82) being as set out in the print dated 11th May, 1982;

be respectively approved."

The purpose of the accompanying regulations is to amend the National Companies and Securities Commission Regulations (NCSC Regulations) by adding the Commonwealth Companies Act 1981 to the list of Acts and Ordinances already prescribed for the purposes of various provisions of the NCSC Act.

Regulation 1 of the accompanying regulations provides that these Regulations are to come into operation on 1 July 1982, which is the date that the Ministerial Council has agreed will be the commencement date of the Commonwealth Companies Act 1981.

Sub-section 41(4) of the NCSC Act provides that a person appointed for the purposes of the NCSC Act or any other prescribed Act is not liable for acts done or omitted to be done in good faith in the performance of his duty. Present regulation 11 prescribes the Commonwealth Securities Industry Act 1980 and the ACT Corporate Affairs Commission Ordinance 1980 for the purposes of sub-section 41(4) of the NCSC Act. Regulation 2 of the accompanying regulations ensures that a person appointed for the purposes of the Commonwealth Companies Act 1981 will be given the same protection against liability as a person appointed for the purposes of the Commonwealth Securities Industry Act 1980 or the ACT Corporate Affairs Commission Ordinance 1980.

Paragraph 47(1)(a) of the NCSC Act prohibits a person who is, or has at any time been, appointed for the purposes of the NCSC Act or any other prescribed Act from divulging or making use of information by reason of his employment otherwise than in the

performance of his official duties. Present regulation 12 prescribes the Commonwealth Securities Industry Act 1980 and the ACT Corporate Affairs Commission Ordinance 1980 for the purposes of paragraph 47(1)(a). Regulation 3 of the accompanying regulations imposes the same obligations of secrecy on a person appointed for the purposes of the Companies Act 1981 as are already imposed on a person appointed for the purposes of the Commonwealth Securities Industry Act 1980, or the ACT Corporate Affairs Commission Ordinance 1980.

Paragraph 47(2)(a) of the NCSC Act provides that, notwithstanding the above prohibition, a person is not precluded from producing a document to a court in the course of criminal proceedings or in the course of any proceedings under the NCSC Act, any other prescribed Act or any prescribed State Act. Present regulation 13 prescribes the following laws for the purposes of paragraph 47(2)(a):

- the Commonwealth Companies (Acquisition of Shares) Act 1980
- the Companies (Acquisition of Shares) (Application of Laws) Act of each State
- the National Companies and Securities Commission (State Provisions) Act of each State
- the Commonwealth Securities Industry Act 1980
- the Securities Industry (Application of Laws) Act of each State.

In addition to the laws prescribed by present regulation 13, regulation 4 of the accompanying regulations prescribes the Commonwealth Companies Act 1981 and the Companies (Application of Laws) Act of each State (apart from Tasmania which has not yet enacted its Companies (Application of Laws) Act) for the purposes of paragraph 47(2)(a) of the NCSC Act.

Paragraph 48(1)(a) of the NCSC Act prohibits a person who is, or has at any time been, appointed for the purposes of the NCSC Act or any other prescribed Act from dealing in securities if he has price sensitive information that is not generally available.

Present regulation 14 prescribes the Commonwealth Securities Industry Act 1980 and the ACT Corporate Affairs Commission Ordinance 1980 for the purposes of paragraph 48(1)(a).

Regulation 5 of the accompanying regulations ensures that a person appointed for the purposes of the Commonwealth Companies Act 1981 will be subject to the same restrictions on dealing in securities as a person appointed for the purposes of the Commonwealth Securities Industry Act 1980 or the ACT Corporate Affairs Commission Ordinance 1980.

Sub-section 49(1) of the NCSC Act provides that a person (other than a member or acting member of the NCSC or its staff) appointed for the purposes of the NCSC Act or any other prescribed Act must inform the NCSC if, in the course of his duties, he is required to consider certain matters where a potential conflict of interest may arise e.g. a matter relating to a body corporate in which he has a relevant interest. Present

regulation 15 prescribes the Commonwealth Securities Industry Act 1980 and the ACT Corporate Affairs Commission Ordinance 1980 for the purposes of sub-section 49(1). Regulation 6 of the accompanying regulations will ensure that a person appointed for the purposes of the Commonwealth Companies Act 1981 will be under the same obligations to notify the NCSC of relevant interests as a person appointed for the purposes of the Commonwealth Securities Industry Act 1980 or the ACT Corporate Affairs Commission Ordinance 1980.

S.R. No. 73/82