

ACTS OF THE PARLIAMENT
OF SOUTH AUSTRALIA

1982

PART I



ACTS OF THE PARLIAMENT OF SOUTH AUSTRALIA

1982

With Tables and Indexes

PART I

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ANNO TRICESIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 1 of 1982

An Act for the establishment of the South Australian College of Advanced Education; to provide for its administration and define its powers, functions, duties and obligations; to incorporate within the College the educational institutions presently known as the "Adelaide College of the Arts and Education", the "Hartley College of Advanced Education", the "Salisbury College of Advanced Education" and the "Sturt College of Advanced Education"; to repeal the Adelaide College of the Arts and Education Act, 1978, the Hartley College of Advanced Education Act, 1978, and the Colleges of Advanced Education Act, 1972-1979; to amend the Tertiary Education Authority Act, 1979; and for other purposes.

[Assented to 7 January 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as the "South Australian College of Advanced Education Act, 1982". Short title.

2. This Act shall come into operation on the first day of January, 1982. Commence-
ment.

3. In this Act, unless the contrary intention appears— Interpretation.

"the academic staff" means all employees of the College engaged in teaching duties, and includes such other persons as are classified by the Council as members of the academic staff:

"the Authority" means the Tertiary Education Authority of South Australia:

"the College" means the South Australian College of Advanced Education:

"the College grounds" means all land—

(a) held under any tenure by the College;

(b) placed under the care, control and management of the College pursuant to the provisions of this Act, and for the time being continuing under that care, control and management;

or

(c) used by the College for, or in connection with, the performance of the functions of the College,

and includes all buildings or structures on, and appurtenances to, that land:

“the constituent Colleges” means the Adelaide College of the Arts and Education, the Hartley College of Advanced Education, the Salisbury College of Advanced Education, and the Sturt College of Advanced Education:

“the Council” means the Council of the College constituted under this Act:

“the general staff” means all persons in the employment of the College otherwise than as members of the academic staff:

“the Principal” means the person for the time being holding or acting in, the office of Principal of the College under this Act:

“the senior staff” means such members of staff of the College as are classified by the Council as members of the senior staff:

“statutes” means the statutes made under this Act:

“student” means a person enrolled as a student of the College:

“student member” of the Council means a student elected to the Council by the students of the College in accordance with the statutes, and for the time being holding that office.

Establishment
of College.

4. (1) There shall be a college entitled the “South Australian College of Advanced Education”.

(2) The College shall be formed by the merger of the constituent Colleges.

(3) The College—

(a) shall be a body corporate with perpetual succession and a common seal;

(b) shall be capable in its corporate name of acquiring, holding, dealing with, and disposing of real and personal property;

(c) shall be capable of acquiring or incurring any other legal rights or liabilities, and of suing and being sued;

(d) shall hold its property on behalf of the Crown;

and

(e) shall have the powers, authorities, duties and obligations prescribed by or under this Act.

(4) The College shall not mortgage, charge, sell or otherwise dispose of any of its real property except with the consent of the Minister.

(5) Where an apparently genuine document purports to bear the common seal of the College, it shall be presumed, in the absence of proof to the contrary, that the common seal of the College was duly affixed to that document.

Functions
of the College.

5. The functions of the College are—

(a) the provision of advanced education, training and research in such fields of knowledge or expertise as the Council may determine;

- (b) the dissemination of knowledge, and the advancement of skills, in fields with which the College is concerned for the advancement of the public interest;
 - (c) the provision of consultative and research services for the benefit of the community, or any part of the community;
 - (d) the provision of post-graduate or refresher courses for those engaged in occupations for which the College provides education and training, and such related occupations as the Council may determine;
 - (e) the fostering and furtherance of an active corporate life within the College;
- and
- (f) the development of educational and cultural activity for the benefit of the wider community.

6. (1) The College may—

- (a) confer degrees, diplomas and other awards recognized and approved by the Authority upon those who have completed courses of advanced education accredited by the Authority;
- and
- (b) confer fellowships and other honorary awards upon persons who in the opinion of the Council merit special recognition by the College.

Conferring of
degrees,
diplomas, etc.

(2) A degree, diploma or other award may be conferred by the College under subsection (1) (a) jointly with some other tertiary institution.

(3) The College may award scholarships conferring such privileges or concessions in relation to tuition as may be authorized by the statutes of the College.

(4) A degree, diploma or other award conferred by any of the constituent Colleges shall be recognized by the College.

7. (1) The College shall not discriminate against or in favour of any person on the ground of sex, marital status, religion, race, political belief or physical impairment.

College
not to
discriminate.

(2) Notwithstanding the provisions of subsection (1), the College may, with the approval of the Minister, make special provision for any students, or class of student, where it is, in the opinion of the Council, necessary to do so to enable those students, or students of that class, to overcome any cultural or educational disadvantage to which they may be subject.

(3) In this section—

- (a) “sex” and “marital status” have the meanings attributed to those expressions by the Sex Discrimination Act, 1975;
 - (b) “race” has the meaning attributed to that expression by the Racial Discrimination Act, 1976;
- and
- (c) “physical impairment” has the meaning attributed to that expression by the Handicapped Persons Equal Opportunity Act, 1981.

8. (1) The College shall be managed and administered by a Council constituted in accordance with this section.

Constitution of
the Council.

- (2) The Council shall be constituted of the following members:
- (a) the Principal, who shall be a member of the Council *ex officio*;
 - (b) a member of the senior staff of the College elected by the senior staff;
 - (c) three members of the academic staff of the College elected by the academic staff;
 - (d) three members of the general staff of the College elected by the general staff;
 - (e) three students of the College elected by the students;
 - (f) fourteen other persons appointed by the Governor on the nomination of the Minister.

(3) A member of the staff of the College is not eligible for election as a student member of the Council.

(4) If before the commencement of this Act, the Minister caused elections to be held in which—

- (a) the Directors of the constituent Colleges constituted one electorate and elected one of their number to membership of the Council;
- (b) the academic staff of the constituent Colleges constituted one electorate and elected three of their number to membership of the Council;
- (c) the general staff of the constituent Colleges constituted one electorate and elected three of their number to membership of the Council;
- (d) the students of the constituent Colleges constituted one electorate and elected three of their number to membership of the Council,

(being, in the case of the elections referred to in paragraphs (b), (c) and (d), so conducted that not more than one person drawn from amongst the academic staff, the general staff or the students of any one of the constituent Colleges could be elected in any one of those elections) the persons so elected shall be deemed to have been elected to membership of the Council under subsection (2) (b), (c), (d) and (e) respectively upon the commencement of this Act.

(5) A member of the Council shall not, in the exercise of his powers or functions as such, be subject to the direction of any person or body of persons.

President and
Deputy
President.

9. (1) The Council shall, from time to time as occasion requires, appoint from its own membership a President and Deputy President.

(2) The term of office of the President or Deputy President, the conditions upon which they shall hold their respective offices, and the powers, functions and duties appertaining to their respective offices shall be as prescribed by the statutes of the College.

(3) No member of the staff, or student, of the College shall be eligible for election as President or Deputy President of the Council.

Conditions of
office.

10. (1) Subject to this section and the statutes—

- (a) a member of the Council (other than a member who holds office *ex officio* or a student member) shall hold office for a term of two years;

and

- (b) a student member of the Council shall hold office for a term of one year.

(2) The following members shall, subject to this section and the statutes, hold office for a term of one year:

- (a) one of the members first elected (or deemed to have been elected) from amongst the academic staff of the College;
 - (b) one of the members first elected (or deemed to have been elected) from amongst the general staff of the College;
- and
- (c) seven of the members first appointed on the nomination of the Minister.

(3) The members referred to in subsection (2) shall be determined by lot.

(4) Upon the expiration of his term of office, a member of the Council shall, subject to this Act, be eligible for re-election or re-appointment.

(5) A person appointed or elected to fill a casual vacancy before the expiration of the term of his predecessor shall hold office for the balance of the term of his predecessor.

(6) Where an elected member of the Council does not continue in the capacity by virtue of which he was entitled to election as a member of the Council, his office shall become vacant.

(7) A member of Council may resign by giving notice in writing of his resignation to the President of the Council.

(8) Where a member who resigns under subsection (7) was appointed to the Council on the nomination of the Minister, a copy of the notice of resignation shall be forwarded to the Minister.

11. (1) A decision carried by a majority of the votes of the members present at a meeting of the Council shall be a decision of the Council.

Conduct of
business by the
Council.

(2) Thirteen members of the Council shall constitute a quorum of the Council.

(3) The President, or if he is not present, the Deputy President or if the President and Deputy President are not present, a chairman elected by the members present, shall preside at a meeting of the Council.

(4) The person presiding at a meeting of the Council shall, in the event of an equality of votes upon any question arising before the Council, have a second or casting vote.

(5) Subject to this Act, and the statutes, the business of the Council shall be conducted in such a manner as the Council may determine.

12. An act or decision of the Council shall not be invalid by reason only of a vacancy in the office of a member of the Council, or on the ground of any defect in the election, nomination or appointment of any member of the Council.

Validity of acts
and decisions
of the Council.

13. (1) The Council—

- (a) shall be the governing authority of the College;
 - (b) may appoint and dismiss officers and employees of the College;
 - (c) may fix fees or charges for tuition or other services provided by the College;
- and

Powers of the
Council.

(d) shall have full power to perform any other act necessary or expedient for the due administration of the College, and the performance of the functions for which the College is established.

(2) The Council may, at any time, delegate any of its powers under this Act to any committee or board appointed by the Council, to any member of the Council, or to any officer or employee of the College.

Council
to collaborate
with certain
bodies, etc.

14. (1) The Council shall, in the exercise of its powers and functions under this Act, collaborate with any body constituted under the law of the State or the Commonwealth with which the Council considers collaboration desirable in the interests of promoting the objects of the College.

(2) In formulating any statutes or policies affecting the admission of students, or the right of students to continue in any course, the Council shall collaborate with the Minister, or any committee established for the purpose by the Minister, with a view to ensuring that the public interest, as assessed and determined by the Minister, is safeguarded.

(3) In determining the courses to be conducted by the College, the Council shall have regard to the needs of the community, as assessed and determined by the Minister.

Internal
organization of
the College.

15. (1) The Council may establish such schools or other divisions (by whatever designation the Council may approve) within the College as it considers necessary or expedient for the purposes of the College and may, from time to time, rearrange or abolish any such schools or divisions and alter or amend the titles or designations thereof.

(2) Notwithstanding the provisions of subsection (1)—

(a) there shall be within the College a school or division designated the "De Lissa Institute of Early Childhood and Family Studies";
and

(b) there shall be within the College a school or division designated the "South Australian School of Art".

(3) The Council may appoint such committees and boards as it considers expedient and may define the powers, functions and duties of those committees or boards.

(4) A committee or board appointed under this section shall consist of such members as the Council thinks fit to appoint to that committee or board.

(5) A member of the committee or board appointed under this section shall hold office under such terms and conditions as may be determined by the Council.

The Principal.

16. (1) The Council shall from time to time, as occasion requires, appoint a suitable person to be Principal of the College.

(2) The first Principal of the College shall be the person nominated for that purpose by the Minister.

(3) The Principal shall be responsible to the Council for the management and administration of the College.

(4) The Principal shall hold office on such terms and conditions as may be prescribed by the statutes, or as may, subject to the statutes, be determined by the Council.

17. (1) Subject to this section, any person employed by one of the constituent Colleges immediately before the commencement of this Act shall, upon the commencement of this Act, become an employee of the College. Transfer of staff.

(2) The salary of any person referred to in subsection (1) shall not be reduced upon transfer to the employment of the College.

(3) The existing and accruing rights or privileges of any such employee in respect of recreation leave, sick leave, long service leave, accouchement leave, professional leave and tenure shall continue in effect.

(4) Any dispute arising in relation to the application or effect of this section upon any employee of the College shall be resolved by an appellate committee to be established by the College.

(5) An employee of the College who was, immediately before the commencement of this Act, a contributor to a superannuation scheme approved by any of the constituent Colleges may remain a contributor under that scheme and the liabilities undertaken by the constituent Colleges under such schemes shall, as from the commencement of this Act, be discharged by the College.

(6) Subject to subsection (7), and any arrangements between the South Australian Superannuation Board and the College, an employee of the College may become or remain a contributor to the South Australian Superannuation Fund.

(7) An employee who exercises his right under subsection (5) to remain a contributor to an approved superannuation scheme may not, while he continues to be such a contributor, become a contributor to the South Australian Superannuation Fund.

18. (1) For the purpose of promoting the development of an active corporate life within the College, the Council may approve the formation of any association or council of students, or students and staff, of the College. Student bodies.

(2) The constitution and rules of any such association or council must be approved by the Council.

19. (1) The real and personal property of the constituent Colleges shall, upon the commencement of this Act, become the property of the College. Transfer of property to the College.

(2) The Governor may, on the recommendation of the Minister, by instrument in writing, direct that any unalienated Crown lands, or any land held on behalf of the Crown, be vested in the College for an estate in fee simple.

(3) The Registrar-General shall, upon proof to his satisfaction that land is vested in the College in pursuance of this section, and upon production of the duplicate certificates of title (if any) relating to the land, issue such new certificates of title, or make such entries and notations upon existing certificates of title, as may be necessary to evidence the vesting of the land in the College.

(4) The Governor may, on the recommendation of the Minister, by instrument in writing, place any unalienated Crown land under the care, control and management of the College.

(5) The Governor may, on the recommendation of the Minister, by instrument in writing, resume any land placed under the care, control and management of the College pursuant to subsection (4).

(6) The Minister may, subject to and in accordance with the Land Acquisition Act, 1969-1972, acquire land for the purposes of the College.

(7) All rights and liabilities of the constituent Colleges (whether vested or contingent) shall, upon the commencement of this Act, become rights and liabilities of the College.

Power to
make statutes.

20. (1) The Council may make, alter and repeal statutes for all or any of the following purposes, or with respect to all or any of the following matters:

- (a) the conduct of the business and proceedings of the Council;
 - (b) the election of members of the Council;
 - (c) the conditions upon which the President, Deputy President, the Principal or any other member of the Council, or officer or employee of the College, shall hold office;
 - (d) the management of the College;
 - (e) the qualification required for admission to any course of education or training provided by the College and the credits to be given for the purposes of any such course in respect of work completed elsewhere;
 - (f) the conferring of fellowships, degrees, diplomas, certificates, scholarships, exhibitions, prizes, and other awards in accordance with this Act;
 - (g) the collection, application and administration of fees payable to the College;
 - (h) the abatement or waiver of fees;
 - (i) courses of instruction, lectures and classes to be provided by the College;
 - (j) examinations and other methods of assessing the academic attainments and performance of students;
 - (k) residential accommodation for students and licensing of boarding houses for students;
 - (l) the establishment and management of branches of the College;
 - (m) co-operation between the College and any university or other college or educational institution, and the affiliation of educational institutions with the College;
 - (n) the maintenance of good order and discipline in the College;
 - (o) the establishment of a board of discipline and its practice, procedure, jurisdiction and powers (which may include powers to punish by a monetary penalty, by expulsion or suspension from the College or by exclusion from rights, privileges or benefits conferred by or arising under this Act or the statutes);
 - (p) the establishment of an appellate committee and its practice, procedure, jurisdiction and powers;
 - (q) the establishment or administration of a fund for the purpose of assisting students in necessitous circumstances;
- and
- (r) any other matter affecting the administration of the College.

(2) Where the Council proposes to make, alter or repeal a statute, it shall at least fourteen days before it does so, give notice in writing of the proposal to the Minister.

- (3) A statute made pursuant to this section shall—
- (a) be sealed with the seal of the College and submitted to the Governor for confirmation;
 - (b) after confirmation be published in the *Gazette* and laid before each House of Parliament;
- and
- (c) take effect on the day on which it is published in the *Gazette* or on a later day prescribed in the statute.

(4) Notwithstanding the foregoing provisions of this section, the Governor may, at any time before the expiration of one month from the commencement of this Act, by notice published in the *Gazette*, promulgate statutes of the College, and those statutes shall be deemed to have been made, confirmed and published under the foregoing provisions of this section and shall operate as from the commencement of this Act.

(5) If either House of Parliament pursuant to a notice of motion given within fourteen sitting days after the statute has been laid before the House passes a resolution disallowing the statute, it shall cease to have effect, but the disallowance shall not affect the validity or legality or cure the invalidity or illegality of any act or omission occurring in the meantime.

(6) Notice of a resolution passed under subsection (5) shall be published in the *Gazette*.

(7) A monetary penalty imposed for an offence against a statute shall be a debt due to the College and shall be recoverable by the College by action in any court of competent jurisdiction.

21. (1) The Council may make, alter and repeal by-laws for all or any of the following purposes:

- (a) to prohibit persons from trespassing on the College grounds;
- (b) to prevent damage to the College grounds (including any fixtures, chattels, trees, shrubs, bushes, flowers, gardens and lawns on those grounds);
- (c) to regulate the speed at which vehicles may be driven on the College grounds;
- (d) to prohibit dangerous or careless driving of vehicles on the College grounds;
- (e) to restrict or prohibit the driving of any vehicle upon the College grounds according to the laden weight of the vehicle or any part of the vehicle;
- (f) to prescribe the route to be followed by traffic on roads, ways or tracks within the College grounds, and the gates to be used for the entrance and exit of vehicles and pedestrians, and to require the observance of one-way traffic rules on specified roads, ways or tracks;
- (g) to prohibit or regulate parking, ranking, placing and arranging of vehicles on the College grounds, and to provide for the removal of vehicles from the College grounds;
- (h) to require drivers or persons in charge of vehicles on the College grounds to comply with traffic directions (which may include directions as to the speed of vehicles, the course and direction of vehicles, the parking or standing of vehicles, and other matters required for order or safety);

-
- (i) generally to regulate traffic of all kinds on the College grounds;
- (j) to prohibit disorderly or offensive behaviour on the College grounds and to provide for the removal from those grounds of persons guilty of disorderly or offensive behaviour in the contravention of the by-laws;
- (k) to regulate, restrict or prohibit the consumption of alcoholic liquor, and the bringing of alcoholic liquor onto those grounds, and to provide for the removal of intoxicated persons from those grounds;
- (l) to provide for the seizure and confiscation of alcoholic liquor that has been brought onto the College grounds in contravention of a by-law;
- (m) to prevent persons from climbing on fences or buildings, or walking over gardens or lawns;
- (n) to regulate the conduct of meetings on the College grounds;
- (o) to prevent the interruption of lectures, classes or meetings by noise or unseemly behaviour (whether within or outside buildings) and to prevent undue noise from motor vehicles;
- (p) to prescribe fines, not exceeding fifty dollars, for contravention of any by-laws;
- and
- (q) to prescribe any other matters expedient for the maintenance of good order on the College grounds or for the protection of property or for the prevention of hindrance to or interference with any activities conducted on the College grounds.
- (2) A by-law shall operate generally throughout the College grounds unless its operation is expressly or by necessary implication limited to a particular part or particular parts of the College grounds.
- (3) Where the Council proposes to make, alter or repeal a by-law, it shall, at least fourteen days before it does so, give notice in writing of the proposal to the Minister.
- (4) A by-law made under this section shall—
- (a) be sealed with the seal of the College and submitted to the Governor for confirmation;
- (b) after confirmation, be published in the *Gazette* and laid before each House of Parliament;
- and
- (c) take effect from a date of publication in the *Gazette* or a later date prescribed in the by-law.
- (5) Notwithstanding the foregoing provisions of this section, the Governor may, at any time before the expiration of one month from the commencement of this Act, by notice published in the *Gazette*, promulgate by-laws of the College and those by-laws shall be deemed to have been made, confirmed and published under the foregoing provisions of this section and shall operate as from the commencement of this Act.
- (6) If either House of Parliament, pursuant to a notice of motion given within fourteen sitting days after the by-law is laid before that House, passes a resolution disallowing the by-law, it shall cease to have effect but the

disallowance of the by-law shall not affect the validity or legality or cure the invalidity or illegality of any act or omission occurring in the meantime.

