

EXPLANATORY STATEMENT

Statutory Rules 1982 No.366

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

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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 accompanying regulation is identical in form and substance to the draft regulation approved by the Ministerial Council.

The purpose of the accompanying regulation is to amend the National Companies and Securities Commission Regulations (NCSC Regulations) by prescribing various superseded State and Territory legislation for the purposes of paragraph 47(2)(a) of the National Companies and Securities Commission Act 1979 (NCSC Act) so as to permit information obtained under co-operative scheme legislation to be used in furtherance of litigation commenced under the previous law.

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 acquired by reason of his employment otherwise than in the performance of his official duties. Paragraph 47(2)(a) of the NCSC Act provides that, notwithstanding this 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. Paragraph 3(3)(a) of the NCSC Act provides that a reference in that Act to an Act includes a reference to an Ordinance.

Present regulation 13 of the NCSC Regulations prescribes the following laws for the purposes of paragraph 47(2)(a):

- the Commonwealth Companies Act 1981
- the Companies (Application of Laws) Act of each State
- 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

The accompanying regulation prescribes the following additional laws for the purposes of paragraph 47(2)(a):

- the superseded Companies Acts of each State
- the superseded Companies Ordinance 1962 of the A.C.T.
- the superseded Company Take-overs Acts of Queensland, Western Australia and South Australia
- the superseded Securities Industry Acts of New South Wales, Queensland, South Australia, Victoria and Western Australia

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- the superseded Securities Industry (Release of Sureties) Act 1977 of Western Australia

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