(7) Notice of a resolution under subsection (6) shall be published in the *Gazette*.

(8) Proceedings in respect of offences against a by-law shall, subject to subsection (9), be heard and determined summarily.

(9) The statutes may provide for proceedings against students or staff of the College in respect of offences against the by-laws to be heard and determined by a board of inquiry established under the statutes and for appeals against decisions of that board of inquiry in respect of any such offences to be heard and determined by an appellate committee established under the statutes.

(10) An allegation in a complaint that any specified place is within the College grounds shall be deemed to be proved in the absence of proof to the contrary.

(11) In any proceedings relating to an offence against a by-law—

(a) an allegation in a complaint that a person named in the complaint was the owner of a vehicle referred to in the complaint on a specified day shall be deemed to be proved in the absence of proof to the contrary;

and

(b) where it is proved that the vehicle was parked in the College grounds in contravention of a by-law it shall be presumed in the absence of proof to the contrary that the vehicle was so parked by the owner of the vehicle.

(12) Where it is alleged that a person has committed an offence against a by-law of the College relating to vehicular traffic or the parking of motor vehicles, the College may cause to be served personally or by post upon that person a notice to the effect that he may expiate the offence by payment to the College of an amount specified in the notice, being an amount fixed by by-law, within a time fixed in the notice, and if the offence is so expiated no proceedings shall be commenced in any court in respect of the alleged offence.

22. (1) Where a statute or by-law has been confirmed by the Governor and published in the *Gazette* all conditions precedent to the making of the by-law shall be conclusively presumed to have been fulfilled.

Validity of
statutes and
by-laws.

(2) A statute or by-law shall not take away or restrict any civil or criminal liability under any other Act or at common law.

(3) Where an act or omission is an offence against a statute and a by-law, the offender may be charged and punished either under the statute or by-law, but not under both.

23. (1) The Council shall, not later than the thirtieth day of June in each year, prepare and present to the Governor a report on the administration of the College during the previous calendar year.

Report.

(2) The report shall contain a full account of the income and expenditure of the College audited in such manner as the Governor may direct.

(3) The Minister shall cause a copy of the report to be laid as soon as practicable before each House of Parliament.

Accounts and
audit.

24. (1) The College shall cause proper accounts to be kept of its financial affairs.

(2) The Auditor-General may, at any time, and shall at least once in every calendar year, audit the accounts of the College.

(3) For the purposes of the audit, the Auditor-General shall have, and may exercise, in relation to the accounts of the College and the officers and employees of the College, the same powers as are vested by the Audit Act, 1921-1981, in the Auditor-General in relation to public accounts and accounting officers.

Financial
provision.

25. The Treasurer shall pay to the College in each financial year such amounts as may be necessary in his opinion for the purpose of enabling the College adequately to perform and discharge its functions and duties under this Act.

Borrowing
of money.

26. (1) The College may, with the approval of the Treasurer, borrow money for the purpose of enabling it to perform its functions under this Act.

(2) A liability incurred by the College under subsection (1) is guaranteed by the Treasurer.

(3) The Treasurer may, without any authority other than this section, pay out of the General Revenue of the State any moneys required for the purpose of discharging obligations arising by virtue of a guarantee under this section.

Exemption
from certain
charges.

27. The College is exempt from the payment of land tax under the Land Tax Act, 1936-1981, and rates under the Local Government Act, 1934-1981.

Powers
conferred
by this Act
subordinated
to provisions
of the Tertiary
Education
Authority
Act.

28. The powers conferred on the College by this Act are subject to the provisions of the Tertiary Education Authority Act, 1979-1982.

Repeal and
amendment of
certain Acts.

29. (1) The following Acts are repealed:

(a) the Adelaide College of the Arts and Education Act, 1978;

(b) the Colleges of Advances Education Act, 1972-1979;

and

(c) the Hartley College of Advanced Education Act, 1978.

(2) The Tertiary Education Authority Act, 1979, is amended—

(a) by striking out Part A of the second schedule;

and

(b) by striking out the third schedule and substituting the following schedule:

THE THIRD SCHEDULE

The following are prescribed post-secondary institutions:

Roseworthy Agricultural College
South Australian College of Advanced Education
South Australian Institute of Technology
Department of Further Education.

(3) The Tertiary Education Authority Act, 1979, as amended by this Act, may be cited as the "Tertiary Education Authority Act, 1979-1982".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 2 of 1982**An Act to amend the Irrigation Act, 1930-1981.***[Assented to 7 January 1982]*

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

- Short titles. 1. (1) This Act may be cited as the "Irrigation Act Amendment Act 1982".
- (2) The Irrigation Act, 1930-1981, is in this Act referred to as "the principal Act".
- (3) The principal Act, as amended by this Act, may be cited as the "Irrigation Act, 1930-1982".
- Commence- 2. This Act shall come into operation on a day to be fixed by proclamation.
ment.
- Amendment of 3. Section 4 of the principal Act is amended by striking out the item:
s. 4—
Arrangement
of Act. PART VI—Lessees of Reclaimed Lands Loan Fund
- and substituting the item:
 PART VI—Financial assistance to holders of land in irrigation areas;.
- Amendment of 4. Section 6 of the principal Act is amended by inserting after the definition
s. 6—
Interpretation. of "Minister" the following definition:
 "owner", in relation to land within an irrigation area, means a person
 who owns, or who is purchasing from the Crown under an agree-
 ment to purchase, the fee simple of the land:.
- Repeal of 5. Section 35 of the principal Act is repealed.
s. 35.
- Insertion of 6. The following section is inserted after section 41 of the principal Act:
new s. 41a.
- Grant of 41a. (1) The Governor may, in the name and on behalf of the
easements
by the Crown. Crown, grant an easement to any person over or in relation to any of
 the following lands that lie within an irrigation area:

- (a) Crown lands or reserved or dedicated lands;
 - (b) land held under licence from the Crown;
- or
- (c) that part of the lands comprised in a lease or agreement to purchase (being a lease or agreement from the Crown under this Act, or any other Act dealing with the disposal of lands of the Crown) in relation to which the lessee or purchaser has surrendered or transferred, or purported to surrender or transfer, to the Crown or a Minister of the Crown certain rights for the purpose of enabling the Crown or an instrumentality of the Crown to carry out any works.

(2) An easement may be granted in such terms and for such purposes as the Minister thinks fit.

(3) The grant of an easement under this section shall be in a form determined by the Minister.

7. The following sections are inserted after section 48b of the principal Act:

48c. (1) In this section, "lease" or "licence" means a lease or licence over lands within an irrigation area, being a lease or licence from the Crown under this Act, or any other Act dealing with the disposal of lands of the Crown.

Insertion of new ss. 48c, 48d and 48e.

Fee simple of lease or licence may be purchased.

(2) A lessee or licensee may apply in writing to the Minister to surrender his interest in the lands, or any part of the lands, comprised in his lease or licence and to purchase, at a price to be determined by the Minister, the fee simple of the lands to which the surrender relates.

(3) The Minister may, upon such terms and conditions as he thinks fit, grant an application made under subsection (2), and shall give the applicant written notice of his decision.

(4) Without limiting the generality of subsection (3), the terms or conditions upon which an application may be granted may include a term or condition—

- (a) that gives the applicant the option of purchasing the fee simple of the lands by immediate payment of cash, or by an agreement to purchase;
- (b) that requires the applicant to purchase the fee simple of the lands by immediate payment of cash;

or

- (c) that requires the land grant issued to the applicant, whether upon payment of cash or upon completion of an agreement to purchase, to be subject to conditions or reservations.

(5) A notice given under subsection (3) to a successful applicant must state—

- (a) the purchase price determined by the Minister;
- (b) the terms and conditions upon which the application is granted;

(c) if the applicant is given the option of entering into an agreement to purchase, the terms, conditions, covenants or reservations of the proposed agreement;

and

(d) the particulars of any conditions or reservations to which the land grant to be issued to the applicant will be subject.

(6) A condition attached to a land grant pursuant to this section may be of indeterminate duration or for such period of time as the Minister determines.

(7) The Minister may revoke, or waive compliance with, a condition to which a land grant or certificate of title is subject.

(8) Where a land grant is subject to conditions or reservations, any certificate of title subsequently issued for any of the lands comprised in the land grant shall, if issued during the continuance of the conditions or reservations, be endorsed with those conditions or reservations.

48d. The provisions of the Crown Lands Act, 1929-1980, apply, *mutatis mutandis*, to and in relation to—

(a) a breach of an agreement to purchase entered into under this Act, as if it were breach of an agreement entered into under that Act;

and

(b) a breach of a condition to which a land grant or certificate of title is subject pursuant to this Act, as if it were breach of a condition to which a land grant or certificate of title is subject pursuant to Division I of Part XIII of that Act.

48e. (1) Notwithstanding any provision to the contrary in this Act or any other Act, or in a perpetual lease, agreement to purchase or land grant, the consent of the Minister is not required to the transfer, assignment, subletting, encumbering or mortgaging of a perpetual lease or agreement to purchase, or of the lands comprised in a land grant, except where the Minister holds a mortgage over the lease, agreement or land grant.

(2) This section applies—

(a) to a perpetual lease of, or an agreement to purchase, any lands within an irrigation area, being a lease or agreement from the Crown under this Act or any other Act dealing with the disposal of lands of the Crown;

and

(b) to a land grant issued in respect of a town allotment under this Act.

Application of Crown Lands Act to breach of Agreement of Agreement or condition.

Consent of Minister not required to transfer, etc., of perpetual lease, agreement or land grant.

Amendment of s. 58—
Power of Minister to require channels to be concreted.

8. Section 58 of the principal Act is amended by inserting in subsections (1), (2) and (3) after the word “lessee”, wherever it occurs, the passage “or owner”.

Amendment of s. 59—
Power of Minister to require lessees or owners to prevent seepage or drainage.

9. Section 59 of the principal Act is amended by inserting in subsections (1), (2) and (3) after the word “lessee”, wherever it occurs, the passage “or owner”.

10. Section 67 of the principal Act is amended—
- (a) by striking out from subsection (1) the word “lessee” and substituting the passage “owner or lessee of land in an irrigation area”;
- (b) by striking out from subsection (1) the passage “comprised in his lease”;
- and
- (c) by inserting in subsection (2) after the word “lessee”, wherever it occurs, the passage “or owner”.
- Amendment of s. 67—
Duty of lessee or owner to repair drains.
11. Section 73 of the principal Act is amended by inserting in paragraph (a) after the word “lessees” the passage “or owners”.
- Amendment of s. 73—
Power of Minister to supply water.
12. Section 80e of the principal Act is amended—
- (a) by inserting in subsection (1) after the word “lessees” the passage “or owners”;
- and
- (b) by inserting in subsection (2) after the word “lessee”, wherever it occurs, the passage “or owner”.
- Amendment of s. 80e—
Settlers to drain blocks.
13. Section 80f of the principal Act is amended—
- (a) by inserting in subsection (1) after the word “lessees”, wherever it occurs, the passage “or owners”;
- (b) by inserting in subsection (1) after the word “lessee”, wherever it occurs, the passage “or owner”;
- and
- (c) by inserting in subsection (3) after the word “lessee”, wherever it occurs, the passage “or owner”.
- Amendment of s. 80f—
Payment of cost of outlet.
14. Section 80g of the principal Act is amended by inserting in subsection (1) after the word “lessees” the passage “or owners”.
- Amendment of s. 80g—
Drainage charge before constitution of drainage area.
15. Section 80i of the principal Act is amended by inserting in subsection (5) after the word “lessee” the passage “or owner”.
- Amendment of s. 80i—
Drainage.
16. Section 80j of the principal Act is amended by inserting in subsection (4) after the word “lessees” the passage “or owners”.
- Amendment of s. 80j—
Provision for recovery of charges and drainage rates.
17. Section 80k of the principal Act is amended—
- (a) by striking out from subsection (1) the word “leases” first occurring and substituting the passage “separate holdings”;
- (b) by striking out from paragraph I of subsection (1) the passage “was comprised in the block and”;
- Amendment of s. 80k—
Apportionment of liability on transfer of portion of blocks.

(c) by striking out from paragraph II of subsection (1) the passage “was comprised in the block and which”;

(d) by striking out from paragraph II of subsection (1) the passage “lessees under the leases aforesaid and the land of those lessees” and substituting the passage “lessees or owners of those holdings on the basis of the area of the lands comprised in the holdings”;

and

(e) by striking out from paragraph III of subsection (1) the passage “lessees under the leases aforesaid and the land of those lessees” and substituting the passage “lessees or owners of those holdings on the basis of the area of the lands comprised in the holdings”.

Amendment of
s. 80—
Payment of
drainage
charges and
rates by
certain
occupiers.

18. Section 80 I of the principal Act is amended—

(a) by inserting after the passage “is not comprised in a lease” the passage “(or any other form of tenure granted under this Act pursuant to the surrender of a lease or licence)”;

and

(b) by inserting after the word “lessee”, wherever it occurs, the passage “or owner”.

Amendment of
heading to
Part VI.

19. The heading to Part VI of the principal Act is amended by striking out the word “LESSEES” and substituting the passage “HOLDERS OF LAND IN IRRIGATION AREAS”.

Amendment of
s. 81—
Financial
assistance
to landholders
in irrigation
areas.

20. Section 81 of the principal Act is amended—

(a) by inserting in subsection (1) after the word “lessee” first occurring the passage “or owner of any land within an irrigation area”;

(b) by striking out from paragraph (a) of subsection (1) the passage “land leased under this Act by the lessee” and substituting the passage “the land”;

and

(c) by inserting in paragraph (c) of subsection (1) after the word “lessee” the passage “or owner”.

Amendment of
s. 113a—
Interpretation.

21. Section 113a of the principal Act is amended by inserting after the word “lessee” in paragraph (a) of the definition of “landholder” the passage “or owner”.

Amendment of
s. 118a—
Use of
party channels
and drains.

22. Section 118a of the principal Act is amended by inserting in subsections (1) and (2) after the word “lessee”, wherever it occurs, the passage “or owner”.

Amendment of
s. 121a—
Power of
Minister
to carry out
work on
behalf of
lessee or
owner.

23. Section 121a of the principal Act is amended by inserting in subsections (1) and (2) after the word “lessee”, wherever it occurs, the passage “or owner”.

24. The second schedule to the principal Act is amended—

(a) by striking out paragraph I appearing after the passage “And the lessee must not—”;

and

(b) by striking out paragraph III of clause 4.

Amendment of
second
schedule.

25. The third schedule to the principal Act is amended—

(a) by striking out paragraph X of clause 3;

and

(b) by striking out paragraph V of clause 5.

Amendment of
third
schedule.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 3 of 1982

An Act to provide for planning, and to regulate development, within the State; to repeal the Planning and Development Act, 1966-1981 and the Control of Advertisements Act, 1916-1935; and for other purposes.

[Assented to 21 January 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the "Planning Act, 1982".

Commence-
ment.

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, by the proclamation made for the purposes of subsection (1), suspend the operation of specified provisions of this Act until a subsequent day fixed by the proclamation, or a day to be fixed by subsequent proclamation.

Arrangement
of Act.

3. This Act is arranged as follows:

PART I—PRELIMINARY

PART II—ADMINISTRATION

DIVISION I—THE SOUTH AUSTRALIAN PLANNING COMMISSION

DIVISION II—THE ADVISORY COMMITTEE ON PLANNING

DIVISION III—STAFF

PART III—APPELLATE AND OTHER PROCEEDINGS UNDER THIS ACT

DIVISION I—THE PLANNING APPEAL TRIBUNAL

DIVISION II—CIVIL ENFORCEMENT PROCEEDINGS

DIVISION III—PROCEEDINGS FOR OFFENCES

- PART IV—THE DEVELOPMENT PLAN
- PART V—DEVELOPMENT CONTROL
- DIVISION I—DEVELOPMENT CONTROL GENERALLY
- DIVISION II—ENVIRONMENTAL IMPACT STATEMENTS
- DIVISION III—CERTAIN DEVELOPMENT NOT TO BE UNDERTAKEN
 WITHOUT CONSENT OF GOVERNOR
- DIVISION IV—APPEAL AGAINST DECISIONS BY PLANNING AUTHORITIES
- DIVISION V—ADVERTISEMENTS
- DIVISION VI—GENERAL PROVISIONS
- PART VI—MINING
- PART VII—LAND MANAGEMENT
- PART VIII—ACQUISITION AND DEVELOPMENT OF LAND
- PART IX—FINANCIAL PROVISIONS
- PART X—MISCELLANEOUS

4. (1) In this Act, unless the contrary intention appears—

Interpretation.

- “the Advisory Committee” means the Advisory Committee on Planning constituted under this Act:
- “allotment” has the same meaning as in Part XIXAB of the Real Property Act, 1886-1981:
- “amendment” includes an addition, excision or substitution:
- “amenity” of a locality includes any quality or condition of the locality that conduces to its harmony, pleasantness or enjoyment:
- “area”, in relation to a council, means the area in relation to which the council is constituted:
- “building” means—
- (a) a building or structure;
- or
- (b) a portion of a building or structure,
- whether temporary or permanent, moveable or immovable:
- “the Chairman” in relation to the Tribunal, the Commission or the Advisory Committee means the person for the time being holding or acting in the relevant office:
- “the Commission” means the South Australian Planning Commission constituted under this Act:
- “council” means a municipal or district council constituted under the Local Government Act, 1934-1981:
- “development” in relation to land, means—
- (a) the erection, construction, conversion, alteration of or addition to a building on the land;
- (b) a change in the use of the land;

- (c) the construction (otherwise than by the Crown, a council or other public authority) of a road, street, or thoroughfare on the land (including any excavation, or other preliminary or associated works);
 - (d) prescribed mining operations on the land;
 - (e) where the land is an allotment—the division of the allotment;
 - (f) where the land is an item of the State heritage—the demolition, conversion, alteration of, or addition to, the item;
- or
- (g) an act or activity in relation to land declared by regulation to constitute development,

but does not include an act or activity in relation to land that is excluded by regulation from the ambit of this definition:

“the Development Plan” means the Development Plan under Part IV:

“division” of an allotment means—

- (a) the division, subdivision or re-subdivision of the allotment;
- or
- (b) any transaction by virtue of which a person becomes, or may become, entitled to possession or occupation of part only of an allotment except—
 - (i) the granting of a licence for a term not exceeding five years, being a licence in respect of which no right or option of renewal or extension exists under which the licence might operate by virtue of renewal or extension for a total period exceeding five years;
- or
- (ii) a transaction exempted by regulation from the ambit of this definition,

and the verb “to divide” has a corresponding meaning:

“environmental impact statement”, in relation to a development or other project, means a statement of—

- (a) the expected effects of the development or project upon the environment;
- (b) the conditions (if any) that should be observed in order to avoid or satisfactorily manage and control any potentially adverse effects of the development or project upon the environment;
- (c) the economic, social or other consequences of carrying the development or project into effect;

and

- (d) any other particulars in relation to the development or project required—
 - (i) by regulation;
- or
- (ii) by the Minister:

“the Hills Face Zone” means the zone shown as the Hills Face Zone on the Development Plan:

“item of the State heritage” means any land, building or structure that is—

(a) a registered item under the South Australian Heritage Act, 1978-1980;

or

(b) an item on the list kept under that Act:

“Judge”, of the Tribunal, includes the Chairman:

“land” includes—

(a) any building upon the land;

(b) any estate or interest in, or right in respect of, the land:

“mining production tenement” means—

(a) a mining lease or miscellaneous purposes licence under the Mining Act, 1971-1978;

(b) petroleum production licence, or pipeline licence under the Petroleum Act, 1940-1978;

or

(c) a production licence or pipeline licence under the Petroleum (Submerged Lands) Act, 1981:

“the Mining Acts” means the Mining Act, 1971-1978, the Petroleum Act, 1940-1978, and the Petroleum (Submerged Lands) Act, 1981:

“the Minister responsible for the State heritage” means the Minister responsible for the administration of the South Australian Heritage Act, 1978-1980:

“owner” of land means—

(a) where the land has been alienated from the Crown by grant in fee simple—the holder of an estate in fee simple in the land;

(b) where the land is held of the Crown by lease or licence—the lessee or licensee;

(c) where the land is held of the Crown under an agreement to purchase—the person who is entitled to the benefit of the agreement:

“planning authority” means a council, the Commission or other authority by which a planning authorization has been, or may be, granted:

“planning authorization”, in relation to development, means any consent, permission, approval, authorization or certificate required in respect of that development by or under this Act or the repealed Act:

“prescribed mining operations” means operations carried on in the course of—

(a) the recovery of naturally occurring substances (except water) from the earth (whether in solid, liquid or gaseous form);

PART I

(b) the recovery of minerals by the evaporation of water,

but does not include operations carried on in pursuance of any of the Mining Acts:

“the principles of development control” means the principles, prescriptions, and criteria embodied in the Development Plan—

(a) under which—

(i) development, or any class of development, is permitted absolutely or conditionally;

or

(ii) development, or any class of development is prohibited;

(b) relating to the conditions upon which development, or any form of development, is or may be permitted, or the conditions that may be attached to a planning authorization;

(c) otherwise relevant to the regulation, restriction or prohibition of development, or any form of development:

“private mine” means land declared under the Mining Act, 1971-1978, to be a private mine:

“rating or taxing Act” means any Act that imposes a rate or tax upon land:

“rating or taxing authority” means any authority to which a rate or tax is payable under a rating or taxing Act:

“the Senior Judge” means the Judge holding, or acting in the office of, Senior Judge under the Local and District Criminal Courts Act, 1926-1981:

“the Tribunal” means the Planning Appeal Tribunal constituted under this Act:

“to undertake” development means to commence or proceed with development or to cause, suffer or permit development to be commenced or proceeded with.

(2) Where at the foot of a section or subsection of this Act the words “Additional Penalty” appear, those words signify that where a person undertakes development in contravention of, and thus commits an offence against, that section or subsection he shall be liable in addition to any other penalty prescribed for the offence to a penalty of an amount not exceeding the cost of the development insofar as it has been undertaken in contravention of that section or subsection.

(3) Where at the foot of a section or subsection of this Act, the words “Default Penalty” appear, those words signify that where a person is convicted of an offence against the section or subsection and the offence continues after the date of the conviction, he shall be guilty of a further offence against the section or subsection and liable, in addition to any other penalty prescribed for such an offence, to a penalty not exceeding the amount of the default penalty for every day the offence continues after the date of the conviction.

5. (1) The Planning and Development Act, 1966-1981, is repealed.
- (2) Notwithstanding subsection (1)—
- (a) the repeal effected by that subsection does not affect any rights accrued under the repealed Act, or the validity of any decision or planning authorization made or granted under the repealed Act, or of a condition attached to any such decision or planning authorization;
 - (b) an application, appeal, or other proceeding that was commenced in pursuance of the repealed Act, or the regulations under the repealed Act, but had not been finally determined at the commencement of this Act may be continued and completed as if this Act had not been enacted;
 - (c) a right of appeal existing under the repealed Act immediately before the commencement of this Act may be exercised after that commencement as if this Act had not been enacted;
 - (d) a condition attached to a planning authorization granted under Part IV, Part V or Part VAA of the repealed Act shall, unless revoked by the Commission or a council by which it was imposed, remain in force and bind the owners and occupiers of the land to which the condition relates;
 - (e) a development plan or supplementary development plan in respect of which representations had been invited under the provisions of the repealed Act but which had not, at the commencement of this Act, become an authorized development plan shall be deemed to be a supplementary development plan in respect of which submissions have been invited under this Act, but persons by whom representations are made (whether before or after the commencement of this Act) in relation to the plan are not entitled to the rights conferred by section 41 (9);
 - (f) a recommendation for the making of planning regulations in respect of which notice had been given under the repealed Act not more than twelve months before the commencement of this Act (being a recommendation that had not been implemented before the commencement of this Act) shall be deemed to be a supplementary development plan in respect of which submissions have been invited under this Act;
 - (g) a proclamation made under section 61 of the repealed Act or under section 29 of the Town Planning Act, 1929-1963, and in force immediately before the commencement of this Act, shall, subject to revocation under this Act, have the force and effect of a proclamation under section 62;
 - (h) a regulation in force under section 36 (4) (d) of the repealed Act immediately before the commencement of this Act shall, subject to this Act, have effect as a regulation under section 65;
- and
- (i) a scheme in force under section 63a of the repealed Act immediately before the commencement of this Act shall, subject to this Act, have effect as a scheme under section 63.
- (3) All real and personal property that was immediately before the commencement of this Act vested in the State Planning Authority shall, upon the commencement of this Act, vest in the Minister.

PART I

Application of Act.

6. (1) Subject to this section, this Act applies throughout the State.

(2) The Governor may, by proclamation—

(a) exclude any specified portion of the State from the application of this Act, or specified provisions of this Act;

or

(b) exclude any specified form of development from the application of this Act, or specified provisions of this Act.

(3) The Governor may, by subsequent proclamation, vary or revoke a proclamation under subsection (2).

(4) This Act does not apply to land within the City of Adelaide.

(5) This Act applies to land whether or not it has been brought under the provisions of the Real Property Act, 1886-1980.

Extent to which the Crown is bound by this Act.

7. (1) Subject to this section, this Act binds the Crown.

(2) Where a Minister of the Crown, or a prescribed instrumentality or agency of the Crown proposes to undertake development it shall, subject to subsection (3), give notice containing prescribed particulars of the proposal—

(a) to the Commission;

and

(b) where the land in relation to which the development is proposed is within the area of a council—to that council.

(3) Notice of a proposed development is not required under subsection (2) if the development is—

(a) such as could be undertaken by a private person without planning authorization;

or

(b) of a kind excluded from the provisions of this section by regulation.

(4) A council may report to the Commission upon a proposal of which it receives notice under subsection (2).

(5) Where notice of a proposal is given to a council under subsection (2), and a report from the council is not received by the Commission within two months of the date of the notice, it shall be conclusively presumed that the council does not intend to report on the proposal.

(6) The Commission shall report to the Minister on any proposal of which it receives notice under subsection (2).

(7) A report under subsection (6)—

(a) must incorporate any report made by a council under subsection (4);

and

(b) if an environmental impact statement has not been prepared and published in relation to the proposal—must contain a recommendation on whether an environmental impact statement should be prepared and published in relation to the proposal.

(8) The Minister shall, as soon as practicable after his receipt of a report under subsection (6), cause copies of the report to be laid before both Houses of Parliament.

(9) If the Minister, after consideration of a report under subsection (6) is of the opinion that the proposal to which the report relates is seriously at variance with the Development Plan, he may give such directions in relation to the proposed development as he thinks fit.

(10) Except as provided by this section, this Act does not bind a Minister of the Crown or a prescribed instrumentality or agency of the Crown.

8. (1) This Act applies to development undertaken by a council.

Councils
bound by
this Act.

(2) Where—

(a) a council proposes to undertake development;

and

(b) a planning authorization would, apart from this section, be required from that council in respect of development of the kind proposed,

the Commission shall be the planning authority from which the relevant planning authorization is to be sought and provisions of this Act under which the council is constituted as planning authority in relation to development of the kind proposed shall, in relation to the particular development proposed by the council, be construed subject to such modifications as are necessary to give effect to this section.

PART II

PART II

ADMINISTRATION

DIVISION I

DIVISION I—THE SOUTH AUSTRALIAN PLANNING COMMISSION

Establishment
of the
Commission.

9. (1) There shall be a commission entitled the "South Australian Planning Commission".

(2) The Commission shall have the powers, functions and duties conferred, assigned or imposed by or under this Act.

(3) In the exercise and discharge of its powers, functions or duties the Commission shall (except where the Commission makes or is required to make a recommendation or report, is required to give effect to an order or direction of the Tribunal or a court or has a discretion in relation to the granting of a planning authorization) be subject to the control and direction of the Minister.

Membership of
the
Commission.

10. (1) The Commission shall consist of three members, appointed by the Governor, of whom—

(a) one (the Chairman) shall be appointed on a full-time basis;

and

(b) two shall be appointed on a part-time basis.

(2) The Governor may appoint a suitable person to be a deputy of a member of the Commission and such a person may, in the absence of the member of whom he has been appointed a deputy, act in the place of that member.

(3) The office of deputy to a member of the Commission may be held in conjunction with any office in the public service of the State.

(4) A person appointed to be the Chairman, or a deputy of the Chairman, of the Commission—

(a) must be a corporate member of the Royal Australian Planning Institute Incorporated;

or

(b) must have qualifications and experience in urban and regional planning, environmental management or a related discipline that are, in the opinion of the Minister, appropriate to the Chairman's functions and duties under this Act.

(5) Of the two members appointed on a part-time basis—

(a) one must be a person with practical knowledge of, and experience in, local government;

and

(b) one must be a person with practical knowledge of, and experience in, administration, commerce, industry or the management of natural resources,

and a deputy of any such member must be similarly qualified.

(6) The member referred to in subsection (5) (a) shall be chosen from a panel of three persons with practical knowledge of, and experience in, local government submitted to the Minister by the Local Government Association.

(7) The term of office for which a member of the Commission is appointed shall be—

(a) in the case of the Chairman—a term of five years;

and

(b) in the case of a part-time member—a term, not exceeding two years, specified in the instrument of his appointment.

(8) A member of the Commission is, upon the expiration of a term of appointment, eligible for re-appointment.

(9) The remuneration, allowances, and conditions of appointment of a member of the Commission—

(a) shall be as determined by the Governor;

or

(b) shall, in the case of the Chairman, if the Governor so decides, be determined wholly or in part in accordance with the Public Service Act, 1967-1978.

(10) The Governor may remove a member of the Commission from office for—

(a) breach of, or failure to comply with, the conditions of his appointment;

(b) misconduct;

or

(c) mental or physical incapacity to carry out satisfactorily the duties of his office.

(11) The office of a member of the Commission becomes vacant if—

(a) he dies;

(b) he resigns by written notice addressed to the Minister;

or

(c) he is removed from office by the Governor under subsection (10).

(12) A member of the Commission who has a direct or indirect pecuniary interest in any matter before the Commission shall not take part in any deliberations or decision of the Commission in relation to that matter.

11. (1) Subject to this Act, the procedure for the calling of meetings of the Commission, and the conduct of business at meetings of the Commission, shall be as determined by the Commission.

Procedures
of the
Commission.

(2) The Chairman shall preside at meetings of the Commission.

(3) A decision in which any two members express their concurrence at a meeting of the Commission shall be a decision of the Commission.

(4) The Commission shall cause accurate minutes to be kept of its proceedings.

12. For the purposes of this Act, the Commission—

(a) may, of its own motion, and shall, at the request of the Minister, consider, and report to the Minister upon, matters relevant to the use or development of land;

Advisory
functions of
Commission.

PART II
DIVISION I

(b) may, with the approval of the Minister, establish, or promote the establishment of, committees to advise the Commission on matters relevant to the administration of this Act.

Delegation
of powers and
functions.

13. (1) The Commission may, with the approval of the Minister, delegate any of its powers or functions.

(2) A delegation under this section—

(a) may be made to—

(i) the Chairman or some other member of the Commission;

(ii) a committee (whether or not it consists of or includes a member or members of the Commission);

(iii) a council or other body corporate;

or

(iv) any other person.

(b) may be made subject to such conditions as the Commission thinks fit;

(c) is revocable at will and does not derogate from the power of the Commission to act in any matter itself.

(3) Where the commission delegates powers or functions to a council in pursuance of this section, it shall be lawful for the council to subdelegate those powers to a committee of the council.

(4) A person to whom powers or functions are delegated under this section (whether individually or as a member of a committee) is disqualified from acting in pursuance of the delegation in relation to any matter in which he has a direct or indirect pecuniary interest.

DIVISION II

DIVISION II—THE ADVISORY COMMITTEE ON PLANNING

Constitution
of the
Committee.

14. (1) There shall be a committee entitled the “Advisory Committee on Planning”.

(2) The Advisory Committee shall consist of the Chairman of the Commission (who shall also be Chairman of the Advisory Committee) and seven other members, appointed by the Governor, of whom—

(a) two shall be persons with wide experience of local government;

(b) one shall be a person with wide experience in environmental matters;

(c) one shall be a person with wide experience of commerce and industry;

(d) one shall be a person with wide experience in rural affairs;

(e) one shall be a person with wide experience of housing or urban development;

and

(f) one shall be a person with wide experience of the utilities and services that form the infrastructure of urban development;

(3) At least one member of the Advisory Committee must be a woman and at least one member must be a man.

(4) Subject to subsection (5), a member of the Advisory Committee, appointed by the Governor, shall hold office at the pleasure of the Governor.

(5) A member of the Advisory Committee, appointed by the Governor, shall vacate his office at the expiration of two years, or such lesser period as the Governor may determine from the date of his appointment or last re-appointment as a member of the Advisory Committee unless the Governor reappoints him as a member of the Advisory Committee.

(6) Subject to any direction of the Minister, the procedures for calling meetings of the Advisory Committee, and conducting its proceedings, shall be as determined by the Advisory Committee.

15. (1) The Advisory Committee—

(a) may advise the Minister on any matter relating to urban or regional planning that should, in the opinion of the committee, be brought to his attention;

and

(b) shall advise the Minister on any matter referred by the Minister to the committee for advice.

(2) The Advisory Committee may, with the approval of the Minister, establish specialist sub-committees to investigate, and report to the Committee, on any matter.

(3) A member of the Advisory Committee, or of a sub-committee appointed under subsection (2), who has a direct or indirect pecuniary interest in any matter before the Advisory Committee or the sub-committee shall not take part in any deliberations or decision of the Advisory Committee or the sub-committee (as the case may require) in relation to that matter.

Functions
and powers
of the
Advisory
Committee.

DIVISION III—STAFF

DIVISION III

16. (1) There shall be—

Staff.

(a) a secretary to the Commission;

(b) a secretary to the Advisory Committee;

and

(c) such other staff to assist the Commission, the Advisory Committee, or both, as the Governor thinks fit.

(2) A secretary or other member of staff referred to in subsection (1) shall be appointed, and shall hold office, subject to, and in accordance with, the Public Service Act, 1967-1978.

(3) The Commission or the Advisory Committee may, with the approval of the Minister administering a department of the public service, make use of the services of officers of that department.

(4) The Commission or the Advisory Committee may, with the approval of a council, make use of the services of officers or employees of that council.

PART III

PART III

APPELLATE AND OTHER PROCEEDINGS UNDER THIS ACT

DIVISION I

DIVISION I—THE PLANNING APPEAL TRIBUNAL

The Tribunal.

17. The body formerly known as the Planning Appeal Board shall continue in existence but, as from the commencement of this Act, shall be known as the "Planning Appeal Tribunal".

The Chairman.

18. (1) There shall be a Chairman of the Tribunal.

(2) The Chairman shall be a person holding judicial office under the Local and District Criminal Courts Act, 1926-1981, nominated by the Senior Judge as Chairman of the Tribunal.

(3) The Chairman is not precluded by his office from performing any other judicial functions.

(4) The Chairman ceases to hold office as such if—

(a) he ceases to hold judicial office under the Local and District Criminal Courts Act, 1926-1981;

or

(b) his nomination is revoked by the Senior Judge.

(5) If the Chairman is absent, or unavailable to act in his office, a Judge nominated by the Senior Judge shall act in the office of the Chairman.

The Judges
of the
Tribunal.

19. The Judges holding office under the Local and District Criminal Courts Act, 1926-1981, shall be Judges of the Tribunal.

The
commissioners.

20. (1) There shall be such commissioners of the Tribunal as the Governor thinks fit to appoint.

(2) A commissioner may be appointed on a full-time or part-time basis, but not more than six shall be appointed on a full-time basis.

(3) A commissioner must be a person with practical knowledge of, and experience in—

(a) local government;

(b) urban and regional planning;

or

(c) administration, commerce or industry.

(4) Subject to subsection (5) a full-time commissioner shall hold office upon terms and conditions determined by the Governor.

(5) The following provisions shall apply in respect of full-time commissioners:

(a) a full-time commissioner shall not be subject to the Public Service Act, 1967-1981, but the rights of a full-time commissioner to long service leave, recreation leave, sick leave and other forms of leave shall be determined in accordance with the provisions of that Act and the regulations under that Act;

- (b) a full-time commissioner may, notwithstanding that he has reached the age of retirement, complete the hearing and determination of any appeal or matter part-heard by him before reaching that age and shall, for that purpose, be deemed to continue as a full-time commissioner;
- (c) a full-time commissioner shall be an "employee" within the meaning of the Superannuation Act, 1969, as amended;
- (d) a person who was immediately before the commencement of this Act a full-time commissioner under the repealed Act shall, subject to this Act, continue in office on terms and conditions no less favourable than those on which he held office under the repealed Act.

(6) A part-time commissioner shall be appointed for a term of office (not exceeding five years) determined by the Governor, and shall, at the expiration of a term of office, be eligible for re-appointment.

(7) The office of a part-time commissioner shall become vacant if—

- (a) he dies;
- (b) he resigns by notice in writing addressed to the Minister;
- or
- (c) he is removed from office by the Governor on the ground of—
- (i) physical or mental incapacity to carry out satisfactorily the duties of his office;
- or
- (ii) misconduct.

21. No act or proceeding of the Tribunal shall be invalid by reason of a vacancy in the office or a defect in the appointment, of a Judge or commissioner of the Tribunal.

Saving provision.

22. Where a Judge or commissioner of the Tribunal has a direct or indirect pecuniary interest in the subject matter of a proceeding before the Tribunal, he is disqualified from sitting at the hearing.

Personal interest bar to sitting at hearing of proceeding.

23. (1) There shall be a secretary to the Tribunal.

The secretary.

(2) The office of secretary to the Tribunal may be held in conjunction with any other office in the Public Service of the State.

24. (1) The sittings of the Tribunal for the hearing of appeals or other matters whether under this Act or any other Act, shall be held at such places and at such times as the Chairman may determine.

Administrative responsibility of the Chairman.

(2) Subject to this Act, the Chairman may give directions as to the arrangement of the business of the Tribunal and the constitution of the Tribunal for the hearing of any proceedings before the Tribunal.

PART III

DIVISION I

Constitution
of the
Tribunal
when hearing
proceedings.

25. (1) Subject to this section and the rules of the Tribunal, the Tribunal shall be constituted for the purpose of hearing and determining proceedings, of a Judge and not less than two Commissioners.

(2) Where a Commissioner dies, or is for any reason unable to continue with the hearing of proceedings part-heard before the Tribunal, the Tribunal constituted of the Judge and the remaining Commissioner or Commissioners may continue and complete the hearing and determination of those proceedings.

(3) The jurisdiction of the Tribunal may be exercised by a Judge or a Commissioner authorized by a Judge—

(a) for the purpose of adjourning any proceedings;

(b) in determining any matter of practice or procedure in any proceedings;

or

(c) in any other matter prescribed by rules of the Tribunal.

(4) The jurisdiction of the Tribunal may be exercised by the secretary to the Tribunal—

(a) for the purpose of adjourning any proceedings;

or

(b) in any other matter prescribed by rules of the Tribunal.

(5) Where a Commissioner, or the secretary, sits alone pursuant to subsection (3) or (4) to exercise the jurisdiction of the Tribunal, he may at any time, and shall at the request of a party to the proceedings, refer a question of law for the decision of the Tribunal.

(6) A question of law referred for the decision of the Tribunal under subsection (5) shall be decided by a Judge and his determination shall constitute the decision of the Tribunal upon that question.

(7) The Tribunal, separately constituted in accordance with this Act, may sit to hear and determine separate proceedings at the same time.

How decisions
of the
Tribunal
to be arrived
at.

26. Where the Tribunal is constituted of a Judge and two or more commissioners any question arising before the Tribunal shall be determined in accordance with the opinion of a majority of those constituting the Tribunal, or where they are equally divided in opinion, in accordance with the opinion of the Judge.

Conference of
parties to
proceedings.

27. (1) The Tribunal shall not commence the hearing of proceedings unless it is satisfied that a conference of the parties, under the chairmanship of a Judge or commissioner of the Tribunal, has taken place, and there remain unresolved differences between the parties.

(2) The Tribunal may dispense with a conference under this section if it is of the opinion that—

(a) no useful purpose would be served by a conference between the parties prior to the hearing;

or

(b) there is some other reason that justifies dispensing with the conference.

(3) A party to proceedings before the Tribunal may appear at a conference under this section by counsel or other representative and any compromise or settlement to which the counsel or other representative agrees at the conference shall be binding on the principal.

(4) Subject to subsection (5), evidence of anything said or done in the course of a conference under this section is inadmissible in proceedings before the Tribunal except by consent of all parties to the proceedings.

(5) The chairman of a conference under this section shall report to the Tribunal on whether a compromise or settlement was reached at the conference and, if so, the terms of the compromise or settlement and the Tribunal may, without further inquiry, make any determination or orders necessary to give effect to any such compromise or settlement.

28. Upon the hearing of proceedings—

- (a) the procedure of the Tribunal shall, subject to this Act, be as it thinks fit;
- (b) the Tribunal shall not be bound by the rules of evidence and may inform itself upon any matter as it thinks fit;
- and
- (c) the Tribunal shall act according to equity, good conscience and the substantial merits of the case.

Principles governing hearings.

29. (1) The Tribunal may, for the purpose of proceedings before the Tribunal—

- (a) by summons signed by or on behalf of the Tribunal by a member of the Tribunal, or the secretary, require the attendance before the Tribunal, or at a conference, of any person;
- (b) by summons signed on behalf of the Tribunal by a member of the Tribunal, or the secretary, require the production before the Tribunal of any relevant books, papers or documents;
- (c) inspect any books, papers or documents produced before it, and retain them for such reasonable period as it thinks fit, and make copies of them, or any of their contents;
- (d) require any person to make an oath or affirmation that he will truly answer all questions put to him relating to any matter at issue before the Tribunal (which oath or affirmation may be administered by a member of the Tribunal, or the secretary);
- or
- (e) require any person appearing before the Tribunal to answer any relevant questions put to him by a member of the Tribunal, or by any person appearing before the Tribunal.

Powers of the Tribunal in relation to witnesses, etc.

(2) Subject to subsection (3), if a person—

- (a) who has been served with a summons to attend before the Tribunal, or at a conference, fails, without reasonable excuse, to attend in obedience to the summons;
- (b) who has been served with a summons to produce relevant books, papers or documents, fails, without reasonable excuse, to comply with the summons;

PART III
DIVISION I

(c) misbehaves himself before the Tribunal, wilfully insults the Tribunal or any member of the Tribunal, or interrupts the proceedings of the Tribunal;

or

(d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Tribunal,

he shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars or imprisonment for three months.

(3) A person who appears as a witness before the Tribunal has the same protection as a witness in proceedings before a District Court.

Joinder of parties and intervention by Minister.

30. (1) The Tribunal may, by order, join a person as a party to proceedings before the Tribunal.

(2) The Minister may, if in his opinion proceedings before the Tribunal involve a question of public importance, intervene in those proceedings.

Costs.

31. (1) The Tribunal may make an order for costs in any proceedings in accordance with the scale prescribed for that purpose—

(a) where in the opinion of the Tribunal the proceedings are frivolous or vexatious;

or

(b) where in the opinion of the Tribunal the proceedings have been instituted or prosecuted for the purpose of delay or obstruction.

(2) Where a party to proceedings before the Tribunal applies for an adjournment of the hearing of those proceedings, the Tribunal may grant that application upon such terms as it considers just, and may make an order for costs in accordance with a scale prescribed for the purpose against the applicant for the adjournment in favour of any other party to the proceedings.

Hearings before the Tribunal to be in public except in certain circumstances.

32. (1) Unless otherwise directed by the Tribunal, all hearings before the Tribunal shall be in public.

(2) Where the Tribunal is satisfied that it is desirable to do so—

(a) in the interests of justice;

(b) by reason of the confidential nature of the evidence to be given before the Tribunal;

(c) in order to expedite proceedings of the Tribunal;

or

(d) for any other reason that the Tribunal thinks sufficient,

the Tribunal may—

(e) direct that a hearing or part of a hearing shall take place in chambers;

(f) give directions prohibiting or restricting the publication of evidence given before the Tribunal or of the contents of any document produced to the Tribunal;

or

(g) give directions excluding any person from the hearing before the Tribunal of any part of the proceedings.

(3) A person shall comply with a direction of the Tribunal under subsection (2).

Penalty: One thousand dollars.

33. (1) The Senior Judge may make rules of the Tribunal—

Rules of the
Tribunal, etc.

(a) governing the institution of proceedings before the Tribunal;

(b) governing the practice and procedure to be observed in relation to conferences of parties prior to the hearing of proceedings;
and

(c) governing any aspect of the practice and procedure of the Tribunal.

(2) An apparently genuine document purporting to be a copy of a determination or order of the Tribunal, and to be certified as such by the secretary to the Tribunal, shall in any legal proceedings, in the absence of proof to the contrary, be accepted as proof of the determination or order.

34. (1) Subject to the rules of the Supreme Court, a party to proceedings before the Tribunal may, within thirty days after the date of the Tribunal's determination or decision or such longer period as may be allowed by the Court, appeal against the determination or decision to the Land and Valuation Court, and on any such appeal the Court may confirm, vary or reverse the determination or decision of the Tribunal and make such orders (including orders as to costs) as it thinks just.

Appeals and
cases stated.

(2) Subject to the rules of the Supreme Court, the Tribunal may refer to the Land and Valuation Court any question of law arising before the Tribunal, and the Court may determine the question referred as it thinks just, and make such orders (including orders as to costs) as it thinks just.

35. (1) Where a person appeals, or purports to appeal, under this or any other Act to the Tribunal or appeals against a determination or decision of the Tribunal to the Land and Valuation Court, and it appears to the Tribunal or the Court—

General
powers of the
Tribunal and
the Land and
Valuation
Court with
respect to
Appeals.

(a) that some irregularity has occurred affecting either the appeal, or purported appeal, or the decision or purported decision against which the appeal or purported appeal has been brought;

(b) that it would conduce to the expeditious administration of justice if the powers conferred by this subsection were exercised,

the Tribunal or the Court may cure the irregularity by ordering that, subject to such conditions as may be stipulated by the Tribunal or the Court, the requirements of this Act, or of any other Act or law, be dispensed with to the extent necessary for that purpose.

(2) Where a person appeals under this or any other Act to the Tribunal or appeals against a determination or decision of the Tribunal to the Land and Valuation Court and it appears to the Tribunal or the Court—

(a) that the appeal relates to an application or proposal made by one party to the appeal to another party to the appeal;

PART III
DIVISION I

(b) that the appeal could be resolved in a manner that is fair to all parties if certain modifications to the application or proposal were made;

and

(c) it would conduce to the expeditious administration of justice if the powers conferred by this subsection were exercised,

the Tribunal or the Court may by order amend the application or proposal accordingly.

DIVISION II

DIVISION II—CIVIL ENFORCEMENT PROCEEDINGS

Jurisdiction
of the Court.

36. (1) Where a person contravenes or fails to comply with a provision of this Act, the Commission or a council may apply to a District Court for an order under this section.

(2) The application may be made *ex parte*, and if the Court is satisfied on the application that the respondent has a case to answer, it shall issue a summons requiring the respondent to appear before the Court to show cause why an order should not be made against him under this section.

(3) If—

(a) after hearing—

(i) the applicant and the respondent;

and

(ii) any other person who has, in the opinion of the Court, a proper interest in the subject-matter of the proceedings and desires to be heard in the proceedings,

the Court is satisfied, on the balance of probabilities, that the respondent to the application has contravened or failed to comply with a provision of this Act;

or

(b) the respondent fails to appear in response to the summons, or having appeared, does not avail himself of an opportunity to be heard,

the Court may by order—

(c) require the respondent to refrain, either temporarily or permanently, from the act, or course of action, that constitutes the contravention of, or failure to comply with, this Act;

(d) require the respondent to make good the contravention or default in a manner, and within a period, specified by the Court.

(4) Any person with a legal or equitable interest in land to which an application under this section relates shall be entitled to appear and be heard in proceedings based on the application before a final order is made.

(5) If, upon an application under this section, or before the determination of the proceedings commenced by the application, the Court is satisfied that, in order to preserve the rights or interests of parties to the proceedings, or for any other reason, it is desirable to make an interim order under this section, the Court may make such an order.

(6) An interim order may be made upon conditions determined by the Court, and shall not operate after the proceedings in which it is made are finally determined.

(7) A person who contravenes, or fails to comply with an order, or an interim order, under this section shall (without prejudice to any liability that he may incur in proceedings for punishment of a contempt of the order) be guilty of an offence and liable to a penalty not exceeding ten thousand dollars.

(8) Where the Court makes an order under subsection (3) (d) against the respondent to an application, and he fails to comply with the order within the period specified by the Court, the Commission or a council may, by leave of the Court, cause any works contemplated by the order to be carried out, and may recover the costs of those works, as a debt, from the respondent.

(9) The Court may, if it thinks fit, adjourn proceedings under this section in order to permit the respondent to make an application for a planning authorization that should have been, but was not, made or to remedy any other default.

(10) The Court may make such orders in relation to the costs of proceedings under this section as it thinks just.

37. (1) Proceedings under this Division may be commenced at any time within twelve months after the date of the alleged contravention of, or failure to comply with, a provision of this Act or, with the authorization of the Attorney-General, at any later time within five years after that date.

Commencement
of proceedings.

(2) An authorization may only be given under subsection (1) in respect of a contravention of, or failure to comply with, a provision of this Act declared by regulation to be a provision in respect of which such an authorization may be given.

(3) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorize the commencement of proceedings under this Division shall be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorization.

38. (1) Subject to the rules of the Supreme Court, an appeal lies against—

Appeals.

(a) an order of a District Court made in the exercise of the jurisdiction conferred by this Division;

or

(b) a decision by a District Court not to make an order under this Division,

to the Land and Valuation Court.

(2) An appeal under this section must be instituted within thirty days of the date of the decision or order subject to appeal, or such longer period as may be allowed by the Land and Valuation Court.

DIVISION III—PROCEEDINGS FOR OFFENCES

DIVISION III

39. (1) Proceedings for an offence against this Act shall be disposed of summarily.

Proceedings
for an
offence
against this
Act.

(2) Any such proceedings may be commenced at any time within twelve months after the date of the alleged commission of the offence or, with the authorization of the Attorney-General, at any later time within five years after the date of the alleged commission of the offence.

PART III
DIVISION III

(3) An authorization may only be given under subsection (2) in respect of offences declared by regulation to be offences in respect of which such an authorization may be given.

(4) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorize the commencement of proceedings for an offence against this Act shall be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorization.

PART IV

PART IV

THE DEVELOPMENT PLAN

40. (1) There shall be a plan to be known as "the Development Plan".

The
Development
Plan.

(2) The Development Plan shall, in the first instance, be based upon—

(a) the provisions of the authorized development plans in force under the repealed Act on a date fixed by the Minister for the purposes of this section;

(b) the provisions of planning regulations in force under the repealed Act on the date mentioned above—

(i) that define a zone or locality and specify the purposes for which the zone or locality is established;

(ii) that are relevant to the question of determining whether a particular form of development in a particular area, zone or locality—

(A) is permitted absolutely or subject to conditions;

or

(B) is prohibited;

(iii) prescribing, or providing for the imposition of conditions, under which a particular form of development in a particular area, zone or locality is, or may be, permitted;

and

(iv) prescribing factors or criteria that are required or permitted to be taken into account by a planning authority in exercising a discretion or arriving at a decision;

and

(c) the provisions of the regulations under the repealed Act relating to the Hills Face Zone,

and shall be in a form approved by resolution of both Houses of Parliament.

41. (1) An amendment to the Development Plan may be made by a supplementary development plan.

Amendments
to the
Development
Plan.

(2) A supplementary development plan may be prepared—

(a) where it relates to the area, or part of the area, of a council—

(i) by the council for the relevant area;

(ii) by the Minister acting at the request of the council;

or

(iii) where the Minister has requested the council to prepare a supplementary development plan in relation to its area or part of its area and the council declines to do so or, at some time after the expiration of three months from the date of the request, it is apparent that substantial delay has occurred in the preparation of the supplementary development plan—by the Minister;

PART IV

(b) where it relates to the areas, or parts of the areas, of two or more councils—by the Minister;

or

(c) where it relates to land that does not lie within the area of a council—by the Minister,

and where a supplementary development plan relating to the area or part of the area of a council is prepared by the Minister he shall, in the course of preparing the supplementary development plan, consult with that council.

(3) A supplementary development plan may contain—

(a) a statement, or amendment to a statement, of developmental objectives (whether of a physical, social or economic nature) for an area or part of the State;

(b) proposals, or amendments to proposals, for development, conservation or land management;

and

(c) provisions that are intended to constitute principles of development control, or amendments to existing principles of development control.

(4) Where a supplementary development plan is prepared, a statement setting out—

(a) the nature of the investigations that have been carried out in the course of preparing the plan;

and

(b) any conclusions that may be drawn from those investigations as to the most desirable forms of development (whether of a physical, social or economic nature) for the area or part of the State to which the plan relates,

shall also be prepared.

(5) Where a supplementary development plan has been prepared by a council, it shall be submitted (together with the statement referred to in subsection (4)) to the Minister, and the Minister, after referring the plan and statement to the Advisory Committee and considering the advice of the Advisory Committee in relation to the plan may—

(a) accept the plan, without amendment, as a basis for public submissions;

(b) amend the plan as he thinks fit (after consultation with any council affected by the plan), and accept the plan as amended as a basis for public submissions;

or

(c) decline to accept the plan as a basis for public submissions.

(6) Where the Minister has prepared a supplementary development plan, or has accepted a supplementary development plan prepared by a council as a basis for public submissions, an advertisement—

(a) giving notice of places at which the plan and statement referred to in subsection (4), or copies of that plan and statement are to be available for inspection, and if copies are to be available for purchase, of places at which copies may be purchased;

- (b) inviting interested persons to make written submissions in relation to the plan—
- (i) where the plan was prepared by the Minister—to the Advisory Committee;
- and
- (ii) where the plan was prepared by a council—to the council, within a period specified in the advertisement (being not less than two months from the date of publication of the advertisement);
- (c) stating that the submissions will be available for inspection by interested persons as from the expiration of the period specified under paragraph (b);
- and
- (d) appointing a place and time at which a public hearing will be commenced in which interested persons may appear to be heard in relation to the supplementary development plan and the submissions,

shall be published in the *Gazette*, and in a newspaper circulating generally throughout the State.

(7) The advertisement referred to in subsection (6) shall, where the supplementary development plan was prepared by the Minister, be published by the Minister, and where it was prepared by a council, be published by the council.

(8) Where written submissions are made in response to an advertisement published under subsection (6), a copy of those submissions shall—

- (a) if made to the Advisory Committee—be made available for inspection by interested persons at the office of the Commission;
- and
- (b) if made to a council—be made available for inspection by interested persons at the office of the council,

between the time mentioned in the advertisement as the time as from which they would be available for inspection and the conclusion of the public hearing.

(9) At the time and place appointed for a public hearing under subsection (6) (d), any interested person may—

- (a) where the supplementary development plan was prepared by the Minister—appear before the Advisory Committee, or a sub-committee appointed by the Advisory Committee, to speak in favour of, or in opposition to, proposals contained in the supplementary development plan, or the submissions relating to that plan;

or

- (b) where the supplementary development plan was prepared by a council—appear before the council, or a committee appointed by the council, to speak in favour of, or in opposition to, proposals contained in the supplementary development plan, or the submissions relating to that plan,

but a person appearing at the public hearing shall not introduce proposals that are not contained either in the plan, or the written submissions.

PART IV

(10) After a public hearing has been held under subsection (9) in relation to a supplementary development plan prepared by a council, the council shall forward copies of the written submissions received by it together with the council's recommendations in relation to the submissions, to the Advisory Committee.

(11) The Advisory Committee shall report to the Minister on the supplementary development plan and on the submissions received in response to the advertisement, and the Minister may—

(a) approve the supplementary development plan;

or

(b) amend the supplementary development plan—

(i) having regard to recommendations of the Advisory Committee;

or

(ii) as the Minister thinks fit in order to bring the supplementary development plan into consistency with this Act, to remove obsolete matter, to achieve uniformity of expression, or to correct any error,

and approve the plan as amended.

(12) Where the Minister has approved a supplementary development plan under subsection (11), the Minister may, subject to subsection (13), refer the plan to the Governor and the Governor may, by notice in the *Gazette*—

(a) declare the plan to be an authorized supplementary development plan;

and

(b) fix a day on which the plan shall come into operation.

(13) Where a supplementary development plan introduces or affects principles of development control under which development is permitted or prohibited, the supplementary development plan shall not be referred to the Governor unless the plan has been referred to the Joint Committee on Subordinate Legislation and—

(a) the Committee has approved the plan;

or

(b) the Committee has resolved not to approve the plan, copies of the plan have on or after the date of the resolution been laid before each House of Parliament, and neither House of Parliament has within six sitting days after the date of the copy of the plan being laid before the House, passed a resolution disallowing the plan.

(14) Where a supplementary development plan has been referred to the Joint Committee on Subordinate Legislation and at the expiration of 14 days from the day on which it was so referred the Committee has neither approved nor resolved not to approve the plan, it shall be conclusively presumed that the Committee has approved the plan.

(15) Before referring a supplementary development plan to which subsection (13) applies to the Governor, the Minister may amend the plan in order to give effect to proposals for amendment made by the Joint Committee on Subordinate Legislation, or by either House of Parliament.

PART IV

42. (1) The Minister may, by notice published in the *Gazette*, amend the Development Plan by including in the Plan a coastal management plan, or part of a coastal management plan, approved under the provisions of the Coast Protection Act, 1972-1978.

Certain amendments may be made without preparation of supplementary development plan.

(2) The Minister may, by notice published in the *Gazette*, amend the Development Plan—

(a) in order to reflect the provisions of authorized development plans, or planning regulations, which were in force under the repealed Act immediately before the commencement of this Act but which came into force too late to be included in the initial compilation of the Plan;

(b) in order to correct an error in the Plan;

or

(c) in order to make a change of form (not involving a change of substance) in the Plan.

(3) Before amending the Development Plan under subsection (2) (a), the Minister shall consult with any council affected by the amendment.

43. (1) Where the Governor is of the opinion that it is necessary in the interests of the orderly and proper development of an area or portion of the State that a supplementary development plan should come into operation without the delays attendant upon advertising for, receiving and considering public submissions, he may, at any time after notice that the plan is available for public inspection has been published, declare, by notice published in the *Gazette*, that the plan shall come into operation on an interim basis on a day specified in the notice.

Interim development control.

(2) Where a notice has been published under subsection (1) the supplementary development plan—

(a) shall come into operation on the day specified in the notice;

and

(b) shall cease to operate—

(i) when superseded by a supplementary development plan that comes into operation under section 41;

or

(ii) upon the expiration of twelve months from the day on which it came into operation,

whichever first occurs.

(3) This section shall expire at the expiration of two years from the commencement of this Act.

44. (1) The Minister shall provide every council with a copy of the Development Plan, and of every authorized supplementary development plan that affects the area of the council.

Copies of the Development Plan to be available to councils and the public.

(2) The Commission and each council shall make a copy of the Development Plan and of every authorized supplementary development plan that affects the area of the council, available for inspection at its public office.

PART IV

(3) The Minister shall make copies of the Development Plan, or of any authorized supplementary development plan, available for purchase by the public.

(4) The Minister may make such other provision for publication of the Development Plan, and of authorized supplementary development plans, as he thinks fit.

(5) The Minister may from time to time consolidate and re-publish the Development Plan with amendments.

Development
Plan to be
judicially
noticed.

45. The Development Plan is a public document of which a court or tribunal shall take judicial notice, without formal proof of its contents.

PART V

PART V

DEVELOPMENT CONTROL

DIVISION I—DEVELOPMENT CONTROL GENERALLY

DIVISION I

46. (1) A person shall not undertake development contrary to this Division.

Offences of undertaking development contrary to this Division.

Penalty: Ten thousand dollars.

Additional Penalty. Default Penalty: One thousand dollars.

(2) A person shall not contravene or fail to comply with a condition attached to a planning authorization.

Penalty: Ten thousand dollars.

Additional Penalty. Default Penalty: One thousand dollars.

47. (1) Subject to this Act, no development shall be undertaken without the consent of the relevant planning authority.

Conditions under which development may be undertaken.

(2) The relevant planning authority in relation to a proposed development shall be ascertained as follows:

(a) where the proposed development is to be undertaken within the area of a council, then, subject to paragraph (b), the council is the relevant planning authority;

(b) where the proposed development is to be undertaken within the area of a council but—

(i) the Commission is constituted by the regulations as planning authority in relation to a class of development in which the proposed development is comprised;

or

(ii) the Minister, acting at the request of the council, declares by notice in writing served personally or by post on the proponent that he desires the Commission to act as planning authority in relation to the proposed development,

then the Commission is the relevant planning authority;

and

(c) where the proposed development is to be undertaken in a part of the State that is not within the area of a council, then the Commission is the relevant planning authority.

(3) Where development of a particular kind is permitted absolutely or conditionally by the principles of development control in a particular area, zone or locality without the consent of a planning authority, then, subject to subsection (4), that development may be undertaken without the consent of a planning authority, but subject to the conditions (if any) under which it is permitted by the principles of development control.

(4) No development is permitted in relation to an item of the State heritage without the consent of the relevant planning authority.

PART V
DIVISION I

(5) Where development of a particular kind is prohibited by the principles of development control in a particular area, zone or locality, then, subject to subsection (6), such development is prohibited within that area, zone or locality.

(6) Where a development is proposed that would, apart from this subsection, be prohibited under subsection (5), the relevant planning authority may consent to that development if—

(a) where the relevant planning authority is a council—the Commission concurs in the granting of the consent;

or

(b) where the relevant planning authority is the Commission—the Minister and, if the development is to be undertaken in the area of a council, the council concur in the granting of the consent.

(7) A consent under this section shall be subject to such conditions (if any) as the relevant planning authority thinks fit to impose, and any such condition shall be binding on, and enforceable against, the person by whom the development is undertaken, and any person who acquires the benefit of the consent.

(8) No appeal shall lie against—

(a) a refusal of consent or concurrence under subsection (6);

or

(b) a condition attached to a consent under subsection (6).

(9) In deciding whether to consent to a proposed development under this section, a planning authority shall have regard to the provisions of the Development Plan so far as they are relevant to that decision.

(10) Where under the provisions of the regulations a council is required to refer a proposal for development to the Commission or a prescribed instrumentality or agency of the Crown for its consideration before consenting to the proposed development, and the Commission or the instrumentality or agency determines that the council should not consent to the development except upon certain specified conditions, and notifies the council of that determination, then—

(a) the council shall not consent to the proposed development without having considered whether it should impose the conditions so determined;

(b) the conditions so determined shall, if imposed by the council, be differentiated in any notice of consent given by the council to the proponent;

and

(c) any appeal in respect of those conditions shall lie against the Commission.

48. Where an application for a planning authorization in respect of a development affecting an item of the State heritage is made, the planning authority from which the authorization is sought—

(a) shall refer the application to the Minister responsible for the State heritage;

and

- (b) shall not grant the authorization until it has received and taken into account any representations that the Minister desires to make on the subject.

DIVISION II—ENVIRONMENTAL IMPACT STATEMENTS

DIVISION II

49. (1) Where a person proposes to undertake a development or project that is, in the opinion of the Minister, of major social, economic or environmental importance—

Preparation of
environmental
impact
statement.

- (a) the Minister may, in consultation with the proponent, have prepared, or arrange for the preparation of, a draft environmental impact statement in relation to the proposed development or project;

or

- (b) the Minister may require the proponent to prepare a draft environmental impact statement in relation to the proposed development or project.

(2) The Minister shall, by public advertisement, invite interested persons to make written submissions to him on the draft environmental impact statement within a period (being not less than two months from the date of publication of the advertisement).

(3) The Minister shall, after considering the submissions and any response that the proponent may desire to make to the submissions, determine what (if any) amendments should be made to the environmental impact statement and, after those amendments have been made, signify by notice to the proponent that the statement is officially recognized.

(4) The Minister may from time to time amend, or require the amendment of, an environmental impact statement to which official recognition has been accorded under this section in order to correct an error or to make modifications that are desirable in view of more accurate or complete data or technological or other developments not contemplated at the time of the original recognition but where a proposed amendment would significantly affect the substance of the environmental impact statement it shall not be made before interested persons have been invited, by public advertisement, to make written submissions on the proposed amendment and the Minister has considered the submissions (if any) received in response to the advertisement.

(5) The Minister may recover reasonable costs incurred by him in relation to the preparation of an environmental impact statement in respect of a development or project as a debt due to him from the proponent.

(6) Copies of draft and officially recognized environmental impact statements shall be available for public inspection, or purchase, at the office of the Commission.

(7) A planning authority shall in determining—

- (a) whether consent should be granted to a development in relation to which an environmental impact statement has been prepared;

and

- (b) if so, the conditions on which consent should be granted,

have regard to any environmental impact statement to which official recognition has been accorded under this section.

PART V

DIVISION III

DIVISION III—CERTAIN DEVELOPMENT NOT TO BE UNDERTAKEN WITHOUT CONSENT OF GOVERNOR

Declaration that development subject to this Division.

50. (1) Where the Governor is of the opinion that a declaration under this Division is necessary to obtain adequate control of development of major social, economic or environmental importance, he may, by notice published in the *Gazette*, declare that this Division applies to—

(a) development generally within specified parts of the State;

or

(b) specified forms of development throughout the whole of the State, or within specified parts of the State.

(2) The Governor may, by subsequent notice published in the *Gazette*, vary or revoke a notice under subsection (1).

(3) Division I of this Part does not apply to development subject to a declaration in force under this section.

Consent of Governor required for certain forms of development.

51. (1) Subject to this section, a person shall not undertake development to which this Division applies without the consent of the Governor.

(2) The Governor may—

(a) consent to development to which this Division applies subject to such conditions (if any) as he thinks fit;

or

(b) decline to consent to development to which this Division applies.

(3) No decision shall be made under subsection (2) unless an environmental impact statement has been prepared under Division II in respect of the proposed development and official recognition has been accorded to that environmental impact statement, and the Governor in determining whether to consent to the proposed development and, if so, the conditions on which consent should be granted, shall have regard to the environmental impact statement.

(4) The consent of the Governor is not required in relation to development lawfully commenced before publication of the notice by virtue of which the development became subject to this Division.

(5) A person—

(a) who undertakes development to which this Division applies without the consent required by this section;

or

(b) contravenes, or fails to comply with, a condition upon which consent was granted,

shall be guilty of an offence.

Penalty: Ten thousand dollars.

Additional Penalty. Default Penalty: One thousand dollars.

DIVISION IV

DIVISION IV—APPEAL AGAINST DECISIONS BY PLANNING AUTHORITIES

Aggrieved applicant may appeal.

52. (1) A person who applies for a planning authorization and is aggrieved by a decision of a planning authority (not being the Governor)—

(a) to refuse the application;

or

(b) to attach conditions to the planning authorization,

may, within two months of the day on which he receives notice of the decision or such longer period as may be allowed by the Tribunal, appeal to the Tribunal against the decision.

(2) Where a decision by which an appellant is aggrieved was made by a person acting in pursuance of delegated powers, the appeal shall lie against the principal and not the delegate.

53. (1) Except as provided by the regulations, notice of an application for a planning authorization must be given in accordance with the regulations. Third-party appeals.

(2) Where notice of an application has been given under subsection (1), any person who desires to do so may, in accordance with the regulations, make representations to the relevant planning authority in relation to the granting or refusal of the application.

(3) The planning authority to which the application is made shall forward to the applicant a copy of the representations made under this section in relation to his application and shall allow him an opportunity to respond, in writing, to those representations.

(4) The response referred to in subsection (3) must be made within ten days after the copy of the representations is forwarded to the applicant.

(5) The planning authority shall, upon deciding an application in relation to which representations have been made under this section, give the persons by whom those representations were made notice of the decision.

(6) Notice under subsection (5) may be given—

(a) personally or by post;

or

(b) by publication of the notice in a newspaper circulating generally throughout the State.

(7) A person who is entitled to be given notice of a decision under subsection (5) and who is aggrieved by the decision of the planning authority, may, subject to subsection (10), appeal to the Tribunal against the decision.

(8) An appeal under subsection (7) must be instituted within fourteen days after notice of the decision to which the appeal relates is given under this section, or such longer period as may be allowed by the Tribunal.

(9) A planning authorization does not operate—

(a) until the time for instituting an appeal under this section against the decision to grant the planning authorization has expired;

or

(b) where there is such an appeal, until the determination of the appeal.

(10) Except by leave of the Tribunal, an appeal under subsection (7) shall not be pursued beyond the stage at which the conference of parties to the appeal required under this Act has been concluded.

(11) An application for leave to continue an appeal under this section must be made within seven days after the conclusion of the conference, and if an application is not made within that period, or if leave is not granted, the appeal shall be deemed to have been dismissed.

PART V
 DIVISION IV

(12) An application for leave to continue an appeal under this section shall be dealt with by the Tribunal as expeditiously as possible.

Powers of
 Tribunal in
 relation to
 decision
 subject to
 appeal.

54. Upon an appeal under this Division the Tribunal may confirm, vary or reverse the decision subject to appeal and may make any consequential or ancillary order or direction that it considers necessary or expedient in the circumstances of the case.

DIVISION V

DIVISION V—ADVERTISEMENTS

Advertisements.

55. (1) Where, in the opinion of the relevant planning authority, an advertisement or advertising hoarding disfigures the natural beauty of a locality or otherwise detracts from the amenity of a locality, the planning authority may by notice in writing served on the advertiser, or the owner or occupier of the land on which the advertisement or advertising hoarding is situated, require him to remove or obliterate the advertisement or to remove the advertising hoarding (or both) within a period specified in the notice (being a period of not less than one month from the date of service of the notice).

(2) No requirement shall be made under subsection (1) in relation to—

(a) an advertisement, the display of which is authorized under the Local Government Act, 1934-1981;

(b) an advertisement required to be displayed under the provisions of some other Act;

or

(c) an advertisement for the sale of land situated on the land advertised for sale.

(3) Where a person on whom a notice is served under subsection (1) fails to comply with the notice within the time allowed in the notice—

(a) the relevant planning authority may itself enter on the land and take the necessary steps for carrying out the requirements of the notice and may recover the costs of so doing, as a debt, from the person on whom the notice was served;

and

(b) the person on whom the notice was served shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(4) A notice under this section—

(a) need not name the person to whom it is addressed;

and

(b) may be served—

(i) personally;

(ii) by post;

or

- (iii) where the identity or whereabouts of the person on whom it is to be served is not readily ascertainable—by affixing it in a prominent position on the advertisement or advertising hoarding to which it relates.

(5) Before the expiration of one year from the commencement of this Act, no planning authorization is required under this Act for the erection or display of an advertisement if—

- (a) the erection or display of the advertisement was, immediately before the commencement of this Act, authorized under the Local Government Act, 1934-1981;

or

- (b) the advertisement is such that it could, immediately before the commencement of this Act, have been lawfully erected or displayed without any licence, consent or authorization under any Act.

(6) Where a planning authorization has been given under this Act for the erection or display of an advertisement no further licence or other authorization in respect of the erection or display of the advertisement is required under the Local Government Act, 1934-1981.

(7) In this section—

“advertisement” means an advertisement or sign that is visible from a street, road or public place or by passengers carried by any form of public transport:

“advertiser”, in relation to an advertisement, means the person whose goods or services are advertised in the advertisement:

“advertising hoarding” means a structure for the display of an advertisement or advertisements:

“the relevant planning authority” means—

- (a) in relation to an advertisement within the area of a council—the council;

or

- (b) in relation to an advertisement within a part of the State that does not lie within the area of a council—the Commission.

(8) A person against whom an order is made under this section may within one month after service of the notice or such longer period as may be allowed by the Tribunal appeal against the order and upon such an appeal the Tribunal may confirm or quash the order subject to the appeal and make any consequential or ancillary order or direction that it considers necessary or expedient in the circumstances of the case.

(9) The Control of Advertisements Act, 1916-1935, is repealed.

Saving
provisions.

56. (1) Notwithstanding any other provision of this Act, no provision of the Development Plan shall—

(a) prevent the continued use, subject to and in accordance with the conditions (if any) attached to that use of land for the purposes for which that land was lawfully being used at the time the provision took effect;

or

(b) prevent the carrying out or completion of a development, subject to and in accordance with the conditions (if any) affecting the development, for which every consent, approval or authorization required under any act authorizing or permitting the development had been obtained and was current when the provision took effect.

(2) For the purposes of subsection (1), conditions imposed by planning regulations under the repealed Act shall be deemed to remain in force.

(3) Where a planning authority is satisfied that, at the time of consideration of the matter by the planning authority, a particular use of land or activities involved in, or associated with, a particular use of land—

(a) have been discontinued for a period of not less than six months immediately preceding that time;

or

(b) have continued only to a trifling extent for such a period,

the planning authority may give notice in writing to the owner and the occupier of the land that it proposes to make a declaration under this section.

(4) The owner or occupier may, within one month after service of a notice under subsection (3), or such extended period as may be allowed by the Tribunal, appeal to the Tribunal against the proposal.

(5) Upon an appeal under subsection (4) the Tribunal may confirm, or revoke the proposal.

(6) Where—

(a) no appeal is instituted against the proposal;

or

(b) an appeal is instituted against the proposal and the proposal is confirmed upon appeal,

the planning authority may, by notice in writing given to the owner and the occupier, declare that the use to which the proposal related has been discontinued.

(7) Where a declaration is made under subsection (6), the use to which it relates shall be conclusively presumed to have been discontinued.

Law
governing
proceedings
under this
Act.

57. (1) Where an application is made to a planning authority for a planning authorization that it is empowered to give under this Act, the law to be applied by the authority in deciding the application, and the law to be applied in resolving any issues arising from the decision in any proceedings (whether brought under this Act or not), shall be the law in force as at the time the application was made.

(2) For the purposes of this section a planning authority makes a decision under this Act either where a decision is actually made or where a decision is, by operation of law, presumed to have been made.

58. (1) Where the demolition of buildings is prescribed as a form of development and regulated under this Act in an area or part of the State, this Act does not prevent or otherwise affect the demolition of a building in that area or part of the State if the demolition is required under the provisions of some other Act.

Interaction
between this
Act and
certain other
Acts.

(2) Where the clearing, cutting or lopping of trees or other vegetation is prescribed as a form of development and regulated under this Act in an area or part of the State, this Act does not prevent or otherwise affect the clearing cutting or lopping of trees or other vegetation in that area or part of the State if the clearing, cutting or lopping—

(a) is required under the provisions of some other Act;

or

(b) is necessary for the purpose of clearing the space to be occupied by a proposed building for the erection of which consent or approval has been granted under this Act, the repealed Act, or the Building Act, 1970-1976;

or

(c) is incidental to the construction, repair or maintenance of works of the Crown, or of an instrumentality or agency of the Crown.

PART VI

PART VI

MINING

Applications for mining production tenements to be referred in certain cases to the Minister.

59. (1) Where an application is made under any of the Mining Acts, for the grant of a mining production tenement, the appropriate authority shall—

(a) cause to be published in the *Gazette* and in a newspaper circulating generally throughout the State, a notice of the application specifying a place at which it can be inspected, and inviting members of the public to make written submissions in relation to the granting of the mining production tenement within a period (which must be a period of at least twenty-eight days from the date of publication of the notice) to the Authority at an address specified in the notice;

and

(b) give notice of the application to the council for the area in which the land to be comprised in the mining production tenement is situated.

(2) The appropriate Authority may refer any application for a mining production tenement to the Minister for advice and where an application is such that it is required by the regulations to be referred to the Minister, the Authority shall refer the application to the Minister for advice.

(3) Where in the opinion of the Minister, or of the appropriate Authority, operations to be conducted in pursuance of a mining production tenement are of major social, economic or environmental importance—

(a) the Minister or the Authority may exercise the powers conferred on the Minister under section 49 in relation to environmental impact statements;

but

(b) any such statement must cover matters determined by the Minister after consultation with the Authority and if official recognition is to be accorded to an environmental impact statement, such recognition shall, in any event, be accorded by the Minister.

(4) The Minister, after obtaining and considering a report from the Commission on an application referred for his advice under this section, and after considering the terms of any relevant officially recognized environmental impact statement shall advise the appropriate Authority whether the application should or should not be granted, and if so, what conditions should be included in the tenement in order to avoid, or manage and control, any potentially adverse effects on the environment that may result from the conduct of mining operations in pursuance of the tenement.

(5) Where the appropriate Authority does not agree with advice tendered to him under subsection (4) (either as to the granting of the tenement or the conditions that should be included in the tenement), he shall refer the matter to the Governor and the Governor shall determine whether the Authority should adhere to the advice.

(6) In this section—

“the appropriate Authority” or the “Authority” means the Minister of the Crown for the time being administering the Mining Acts.

PART VI

60. (1) Except as provided in this Part, this Act does not prevent, or otherwise affect, operations carried on in pursuance of any of the Mining Acts.

(2) Subject to subsection (3), this Act does not prevent, or otherwise affect, the operation of a private mine.

(3) Where for a period of twelve months commencing on or after the relevant date mining operations have not been carried on at a private mine, this Act applies in respect of mining operations carried on at the mine.

(4) In this section—

“the relevant date” means the date that fell exactly one year before the date of the commencement of this Act.

This Act not to affect operations carried on in pursuance of Mining Acts except as provided in this Part.

PART VII

PART VII

LAND MANAGEMENT

Agreements relating to preservation or development of land.

61. (1) The Minister may enter into an agreement with any person relating to the development, preservation or conservation of land of which that person is the owner.

(2) A council may enter into an agreement with any person relating to the development, preservation or conservation of land within the area of the council of which that person is the owner.

(3) A council has power to carry out on private land any works for which provision is made by agreement under this section.

(4) An owner of land shall not enter into an agreement under this section unless all other persons with a legal interest in the land consent to his so doing.

(5) The Registrar-General shall, upon the application of the Minister or the council made with the consent of the owner of the land, register such an agreement and enter a memorial of the agreement on the certificate of title, Crown lease, or other instrument of title to the land.

(6) Where a memorial of an agreement has been entered under subsection (5), the agreement is, upon transfer of title to the land, binding on, and enforceable by or against, the successors in title to the owner who entered into the agreement.

(7) The Registrar-General shall, if satisfied upon the application of the Minister, the council or the owner of the land that an agreement in relation to which a memorial has been entered under this section has been rescinded or amended, enter a memorial of the rescission or amendment on the certificate of title, Crown lease or other instrument of title to the land.

(8) An agreement under this section may provide for remission of rates or taxes upon the land but except as so provided such an agreement does not affect the obligations of an owner of land under any other Act.

(9) An agreement under this section entered into by a council shall not provide for the remission of rates or taxes payable to the Crown unless the Minister consents to the remission and such an agreement entered into by the Minister shall not provide for the remission of rates or taxes payable to a council unless the council consents to the remission.

Preservation of open space.

62. (1) The Governor may, if satisfied on the application of the owner of land that it is in the public interest to preserve the land as an open space, prohibit, by proclamation, the division of the land into allotments, or the use of the land for any purpose that is, in the opinion of the Commission, not in keeping with its character as an open space.

(2) Where the owner holds the land from the Crown under a lease, licence or agreement to purchase, an application shall not be made under this section without the consent of the Minister of Lands.

(3) While a proclamation remains in force under this section—

(a) the land shall not be divided or used in contravention of the proclamation;

and

(b) the value of the land for the purpose of any rating or taxing Act shall be assessed on the basis that the land cannot be divided or used for any purpose not in keeping with its character as an open space.

(4) The Governor may, by subsequent proclamation, revoke a prohibition imposed under this section wholly, or in so far as it affects a specified parcel of land, and, where he does so, the owner of the land shall be liable to pay to a rating or taxing authority, in respect of the land that ceases to be affected by the prohibition, the difference between the amount of the rates or taxes payable during the period of five years immediately preceding the revocation to that authority on the land while the prohibition was in force, and the amount that would have been payable during that period if the prohibition had not been imposed.

(5) Any amount that an owner of land is liable to pay under subsection (4) may be recovered as a debt.

PART VIII

PART VIII

ACQUISITION AND DEVELOPMENT OF LAND

Development schemes.

63. (1) The Minister may prepare and submit to the Governor—

(a) a scheme involving the acquisition, development, management or disposal of land by an authority to which this section applies;

or

(b) a scheme modifying a scheme previously approved by the Governor under this section.

(2) A scheme prepared under this section shall not be submitted to the Governor unless every council whose area is affected by the scheme and the owners of land affected by the scheme, have had an opportunity to make representations to the Minister in relation to the scheme.

(3) Upon submission of a scheme to the Governor, the Governor may, by notice published in the *Gazette*, approve the scheme.

(4) Where a scheme has been approved under this section, the authority authorized under the terms of the scheme to carry out the scheme may acquire, develop, manage or dispose of land in accordance with the scheme.

(5) The Land Acquisition Act, 1969-1972, shall apply to the acquisition of land under subsection (4).

(6) In this section—

“authority to which this section applies” means—

(a) the Minister;

or

(b) a prescribed authority.

Purchase of land for development.

64. (1) The Minister may purchase land by agreement for the purpose of development or re-development of that land or for any public purpose.

(2) The Land Acquisition Act, 1969-1972, does not apply to the acquisition of land in pursuance of this section.

Reservation of land for future acquisition.

65. (1) The Governor may, by regulation, reserve land for future acquisition under this Act or any other Act, by an authority nominated in the regulation.

(2) Where land is, by virtue of subsection (1) reserved for future acquisition, the Registrar-General shall, on the application of the Minister, note the reservation on any relevant certificate of title relating to the land.

(3) The owner of land reserved for future acquisition under this section is entitled to be compensated by the relevant authority for the diminution in value of the land resulting from the reservation.

(4) The compensation to which a person is entitled under subsection (3) shall be determined by agreement or, in default of agreement, by the Land and Valuation Court.

(5) Land reserved for future acquisition under this section shall not be developed except—

(a) by consent of the Commission granted after consultation with the relevant authority;

or

(b) as required under some other Act or law.

(6) If the Commission refuses its consent to the development of land reserved for future acquisition under this section, or if the owner after making all reasonable attempts to sell the land is unable to do so, the owner of the land may require the relevant authority to proceed immediately with the acquisition of the land.

(7) Upon acquisition under the Land Acquisition Act, 1969-1972, of land reserved for future acquisition under this section—

(a) compensation shall be determined having regard to the value that the land would have had if it had not been reserved;

but

(b) any compensation that has been paid pursuant to an entitlement under subsection (3) shall be taken into account.

(8) If land reserved for future acquisition under this section ceases to be so reserved, the Registrar-General shall, on the application of the Minister or the owner of the land, make such notations on any relevant certificate of title as may be necessary to reflect the fact that the land has ceased to be so reserved.

PART IX

PART IX

FINANCIAL PROVISIONS

Moneys
required for
this Act.

66. The moneys required for the purposes of this Act shall be paid out of moneys provided by Parliament for those purposes.

Continuance of
the Fund.

67. (1) The Fund at the Treasury known as the Planning and Development Fund shall continue in existence.

(2) There shall be paid into the Fund—

(a) moneys made available by the Treasurer, out of appropriations authorized by Parliament, for the purposes of the Fund;

(b) all moneys derived by the Minister from the sale, leasing or other disposal by the Minister of land vested in the Minister;

(c) all moneys received by the Commission in respect of the division of land;

(d) all moneys to be contributed by a council in respect of any scheme jointly undertaken or carried out by that council and the Minister;

(e) the amount of all loans raised by the Minister under this Act;

and

(f) all other moneys that are required to be paid into the Fund by this or any other Act.

Borrowing.

68. The Minister may borrow moneys for the purposes of this Act upon terms and conditions approved by the Treasurer.

Application of
the Fund.

69. The moneys standing to the credit of the Fund may be used by the Minister for all or any of the following purposes:

(a) the acquisition and development of land under this Act;

(b) the payment of moneys, whether by way of compensation or otherwise, which the Minister becomes liable to pay under this Act;

(c) the payment of rates, taxes and other charges due and payable by the Minister in respect of land vested in or held by the Minister;

(d) the transfer to any reserve for the repayment of any moneys borrowed by the Minister for the purposes of this Act;

(e) the payment of principal, interest and expenses in respect of moneys borrowed by the Minister for the purposes of this Act;

(f) the maintenance and development of property vested in the Minister;

and

(g) any purposes authorized by or under this Act as a purpose for which the Fund may be applied.

Accounts
and audit.

70. (1) The Minister shall cause proper accounts to be kept in relation to the Fund.

(2) The Auditor-General may at any time, and shall at least once in every year, audit the accounts of the Fund.

PART X

MISCELLANEOUS

71. (1) On or before the thirty-first day of October in each year—

Annual report.

(a) the Commission shall prepare and present to the Minister a report upon the administration of this Act during the year that ended on the preceding thirtieth day of June;

and

(b) the Chairman of the Tribunal shall prepare and present to the Minister a report on the work of the Tribunal during the year that ended on the preceding thirtieth day of June.

(2) The Minister shall, as soon as practicable after receiving a report presented under this section, cause copies of the report to be laid before each House of Parliament.

72. (1) A member of the Commission or of the Tribunal or a person authorized in writing by the Minister or a Judge of the Tribunal, may at any reasonable time, enter upon and inspect land for any reasonable purpose connected with the administration of this Act, but no building shall be entered pursuant to this subsection unless the occupier has been given reasonable notice of the proposed entry.

Power to inspect land and premises.

(2) The powers conferred by subsection (1) may also be exercised by any person authorized by the council of the area in which the land or buildings are situated.

(3) No person shall obstruct any person in the exercise of a power conferred by this section.

Penalty: Two hundred dollars.

73. A council shall seek and consider the advice of a person with prescribed qualifications—

Professional advice to be obtained by councils in relation to certain matters.

(a) in relation to the preparation of a supplementary development plan;

or

(b) in relation to any matter arising under this Act that is declared by regulation to be a matter on which such advice should be sought and considered by a council.

74. (1) The Governor may, on the recommendation of the Commission, make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

Regulations.

(2) Any such regulations—

(a) may apply generally throughout the State or be limited in application to a particular area, part of an area, or other part of the State;

(b) may apply to development generally or any specified class of development;

and

(c) may operate by reference to any other factor or combination of factors.

PART X

(3) Any such regulation may impose a penalty not exceeding one thousand dollars for breach of, or failure to comply with, the regulation and may also impose a default penalty not exceeding two hundred dollars.

(4) The regulations may prescribe and provide for the payment of fees.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 4 of 1982

An Act to amend the Seeds Act, 1979.

[Assented to 25 February 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Seeds Act Amendment Act, 1982". Short titles.
 (2) The Seeds Act, 1979, is in this Act referred to as "the principal Act".
 (3) The principal Act, as amended by this Act, may be cited as the "Seeds Act, 1979-1982".

2. This Act shall come into operation on a day to be fixed by proclamation. Commence-
ment.

3. Section 7 of the principal Act is amended— Amendment of
s. 7—
Statement to
be furnished
in relation
to sale of
seeds.
 - (a) by striking out from subsection (1) the passage "a statement in the prescribed form" and substituting the passage "a written statement";
 - (b) by inserting after paragraph (a) of subsection (3) the following paragraphs:
 - (ab) the proportion by mass (expressed as a percentage) that the seeds of the principal species, or, where more than one, each of the principal species, bear to the total mass of the seeds and inert matter mixed with the seeds;
 - (ac) the proportionate number (expressed in the prescribed manner) of seeds of prescribed species (other than principal species) that are included in the mixture of seeds and inert matter;;
 - (c) by striking out from paragraph (b) of subsection (3) the passage "of the seeds" and substituting the passage "of the seeds of the principal species or, where more than one, of each of the principal species";

(d) by striking out paragraph (d) of subsection (3) and substituting the following paragraph:

(d) the proportion by mass (expressed as a percentage) that inert matter mixed with the seeds bears to the total mass of the seeds and inert matter;;

(e) by striking out paragraph (e) of subsection (3) and substituting the following paragraph:

(e) all chemical treatment to which the seeds have been subjected during processing;;

(f) by striking out from paragraph (f) of subsection (3) the word "any" and substituting the word "all";

(g) by inserting after subsection (5) the following subsection:

(5a) A statement is not false for the purposes of subsection (5) if the information contained in the statement conforms with limits of accuracy prescribed by the regulations.;

(h) by striking out paragraph (b) of subsection (6) and substituting the following paragraph:

(b) the sale of seeds of prescribed species where the vendor reasonably expects that the seeds will not be used by the purchaser for the germination or propagation of plants;;

(i) by striking out from subsection (6) the word "or" between paragraphs (b) and (c) and inserting after paragraph (c) the following paragraph:

or

(d) the sale of seeds by a person exempted by or under the regulations from the provisions of this section in relation to the sale.;

and

(j) by inserting after subsection (6) the following subsections:

(7) The regulations—

(a) may exempt, or provide for the exemption of, a person, or persons of a specified class, from the provisions of this section in relation to the sale of seeds generally or in relation to the sale of seeds of specified species;

and

(b) may prescribe conditions that attach, or may be attached, to any such exemption.

(8) In this section—

"inert matter" has the meaning assigned by the regulations:

"principal species" means a species comprising not less than the prescribed percentage, by mass, of the total mass of the seeds and inert matter mixed with the seeds.

4. Section 8 of the principal Act is amended—

Amendment of
s. 8—
Defences.

(a) by striking out paragraph (b) and substituting the following paragraph:

(b) that before the sale he obtained an undertaking from the purchaser that the purchaser would treat or clean the seeds before reselling them and that the seeds were sold on the understanding that the purchaser would comply with that undertaking;;

(b) by striking out subparagraphs (ii) and (iii) of paragraph (c) and substituting the following subparagraph:

(ii) the sale of the seeds was incidental to a business of primary production;;

and

(c) by striking out from sub-subparagraph (A) of subparagraph (iv) of paragraph (c) the expression “30 kilometres” and substituting the expression “50 kilometres”.

5. Section 12 of the principal Act is amended by striking out from paragraph (d) of subsection (2) the passage “two hundred dollars” and substituting the passage “five hundred dollars”.

Amendment of
s. 12—
Regulations.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 5 of 1982

An Act to amend the Explosives Act, 1936-1974.

[Assented to 25 February 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Explosives Act Amendment Act, 1982".

(2) The Explosives Act, 1936-1974, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Explosives Act, 1936-1982".

Amendment of s. 52— Regulations.

2. Section 52 of the principal Act is amended—

(a) by striking out from paragraphs XXIIIc, XXIII d, and XXIIIe the passage "For regulating" wherever it occurs and substituting, in each case, the word "Regulating";

and

(b) by inserting after paragraph XXIIIe the following paragraph:

XXIIIea. Regulating and controlling the use of fireworks and other explosives for, or in connection with, entertainment.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 6 of 1982

An Act to amend the Highways Act, 1926-1980.

[Assented to 25 February 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Highways Act Amendment Act, 1982". Short titles.

(2) The Highways Act, 1926-1980, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Highways Act, 1926-1982".

2. This Act shall be deemed to have come into operation on the first day of July, 1981. Commence-
ment.

3. Section 31 of the principal Act is amended by striking out paragraph (g) from subsection (2). Amendment of
s. 31—
Highways
Fund.

4. Section 32 of the principal Act is amended by striking out from subparagraph (i) of paragraph (m) of subsection (1) the passage "seven and one-half per centum" and substituting the passage "9.8 per centum". Amendment of
s. 32—
Application of
Highways
Fund.

5. Section 36a of the principal Act is repealed. Repeal of
s. 36a.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 7 of 1982

An Act to repeal the Imprint Act, 1951.

[Assented to 25 February 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

- Short title 1. This Act may be cited as the "Imprint Act (Repeal) Act, 1982".
- Repeal. 2. The Imprint Act, 1951, is repealed.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 8 of 1982

An Act to amend the Legal Practitioners Act, 1981.

[Assented to 25 February 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Legal Practitioners Act Amendment Act, 1982". Short titles.

(2) The Legal Practitioners Act, 1981, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Legal Practitioners Act, 1981-1982".

2. This Act shall come into operation on the first day of March, 1982. Commence-
ment.

3. The following section is inserted after section 20 of the principal Act: Insertion of
new s. 20a.

20a. The powers, discretions, functions and duties of the Supreme Court under this Division shall, subject to any rule, order or direction of the Court to the contrary, be exercised or discharged by the Registrar of the Supreme Court. Registrar
to be the
officer of
Court by
whom functions
related to
practising
certificates
are to be
exercised.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 9 of 1982

An Act to amend the Local Government Act, 1934-1981; and to repeal the Levi Park Act, 1948-1976.

[Assented to 4 March 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Local Government Act Amendment Act 1982".

(2) The Local Government Act, 1934-1981, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Local Government Act, 1934-1982".

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

Insertion of
new s. 886d.

3. The following section is inserted after section 886c of the principal Act:

Vesting of
Levi Park in
the
Corporation of
the Town of
Walkerville.

886d. (1) Levi Park is vested in the Walkerville Council for an estate of fee simple.

(2) The Registrar-General shall, upon receipt of a request in writing from the Council, and production of the appropriate duplicate certificates of title, make such entries in the Register Book as may be necessary to evidence the vesting of the Park in the Council.

(3) The Council shall—

- (a) maintain Levi Park in perpetuity as a public park;
- (b) preserve for as long as possible the Moreton Bay fig tree growing, at the commencement of this section, in the Park;
- (c) maintain and preserve Vale House, and make it available for appropriate community use;

and

- (d) maintain and preserve the caravan park and camping ground in the Park.

(4) The Council shall be deemed to have constituted, in pursuance of section 666c, a controlling body consisting of a chairman and four other members to undertake the care, control and management of Levi Park, and the controlling body shall not be abolished within the period of three years next ensuing after the commencement of the Local Government Act Amendment Act, 1982, and shall not be abolished subsequently unless the Minister consents to its abolition.

(5) The chairman and members of the Levi Park Trust shall be deemed to have been appointed upon the commencement of the Local Government Act Amendment Act, 1982, as the first chairman and members of the controlling body for a term of office, in the case of the chairman, of three years, and in the case of the other members, of two years.

(6) The secretary to the Levi Park Trust shall be deemed to have been appointed by the Council, on terms and conditions no less favourable than those on which he held office as secretary to the Trust, and for a term of two years as from the commencement of the Local Government Act Amendment Act, 1982, as secretary to the controlling body.

(7) The Council shall not alter the nature of the use to which the Park or any part of the Park is put unless the Minister consents.

(8) In this section—

“Levi Park” or “the Park” means the whole of the land that immediately before the commencement of this section constituted the park administered under the Levi Park Act, 1948-1976:

“Vale House” means the building situated in the Park and known under that name:

“the Walkerville Council” or “the Council” means the Corporation of the Town of Walkerville.

4. The Levi Park Act, 1948-1976, is repealed.

Repeal of the
Levi Park Act,
1948-1976.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 10 of 1982

An Act to amend the Building Act, 1970-1976.

[Assented to 4 March 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Building Act Amendment Act, 1982."

(2) The Building Act, 1970-1976, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Building Act, 1970-1982".

Amendment of
s. 61—
Regulations.

2. Section 61 of the principal Act is amended by striking out the passage "upon the recommendation of" and substituting the passage "after the Minister has consulted with".

Amendment of
s. 62—
Building
Advisory
Committee.

3. Section 62 of the principal Act is amended by striking out from subsection (2) the word "six" and substituting the passage "not more than ten".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 11 of 1982

An Act to amend the Rural Advances Guarantee Act, 1963.

[Assented to 4 March 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Rural Advances Guarantee Act Amendment Act, 1982". Short titles.

(2) The Rural Advances Guarantee Act, 1963, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Rural Advances Guarantee Act, 1963-1982".

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

3. Section 2 of the principal Act is amended by striking out from the definition of "the Committee" the passage "The Parliamentary Committee on Land Settlement constituted under the Land Settlement Act, 1944-1961" and substituting the passage "the Industries Development Committee established under the Industries Development Act, 1941-1978". Amendment of s. 2— Interpretation.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 12 of 1982

**An Act to establish a corporation to be known as "Technology Park Adelaide";
to prescribe its functions and powers; and for other purposes.**

[Assented to 4 March 1982]

BE IT ENACTED by the Governor of the State of South Australia, with
the advice and consent of the Parliament thereof, as follows:

PART I

PART I
PRELIMINARY

- | | |
|--------------------|---|
| Short title. | 1. This Act may be cited as the "Technology Park Adelaide Act, 1982". |
| Commence-
ment. | 2. This Act shall come into operation on a day to be fixed by proclamation. |
| Arrangement. | 3. This Act is arranged as follows: |

PART I—PRELIMINARY

PART II—TECHNOLOGY PARK ADELAIDE

DIVISION I—CONSTITUTION OF THE CORPORATION

DIVISION II—FUNCTIONS AND POWERS OF THE CORPORATION

DIVISION III—STAFF OF THE CORPORATION

DIVISION IV—FINANCIAL PROVISIONS

PART III—MISCELLANEOUS

- | | |
|-----------------|--|
| Interpretation. | 4. In this Act, unless the contrary intention appears—
"Chief Executive Officer" means the person holding the office of Chief Executive Officer under this Act:
"the Commonwealth Minister" means the Minister of State of the Commonwealth who is responsible for science and technology:
"the Corporation" means the body corporate entitled "Technology Park Adelaide" established under this Act: |
|-----------------|--|

“the Council” means the Corporation of the City of Salisbury:

“the Park” means the land comprised in allotments numbered 101 and 104 on Lands Titles Office Filed Plan No. 14368.

PART II

PART II

TECHNOLOGY PARK ADELAIDE

DIVISION I—CONSTITUTION OF THE CORPORATION

DIVISION I

5. (1) There shall be a corporation entitled “Technology Park Adelaide”.

The Corporation.

(2) The Corporation—

(a) shall be a body corporate with perpetual succession and a common seal;

(b) shall be capable of suing and being sued.

(3) Where an apparently genuine document purports to bear the common seal of the Corporation, it shall be presumed in any legal proceedings, in the absence of proof to the contrary, that the document has been duly executed by the Corporation.

(4) The Corporation shall be subject to the direction and control of the Minister.

6. (1) The Corporation shall consist of six members of whom—

Membership of the Corporation.

(a) five shall be appointed by the Governor on the nomination of the Minister;

and

(b) one shall be appointed by the Governor on the nomination of the Commonwealth Minister.

(2) A member of the Corporation shall be appointed for such term of office, not exceeding three years, and upon such conditions, as the Governor determines.

(3) The Governor may appoint a person to be the deputy of a member of the Corporation and that person may, in the absence of the member of whom he has been appointed a deputy, act as a member of the Corporation.

(4) The Governor may remove a member of the Corporation from office for—

(a) any breach of, or non-compliance with, the conditions of his appointment;

PART II
DIVISION I

(b) mental or physical incapacity to carry out satisfactorily the duties of his office;

(c) neglect of duty;

or

(d) dishonourable conduct.

(5) The office of a member of the Corporation becomes vacant if—

(a) he dies;

(b) his term of office expires;

(c) he resigns by written notice to the Minister;

or

(d) he is removed from office by the Governor pursuant to subsection (4).

(6) Upon the office of a member of the Corporation becoming vacant, a person shall be appointed in accordance with this Act to the vacant office.

The Chairman
and Chief
Executive
Officer.

7. One member of the Corporation shall be appointed by the Governor to be the Chairman of the Corporation and the same or another member of the Corporation shall be appointed by the Governor to be the Chief Executive Officer of the Corporation.

Procedures,
etc., of the
Corporation.

8. (1) Four members of the Corporation shall constitute a quorum at a meeting of the Corporation.

(2) The Chairman of the Corporation shall preside at a meeting of the Corporation at which he is present and, in the absence of the Chairman from a meeting, the members present shall decide who is to preside at the meeting.

(3) A decision carried by a majority of the votes of the members of the Corporation present at a meeting shall be a decision of the Corporation.

(4) Each member of the Corporation shall be entitled to one vote on a matter arising for determination by the Corporation and the person presiding at the meeting of the Corporation shall, in the event of an equality of votes, have a second or casting vote.

(5) The Corporation shall cause accurate minutes to be kept of the business conducted at meetings of the Corporation.

(6) Subject to this Act, the procedure for the calling of meetings of the Corporation, and the conduct of business at meetings of the Corporation shall be determined by the Corporation.

Validity of
acts of
Corporation
and immunity
of members.

9. (1) No act or proceeding of the Corporation shall be invalid by reason only of a vacancy in the office of a member, or a defect in the appointment of a member.

(2) No liability shall attach to a member of the Corporation for any act or omission by him, or by the Corporation, in good faith in the exercise or purported exercise of his or its powers or functions or in the discharge, or purported discharge of his or its duties under this Act.

(3) Any liability that would, but for subsection (2), attach to a member of the Corporation shall attach to the Crown.

10. (1) A member of the Corporation who is in any way directly or indirectly interested in a contract, or proposed contract, made by, or in the contemplation of, the Corporation—

- (a) shall as soon as he becomes aware of the contract or proposed contract, disclose the nature of his interest to the Corporation; and
- (b) shall not take part in any deliberations or decision of the Corporation with respect to that contract.

Penalty: Five hundred dollars.

(2) A disclosure made under this section shall be recorded in the minutes of the Corporation.

(3) Where a member makes a disclosure of interest in respect of a contract or proposed contract in accordance with this section—

- (a) the contract is not liable to be avoided by the Corporation on any ground arising from the fiduciary relationship between the member and Corporation; and
- (b) the member is not liable to account to the Corporation for profits derived from the contract.

11. A member of the Corporation shall, if the Governor thinks fit, be entitled to such remuneration, allowances and expenses as may be determined by the Governor.

Remuneration,
etc., of
Members.

DIVISION II—FUNCTIONS AND POWERS OF THE CORPORATION

12. (1) The functions of the Corporation are as follows:

Functions of
the
Corporation.

- (a) to promote scientific and technological research and development;
- (b) to promote and encourage—
 - (i) the establishment and development in South Australia of industries using high technology or producing goods or providing services involving high technology; and
 - (ii) the introduction and development of high technology by industries already established in South Australia;
- (c) to encourage co-operation and the exchange of ideas and knowledge between industry and educational institutions;
- (d) to attract to the Park from Australia and overseas individuals and companies undertaking scientific and technological research and development, using high technology in industry, or producing goods or providing services involving high technology;
- (e) to develop and maintain land and to provide and maintain accommodation, facilities and services for the purpose of carrying out the above functions.

(2) For the purpose of carrying out its functions the Corporation may—

- (a) acquire, hold, deal with and dispose of real and personal property;
- (b) enter into any kind of contract or arrangement;

PART II
DIVISION II

- (c) acquire or incur any other rights or liabilities;
- (d) divide land, build roads, erect buildings and construct other works;
- (e) exercise any other powers that are necessary for, or incidental to, the efficient discharge of its functions.

Delegation of functions and powers.

13. (1) The Corporation may, with the approval of the Minister, delegate any of its powers or functions.

(2) A delegation under this section—

(a) may be made to—

(i) the Chief Executive Officer or another member of the Corporation;

(ii) the Council;

or

(iii) any other person;

(b) may be made subject to such conditions as the Corporation thinks fit;

(c) is revocable at will and does not derogate from the power of the Corporation to act in any matter itself.

(3) A person to whom powers or functions are delegated under this section is disqualified from acting in pursuance of the delegation in relation to any matter in which he has a direct or indirect pecuniary interest.

DIVISION III

DIVISION III—STAFF OF THE CORPORATION

Employees of Corporation.

14. The Corporation may, with the approval of the Governor, and on such conditions as he approves, engage such employees as it thinks necessary to perform its functions under this Act.

Corporation may make use of services of public servants.

15. The Corporation may make use of the services of officers of a department of Government with the approval of the Minister administering that department.

DIVISION IV

DIVISION IV—FINANCIAL PROVISIONS

Dealings with moneys of the Corporation.

16. (1) Except as authorized by the Minister and the Treasurer, no moneys shall be expended by the Corporation except in accordance with a budget approved by the Minister and the Treasurer.

(2) Any moneys of the Corporation that are not immediately required for the purposes of the Corporation may be invested in such manner as the Treasurer may approve.

Borrowing of moneys.

17. (1) The Corporation may, for the purposes of this Act, borrow moneys from the Treasurer, or, with the consent of the Treasurer, from any other person.

(2) A liability incurred by the Corporation under subsection (1) with the consent of the Treasurer is guaranteed by the Treasurer.

(3) A liability of the Treasurer under a guarantee arising by virtue of subsection (2) shall be satisfied out of the General Revenue of the State, which is appropriated by this section to the necessary extent.

PART II
DIVISION IV

18. (1) The Corporation shall cause proper accounts to be kept of its financial affairs.

Accounts and
audit.

(2) The Auditor-General may at any time, and shall at least once in every year, audit the accounts of the Corporation.

(3) For the purpose of an audit under subsection (2), the Auditor-General may exercise in relation to the accounts of the Corporation and the members and employees of the Corporation, the powers that are vested in the Auditor-General by the Audit Act, 1921-1981, in respect of public accounts and accounting officers.

PART III

PART III

MISCELLANEOUS

19. (1) The Corporation shall, on or before the thirtieth day of September in each year, deliver to the Minister a report upon the administration of this Act during the period of twelve months that ended on the preceding thirtieth day of June.

Report.

(2) The report must incorporate the audited statement of accounts for the Corporation in relation to the relevant period.

(3) The Minister shall cause a copy of the report to be laid before each House of Parliament.

20. Proceedings for an offence against this Act shall be disposed of summarily.

Proceedings.

21. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

Regulations.

(2) Without limiting the generality of subsection (1), the Governor may, on the recommendation of the Corporation, make regulations, in relation to the Park, that—

- (a) prohibit or regulate the construction of buildings or structures;
- (b) prescribe the design and siting of buildings and structures;
- (c) prescribe requirements for the maintenance of buildings and structures;
- (d) prescribe requirements for landscaping;
- (e) prohibit changes in the use of land or prescribe conditions on which the use of land may be changed;

PART III

(f) prohibit or regulate any activity that may endanger life or property;

(g) prohibit or regulate any activity that may impair the amenity of the Park or interfere with other activities in the Park;

or

(h) prohibit the ownership or occupation by any person of land situated in the Park without the authority of the Corporation.

(3) Regulations made under subsection (2) shall apply in addition to and not in derogation of any other law.

(4) Regulations made under this section may impose a penalty, not exceeding two thousand dollars, for contravention of or failure to comply with the regulations and may also, in relation to a continuing offence, impose an additional penalty, not exceeding two hundred dollars, for every day during which the offence continues.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 13 of 1982

An Act to amend the Hairdressers Registration Act, 1939-1981.

[Assented to 4 March 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the “Hairdressers Registration Act Amendment Act, 1982”. Short titles.

(2) The Hairdressers Registration Act, 1939-1981, is in this Act referred to as “the principal Act”.

(3) The principal Act, as amended by this Act, may be cited as the “Hairdressers Registration Act, 1939-1982”.

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

3. Section 19 of the principal Act is amended by striking out from paragraph (c) of subsection (1) the passage “on the date” and substituting the passage “at any time during the period of six months preceding the date”. Amendment of s. 19—
Registration of applicants.

4. Section 29 of the principal Act is amended—

(a) by inserting after subsection (2) the following subsections:

(2a) Subsection (2) does not apply to—

(a) an apprentice who is acting in the course of his apprenticeship;

or

(b) an employee of a registered hairdresser who is acting in the course of his employment within six months of completing his apprenticeship in hairdressing.

Amendment of s. 29—
Requirement to register.

(2b) A person who—

(a) commences employment with the Department of Further Education after the commencement of the Hairdressers Registration Act Amendment Act, 1982;

or

(b) commences employment with a prescribed body or authority after that body or authority is prescribed,

shall not teach hairdressing for fee or reward in the course of that employment unless he is registered under this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 14 of 1982

An Act to confer an exemption from stamp duty in respect of the merger of Berri Co-operative Winery and Distillery Limited and Renmano Wines Co-operative Limited.

[Assented to 4 March 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as the “Riverland Co-operatives (Exemption from Stamp Duty) Act, 1982”. Short title.

2. In this Act—

Interpretation.

“the Co-operatives” means the Berri Co-operative Winery and Distillery Limited and Renmano Wines Co-operative Limited:

“stamp duty” means stamp duty payable under the Stamp Duties Act, 1923-1981.

3. No stamp duty shall be payable in respect of a transfer or assignment of real or personal property that is consequent upon the amalgamation of the Co-operatives. Exemption from stamp duty.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 15 of 1982

An Act to amend the Stamp Duties Act, 1923-1981.

[Assented to 11 March 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Stamp Duties Act Amendment Act, 1982".

(2) The Stamp Duties Act, 1923-1981, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Stamp Duties Act, 1923-1982".

Commencement.

2. This Act shall come into operation on a day to be fixed by proclamation.

Insertion of new s. 31l.

3. The following section is inserted after section 31k of the principal Act:

Registered person not to add duty to amount payable in respect of credit business.

31l. (1) Except as provided in this section, a registered person or any person acting on his behalf shall not add the amount of any duty or of any part of the duty payable by the registered person as such under this Act to any amount payable by any other person with whom he has entered into or is conducting any credit business or rental business, whether by agreement or otherwise, or otherwise demand or recover or seek to recover any such firstmentioned amount from that other person.

Penalty: Two hundred dollars.

(2) In the event of a contravention of subsection (1) of this section—

(a) the court by which the defendant is convicted shall, in addition to imposing a penalty for the offence, order the defendant to refund to the other person referred to in that subsection any such amount which has been paid by that other person;

or

(b) the other person referred to in that subsection may recover any such amount from the registered person or person to whom he paid it by action in a court of competent jurisdiction as if it were a debt due to him from that person.

(3) Where the amount of any loan has been included in a statement lodged with the Commissioner pursuant to section 31f and the loan is repaid prior to the date agreed upon, the stamp duty paid on the statement may be apportioned upon such basis as is agreed between the lender and the borrower and, in the absence of agreement, the borrower shall pay to the lender such proportion of the stamp duty as bears to the total stamp duty paid the same proportion as the amount of the rebate of interest received by the borrower as a result of the early termination of the contract bears to the total amount of the interest provided in the contract.

(4) This section applies to duty payable by virtue of a transaction entered into after the commencement of the Stamp Duties Act Amendment Act, 1982, not being a transaction of a class specified by proclamation under subsection (5).

(5) The Governor may—

- (a) by proclamation specify a class of transactions for the purposes of subsection (4);
- (b) by further proclamation, vary or revoke a proclamation under paragraph (a).

4. The following section is inserted after section 31o of the principal Act:

31p. (1) Except as provided in this section, a vendor of any goods or other person acting on his behalf shall not add the amount of any duty or of any part of the duty payable by the vendor as such under this Act to any amount payable by the purchaser of the goods, whether by agreement or otherwise, or otherwise demand or recover or seek to recover any such amount from the purchaser.

Insertion
of new s. 31p.

Vendor not
to add
duty to
purchase
price.

Penalty: Two hundred dollars.

(2) In the event of a contravention of subsection (1)—

(a) the court by which the defendant is convicted shall, in addition to imposing a penalty for the offence, order the defendant to refund to the purchaser any such amount which has been paid by the purchaser;

or

(b) the purchaser may recover any such amount from the vendor or person to whom he paid it by action in a court of competent jurisdiction as if it were a debt due to him from that vendor or person.

(3) Where a purchaser under an instalment purchase agreement completes the purchase or terminates the bailment of the goods before the last day on which the last instalment is payable under the agreement, the stamp duty paid on the agreement may be apportioned between the vendor and the purchaser on such basis as may be agreed between the vendor and purchaser but, in the absence of such agreement, the purchaser shall pay to the vendor such proportion of the stamp duty as

bears to the total stamp duty paid on the instrument constituting or evidencing the agreement the same proportion as the amount of the rebate of interest, insurance and other charges received by the borrower as a result of the early termination of the agreement bears to the total amount of the interest, insurance and other charges provided in the agreement.

(4) This section applies to duty payable by virtue of a transaction entered into after the commencement of the Stamp Duties Act Amendment Act, 1982, not being a transaction of a class specified by proclamation under subsection (5).

(5) The Governor may—

- (a) by proclamation specify a class of transactions for the purposes of subsection (4);
- (b) by further proclamation, vary or revoke a proclamation under paragraph (a).

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 16 of 1982

An Act to repeal the Land Settlement Act, 1944-1978.

[Assented to 11 March 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as the "Land Settlement Act Repeal Act, 1982". Short title.
2. This Act shall come into operation on a day to be fixed by proclamation. Commence-
ment.
3. The Land Settlement Act, 1944-1978, is repealed. Repeal of
Land
Settlement
Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 17 of 1982

An Act to amend the Long Service Leave (Building Industry) Act, 1975-1976.

[Assented to 11 March 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Long Service Leave (Building Industry) Act Amendment Act, 1982".

(2) The Long Service Leave (Building Industry) Act, 1975-1976, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Long Service Leave (Building Industry) Act, 1975-1982".

Commence-
ment.

2. This Act shall come into operation on the first day of July, 1982.

Amendment of
s. 4—
Definitions.

3. Section 4 of the principal Act is amended—

(a) by inserting before the definition of "the Board" the following definition:

"allowable absence" in relation to a building worker means an absence of that worker from his work as a building worker, being an absence of the kind declared by regulation to be an allowable absence;;

(b) by striking out from the definition of "the Board" the passage "(Casual Employment)" and substituting the passage "(Building Industry)";

(c) by striking out the definitions of "employer" and "effective service" and substituting the following definitions:

"contribution" means an amount payable by an employer to the Commissioner under this Act:

"effective service" in relation to a building worker or former building worker means a period with which he is entitled to be credited as effective service pursuant to this Act:

“effective service entitlement” in relation to a building worker or former building worker means the aggregate of that person’s periods of effective service:

“employer” means a person or body that employs a person under a contract of employment as a building worker for the purpose of any of the following activities:

(a) the construction, renovation, alteration, maintenance, repair or demolition of—

- (i) any building;
- (ii) structures (including tanks) for the storage or supply of water;
- (iii) structures for the conveyance, treatment or disposal of sewage or effluent;
- (iv) bridges, viaducts, aqueducts or tunnels;
- (v) chimney stacks, cooling towers or silos, or the construction, improvement or alteration of docks, jetties, piers or wharves;

(b) pile driving or the preparation of the site for an activity referred to in paragraph (a);

(c) the construction on the site of an activity referred to in paragraph (a) of structures or fixtures required for or in connection with that activity;

or

(d) the construction off the site of an activity referred to in paragraph (a) of structures or fixtures required for or in connection with that activity where the person or body in question also engages in an activity or activities referred to in that paragraph,

but does not include—

(e) the Crown;

(f) any agency or instrumentality of the Crown;

(g) a council within the meaning of the Local Government Act, 1934-1981;

(h) any person or body of a prescribed class;

or

(i) any person or body where the activities of the kinds referred to in paragraphs (a) to (c) engaged in by the person or body are (taken together) subsidiary to other activities engaged in by that person or body;

(d) by striking out the definition of “the industry”;

(e) by striking out the definition of “ordinary pay” and substituting the following definitions:

“ordinary hours” in relation to a period of service of a person means the number of hours prescribed by award or industrial agreement under the Industrial Conciliation

and Arbitration Act, 1972, as amended, or the *Conciliation and Arbitration Act 1904* of the Commonwealth as amended, as the ordinary hours of work in a week in relation to work of the kind performed by the person during that period of service:

“ordinary pay” in relation to work as a building worker means the weekly base rate of pay for ordinary hours prescribed by award or industrial agreement under the Industrial Conciliation and Arbitration Act, 1972, as amended, or the *Conciliation and Arbitration Act 1904* of the Commonwealth as amended in relation to work of that kind, including any rate or payment of a class declared by regulation to form part of ordinary pay in relation to work of that kind:

“prescribed percentage” in relation to wages paid to a building worker during a particular period means the percentage declared by regulation to be the prescribed percentage in relation to that period:

“site” in relation to an activity means the place at which the activity is carried on and includes any adjacent area where materials and equipment required for or in connection with the activity are stored:

“special rates or allowances” means special rates or allowances whether or not prescribed by an industrial award or agreement (including any rate or payment of a class declared by regulation to be a special rate or allowance);;

(f) by striking out from the definition of “worker” the passage “means a person who is engaged under a contract of employment for hire or reward in the industry in the occupation or calling” and substituting the passage “or ‘building worker’ means a person engaged by an employer under a contract of employment to perform work”;

(g) by striking out from the definition of “worker” the passage “but does not include a person who having been a worker has received a payment under section 35 of this Act”;

and

(h) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsections:

(2) For the purposes of this Act, periods of effective service shall be reckoned in months to one decimal place.

(3) For the purposes of this Act, in determining whether particular activities are subsidiary to other activities, regard shall be had to the number of persons engaged exclusively in the firstmentioned activities and to the number of persons engaged in the other activities (disregarding in both cases persons who are engaged wholly or principally in work of an administrative or clerical nature).

5. Section 8 of the principal Act is amended by striking out from subsection (1) the passage “(Casual Employment)” and substituting the passage “(Building Industry)”.

Amendment of
s. 8—
Constitution
of Board.

6. Section 15 of the principal Act is amended by striking out the passage “and the consent of the Minister”.

Amendment of
s. 15—
Board may
make use of
officers, etc.

7. The following section is inserted after section 17 of the principal Act:

Insertion of
new s. 17a.

17a. (1) The Board may, with the approval of the Minister and Treasurer, lend moneys forming part of the Fund to an industrial organization for the purpose of establishing or operating any group training scheme for the building industry approved by the Industrial and Commercial Training Commission.

Loans for
training
purposes.

(2) A loan under subsection (1) shall be subject to such terms and conditions as the Minister and the Treasurer think appropriate and may be made free of interest.

8. Sections 22 and 23 of the principal Act are repealed and the following section is substituted:

Repeal of
ss. 22 and 23
and substitution
of new section.

22. Where—

- (a) an employer engages a building worker;
 - (b) a building worker dies or ceases to be employed by an employer;
 - (c) during the course of employment by any person, a person becomes a building worker in the employment of that person;
- or
- (d) a person ceases to be a building worker but continues in the employment of the person by whom he was employed as a building worker,

Returns as to
employment of
workers.

the employer shall, within one month, give written notice containing the prescribed particulars to the Board.

Penalty: Five hundred dollars.

9. Section 24 of the principal Act is amended—

Amendment of
s. 24—
Contributions
by employers.

- (a) by inserting in subsection (1) after the passage “total of the wages” the passage “(excluding any amounts by way of special rates or allowances)”;
- (b) by striking out from subsection (1) the passage “Two hundred dollars” and substituting the passage “Five hundred dollars”;
- (c) by striking out subsection (2) and substituting the following subsection:

(2) On or before the twenty-first day of each month each employer shall pay to the Commissioner a sum equal to the prescribed percentage of the total of the wages (excluding any

Long Service Leave (Building Industry) Act Amendment Act, 1982

amounts by way of special rates or allowances) paid by him to his workers in respect of the month immediately preceding that firstmentioned month.

Penalty: Five hundred dollars.;

and

(d) by striking out subsection (4).

Repeal of ss. 24a and 24b and substitution of new sections.

Contributions in relation to certain effective service.

10. Sections 24a and 24b of the principal Act are repealed and the following sections are substituted:

24a. (1) Where—

(a) a person is entitled to be credited with a period of effective service by virtue of section 27 in respect of a period of service occurring before the commencement of this Act;

and

(b) a certificate evidencing effective service in relation to that period of service had not been issued by the Board pursuant to section 29 or 29a of this Act as in force before the commencement of the Long Service Leave (Building Industry) Act Amendment Act, 1982,

a contribution shall be payable to the Commissioner by the person who was the employer in respect of that period of service as if a certificate referred to in paragraph (b) had been issued by the Board evidencing the period of effective service referred to in paragraph (a).

(2) Where—

(a) a person is entitled to be credited with effective service by virtue of section 27 in respect of a period of service occurring after the commencement of this Act;

and

(b) contributions have not been paid to the Commissioner pursuant to this Act by the person who was the employer in respect of that period of service,

a contribution shall be payable to the Commissioner by the person who was the employer in respect of that period of service of an amount equal to the prescribed percentage of the total wages paid for that service.

(3) Where a person is entitled to be credited with effective service by virtue of section 28 (2), a contribution shall be payable to the Commissioner by the employer of that person equal to the prescribed percentage of the total wages (excluding any amounts by way of special rates or allowances) paid to that person during the period of his continuous service within the meaning of the Long Service Leave Act, 1967, as amended, with that employer before he became a building worker, disregarding any period of that service in respect of which that person had taken long service leave.

(4) The Commissioner may, if he thinks fit, accept payments in discharge of a liability under this section by instalments over a period not exceeding five years.

24b. (1) The Commissioner may, by notice in writing, require any person—

Power to
require
information,
etc.

(a) to furnish to him in writing, within the time specified in the notice, such information as he may require;

(b) to attend for the purpose of giving evidence before him at a time and place specified in the notice;

or

(c) to produce to him, within the time specified in the notice, such books, records or documents as he may require,

for the purpose of determining whether a person is liable to make contributions under this Act or determining the nature or extent of a person's liability under this Act.

(2) The Commissioner may—

(a) require that information furnished to him in writing be verified by statutory declaration;

or

(b) require any person attending before him to give evidence and, if he so requires, to give the evidence on oath (which he is hereby authorized to administer).

(3) A person shall not, without reasonable excuse, fail to comply with a requirement of the Commissioner under this section.

Penalty: Five hundred dollars.

11. Section 24c of the principal Act is amended—

Amendment of
s. 24c—
Assessments.

(a) by striking out from subsection (1) the passage "total of the wages paid by the employer and that employer shall, subject to section 36b of this Act, be liable to pay to the Commissioner as a contribution the sum equal to the prescribed percentage of the amount of that assessment" and substituting the passage "amount payable by the employer under this Act";

(b) by striking out from subsection (2) the passage "and of the contribution to be given to the employer liable to make that payment" and substituting the passage "to be given to the employer to whom it relates";

and

(c) by striking out subsection (3) and substituting the following subsection:

(3) Where an employer is given notice in writing of an assessment under this section, the employer shall, within the period specified in the notice, pay to the Commissioner the amount specified in the notice as the amount assessed to be payable by him under this Act.

Penalty: Five hundred dollars.

Amendment of
s. 24d—
Recovery of
contributions.

12. Section 24d of the principal Act is amended by striking out from subsection (2) the passage “of Stamps”.

Repeal of
ss. 27 to 30 and
substitution
of new
sections.

13. Sections 27 to 30 (inclusive) of the principal Act are repealed and the following sections are substituted:

Effective
service before
commencement
of Long Service
Leave (Building
Industry) Act
Amendment
Act, 1982.

27. (1) The Board shall, before the expiration of the period of six months after the commencement of the Long Service Leave (Building Industry) Act Amendment Act, 1982, in respect of each person known to the Board to have had an effective service entitlement immediately before that commencement pursuant to the provisions of this Act as in force before that commencement, determine the period of that effective service entitlement.

(2) The Board shall embody each determination made under subsection (1) in a certificate in the prescribed form and cause a copy of the certificate to be given to the person to whom it relates.

(3) Where a person—

(a) has not received a certificate under subsection (2) within the period referred to in subsection (1) and claims to have had an effective service entitlement referred to in subsection (1);

or

(b) has received a certificate under subsection (2) and disputes the determination of the Board contained in the certificate,

he may, after the commencement of the Long Service Leave (Building Industry) Act Amendment Act, 1982, make an application in the prescribed manner and form to the Board for a determination or redetermination of his effective service entitlement (if any) immediately before that commencement.

(4) The Board may, upon an application under subsection (3), make a determination or redetermination of the applicant's effective service entitlement immediately before the commencement of the Long Service Leave (Building Industry) Act Amendment Act, 1982.

(5) The Board shall embody each determination or redetermination made under subsection (4) in a certificate in the prescribed form and cause a copy of the certificate to be given to the person to whom it relates.

(6) For the purposes of this Act after the commencement of the Long Service Leave (Building Industry) Act Amendment Act, 1982—

(a) a person shall be deemed to have had immediately before that commencement an effective service entitlement of the period (if any) determined or redetermined by the Board under this section or by the Tribunal on appeal under Part IVA against such a determination or redetermination;

and

(b) except as provided in paragraph (a), effective service and, effective service entitlements shall be determined without reference to periods of employment occurring before that commencement.

(7) An apparently genuine document purporting to be a certificate issued by the Board under this section shall, in the absence of proof to the contrary, be proof that the Board made a determination or redetermination under this section in the terms set out in the certificate.

28. (1) A person is entitled in respect of each period of service as a building worker occurring after the commencement of the Long Service Leave (Building Industry) Act Amendment Act, 1982, to be credited with effective service calculated as follows:

Effective service after commencement of Long Service Leave (Building Industry) Act Amendment Act, 1982.

$$E = \frac{T.H.}{O.H.} \times \frac{12}{52}$$

where—

E = the period of effective service:

T.H. = the sum of the total number of hours worked by the person as a building worker during the period of service (disregarding any hours worked by him in any week in excess of ordinary hours) and the total number of ordinary hours for which he was absent from that work during that period as a result of allowable absences:

O.H. = the ordinary hours in relation to the period of service.

(2) Where, after the commencement of the Long Service Leave (Building Industry) Act Amendment Act, 1982, a person becomes, during the course of employment by any person, a building worker in the employment of that person, he is entitled in respect of his service with that employer before he became a building worker to be credited with effective service calculated as follows:

$$E = C.S. \times \frac{AH}{O.H.} \times \frac{12}{52}$$

where—

E = the period of effective service:

C.S. = the period of his continuous service within the meaning of the Long Service Leave Act, 1967, as amended, with that employer before he became a building worker expressed in weeks to two decimal places, disregarding any period in respect of which he had taken long service leave:

AH = the average hours worked per week in the weeks in which the person worked in the period designated by the symbol "C.S.", disregarding any hours worked by him in any week in excess of ordinary hours:

O.H. = the ordinary hours in relation to the period designated by the symbol "C.S."

(3) Where a person is entitled to be credited with a period of effective service by virtue of subsection (2), he shall, if he ceases to be employed by the person referred to in that subsection, cease to be entitled to be credited with that period of effective service.

(4) Where a person who has an effective service entitlement of less than one hundred and twenty months is dismissed from employment as a building worker and the Board is satisfied, after affording the

former building worker and his former employer an opportunity to be heard, that he was dismissed from that employment as a result of serious and wilful misconduct, he shall cease to have that effective service entitlement.

(5) Where a person—

(a) has an effective service entitlement of less than eighty-four months;

(b) has not received, or become entitled to receive, a payment or leave referred to in section 34 (1) (a) (ii);

and

(c) is not employed as a building worker for a continuous period of eighteen months or more otherwise than on account of illness or injury,

he shall cease to have that effective service entitlement.

(6) Subsection (5) does not apply to a person who ceases to be a building worker but continues in the employment of the person by whom he was employed as a building worker if that person while in the same employment again becomes a building worker.

(7) Where a person becomes entitled to receive a payment from the Board under section 33 or 34, he shall cease to have the effective service entitlement that gave rise to that entitlement.

(8) Where—

(a) a person becomes entitled under the Long Service Leave Act, 1967, as amended, to a grant of long service leave, or a payment in lieu of long service leave;

and

(b) by virtue of section 35 (1), the continuous service of that person giving rise to that entitlement includes a period equal to the person's effective service entitlement at the time that he ceased to be a building worker,

that person shall cease to have that effective service entitlement.

Amendment of
s. 31—
Return of
service.

14. Section 31 of the principal Act is amended by striking out from subsection (1) the passage "ordinary time worked, calculated in the prescribed manner," and substituting the passage "ordinary hours worked".

Repeal of
ss. 32 to 36
and
substitution of
new sections.

15. Sections 32 to 36 (inclusive) of the principal Act are repealed and the following sections are substituted:

Notices
issued by
Board
setting out
effective
service.

32. (1) The Board shall, as soon as practicable after the thirty-first day of July, 1983, and each succeeding thirty-first day of July, in respect of each person known to the Board to have had an effective service entitlement during the year ending on the last preceding thirtieth day of June determine—

(a) the periods that the person became entitled to be credited with as effective service during that year;

and

(b) the effective service entitlement of that person as at that thirtieth day of June.

(2) The Board may—

(a) in relation to any person of its own motion at any time;

or

(b) upon application made in the prescribed manner and form by any person,

determine or redetermine the effective service entitlement of that person as at a time specified by the Board.

(3) The Board shall embody each determination made under subsection (1) or (2) in a certificate in the prescribed form and cause a copy of the certificate to be given to the person to whom it relates.

(4) An apparently genuine document purporting to be a certificate issued by the Board under this section shall, in the absence of proof to the contrary, be proof that the person to whom the certificate relates had, at the date specified in the certificate, the effective service entitlement specified in the certificate.

33. (1) Subject to subsection (2), where a building worker attains an effective service entitlement of one hundred and twenty months—

Payment for
120 months
effective
service.

(a) the employer in whose employment the worker is when that effective service entitlement is attained, shall, as soon as practicable after that time, grant the worker leave to be absent from work for a period of thirteen weeks;

and

(b) the Board shall, when the worker takes that leave of absence, or that employment terminates, whichever first occurs, become liable to pay to the worker an amount equal to thirteen times the ordinary pay immediately before that time for work of the kind last performed by him as a building worker.

(2) Notwithstanding the provisions of subsection (1), where a worker referred to in that subsection continues in the same employment beyond the expiration of the period of twelve months from the time that effective service entitlement was attained without taking the leave of absence referred to in that subsection, the amount payable to the worker under that subsection shall—

(a) be an amount equal to thirteen times the ordinary pay at the expiration of that period of twelve months for work of the kind last performed by him as a building worker;

or

(b) if the Board, upon application made by the worker or the employer in the prescribed manner and form, thinks fit, be an amount equal to thirteen times the ordinary pay at a subsequent date fixed by the Board for work of the kind last performed by him as a building worker.

(3) No person shall during any period for which he is, pursuant to this section, absent from his employment, engage in any other employment for hire or reward.

Penalty: One hundred dollars.

(4) No person shall employ any other person for hire or reward during any period during which that other person is to his knowledge absent from other employment pursuant to this section.

Penalty: One hundred dollars.

34. (1) Where, upon application made in the prescribed manner and form, the Board is satisfied—

(a) that a person has an effective service entitlement—

(i) of eighty-four months or more but less than one hundred and twenty months;

or

(ii) of less than eighty-four months and has—

A. received or become entitled to receive a payment under section 33 as in force before or after the commencement of the Long Service Leave (Building Industry) Act Amendment Act, 1982;

B. before the commencement of this Act, been granted or become entitled to be granted long service leave under the Long Service Leave Act, 1967, as amended, for service as a worker within the meaning of this Act;

or

C. before or after the commencement of this Act, been granted or become entitled to be granted long service leave under the Long Service Leave Act, 1967, as amended, for service otherwise than as a worker within the meaning of this Act where that service and the service giving rise to that effective service entitlement were parts of a continuous period of service in the employment of the same person;

and

(b) that the person has—

(i) died;

(ii) ceased to be a building worker and has attained the prescribed retiring age;

(iii) ceased to be a building worker and has a physical or mental disability such that he will be unable to work as a building worker for a continuous period of twelve months or more;

or

Pro-rata
payments for
effective
service less
than 120
months.

- (iv) ceased to be a building worker and has not worked as a building worker for a continuous period of twelve months or more from the time that he ceased to be a building worker,

the Board shall pay to that person or his personal representative, an amount calculated as follows:

$$A = O.P. \times E \times \frac{13}{120}$$

where—

A = the amount payable expressed in dollars and cents:

O.P. = the ordinary pay on the relevant day for work of the kind last performed by the person as a building worker:

E = the effective service entitlement of the person.

(2) In subsection (1) “the relevant day” means—

(a) in relation to a person who has died—the day on which he died;

(b) in relation to a person who has ceased to be a building worker and has attained the prescribed retiring age—the day on which he ceased to be a building worker or attained the prescribed retiring age, whichever last occurred;

(c) in relation to a person who has ceased to be a building worker and has a physical or mental disability of the kind referred to in subsection (1) (b) (iii)—the day on which the person made the application under subsection (1);

or

(d) in relation to a person who has ceased to be a building worker and has not worked as a building worker for a continuous period of twelve months or more from the time that he ceased to be a building worker—the day on which that period of twelve months expired.

(3) Where, upon an application under subsection (1), the Board determines that the applicant is not entitled to the payment sought, the Board shall give to the applicant notice in writing of its decision and the reasons for its decision.

35. (1) Where a person employed as a building worker ceases to be a building worker but continues in the employment of the person by whom he was employed as a building worker, the continuous service of that person for the purposes of the Long Service Leave Act, 1967, as amended, shall be deemed to include a period equal to the person's effective service entitlement at the time that he ceased to be a building worker.

Building
worker
continuing
in same
employment
otherwise than
as building
worker.

(2) Subsection (1) does not apply if the former building worker receives a payment under this Act in respect of the effective service entitlement referred to in that subsection.

(3) Where—

(a) an entitlement to a grant of long service leave or payment in lieu thereof arises under the Long Service Leave Act, 1967, as amended, in relation to a former building worker referred to in subsection (1);

and

(b) by virtue of that subsection the continuous service of that person includes a period equal to his effective service entitlement at the time that he ceased to be a building worker,

the Board shall pay to the person liable to grant the leave or make the payment an amount calculated as follows:

$$A = \frac{O.P. \times N \times E}{C.S.}$$

where—

A = the amount payable expressed in dollars and cents:

O.P. = the ordinary pay, within the meaning of the Long Service Leave Act, 1967, as amended, of the former building worker last payable before the entitlement arose:

N = the number of weeks' leave required to be granted, or the number of weeks' leave in lieu of which payment is required to be made, under the Long Service Leave Act, 1967, as amended:

E = the effective service entitlement of the person at the time that he ceased to be a building worker:

C.S. = the period of the person's continuous service within the meaning of the Long Service Leave Act, 1967, as amended, expressed in months to one decimal place.

Amendment of
s. 36a—
The Appeal
Tribunal.

16. Section 36a of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) The Tribunal shall be constituted of an industrial magistrate within the meaning of the Industrial Conciliation and Arbitration Act, 1972-1981, appointed by the Governor.

Repeal of
s. 36b and
substitution
of new
sections.

Appeal to
Tribunal.

17. Section 36b of the principal Act is repealed and the following sections are substituted:

36b. (1) A person aggrieved by any assessment of the Commissioner or any determination or decision of the Board made under this Act may appeal to the Tribunal against the assessment, determination or decision.

(2) An appeal under this section must be instituted not later than thirty days after service upon the appellant of written notice of the assessment, determination or decision appealed against, but the Tribunal may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be so instituted.

(3) The Tribunal may, on the hearing of the appeal, do one or more of the following, according to the nature of the case—

- (a) affirm, vary or quash the assessment, determination or decision appealed against, or substitute its own assessment, determination or decision for that made in the first instance;
- (b) remit the subject matter of the appeal for further consideration;
- (c) make any further or other order as to costs or any other matter that the case requires.

36ba. (1) The Tribunal may for the purposes of an appeal under this Part—

Powers of
Tribunal.

- (a) by summons signed by the Tribunal, require the attendance before the Tribunal of any person whom it thinks fit to call before it;
- (b) by summons signed by the Tribunal, require the production of any books, papers, documents or other thing;
- (c) inspect any books, papers, documents or other things produced before it, and retain them for such reasonable period as it thinks fit, and make copies of such books, papers or documents or any of their contents;
- (d) require a person to make an oath or affirmation that he will truly answer all questions put to him by the Tribunal or a person appearing before it relevant to any matter arising in the hearing (which oath or affirmation may be administered by the Tribunal);

or

- (e) require a person (other than counsel) appearing before the Tribunal (whether he has been summoned to appear or not) to answer relevant questions put to him by the Tribunal or by a person appearing before it.

(2) Subject to subsection (3), if a person—

- (a) who has been served with a summons to attend before the Tribunal neglects or fails to attend in obedience to the summons;
- (b) who has been served with a summons to produce any books, papers, documents or other thing, neglects or fails to comply with the notice;
- (c) misbehaves himself before the Tribunal, wilfully insults the Tribunal, or interrupts the proceedings of the Tribunal;

or

- (d) refuses to be sworn or to affirm, or to answer a relevant question, when required to do so by the Tribunal,

he shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(3) A person shall not be obliged to answer a question put to him in proceedings before the Tribunal if the answer to the question would tend to incriminate him.

Amendment of
s. 37—
Powers of
Inspectors.

18. Section 37 of the principal Act is amended—

- (a) by inserting at the foot of subsection (2) the following passage:
Penalty: Five hundred dollars.;
 - (b) by inserting at the foot of subsection (3) the following passage:
Penalty: Five hundred dollars.;
 - (c) by inserting at the foot of subsection (4) the following passage:
Penalty: Five hundred dollars.;
- and
- (d) by inserting at the foot of subsection (5) the following passage:
Penalty: Five hundred dollars.

Repeal of
ss. 38, 39
and 40 and
substitution
of new
sections.

19. Sections 38, 39 and 40 of the principal Act are repealed and the following sections are substituted:

Books and
records to be
preserved.

38. (1) Every person who is an employer under this Act shall keep or cause to be kept in this State sufficient books and records to enable his liability in respect of contributions under this Act to be accurately calculated and shall preserve those books and records in this State for a period of not less than five years next following the completion of the transactions to which they relate.

Penalty: Five hundred dollars.

(2) This section shall not apply so as to require the preservation of any books or records—

(a) in respect of which the Commissioner has notified the employer that preservation is not required;

or

(b) of a company which has gone into liquidation and which has been finally dissolved.

False or
misleading
information.

39. A person shall not—

(a) lodge any notice or return with the Commissioner;

(b) furnish any information, give any evidence or produce any book, record or document to the Commissioner;

(c) lodge any return with the Board;

or

(d) keep any record,

pursuant to this Act that is to his knowledge false or misleading in a material particular.

Penalty: Five hundred dollars.

Service of
documents.

40. (1) Any certificate, notice, or other document required or authorized by this Act to be served or given by the Commissioner or the Board shall be deemed to have been duly served or given—

(a) if it is left at the last known place of residence or business in or out of the State of the person, whether or not he is an

employer, on or to whom the certificate, notice or document is to be served or given or, in the case of an employer, at his address for service shown on the return last furnished by him with some person apparently in his employment;

or

(b) if sent by prepaid letter post, addressed to the person, whether or not he is an employer, on or to whom the certificate, notice or document is to be served or given at his last known place of residence or business in or out of the State or, in the case of an employer, at his address for service shown on the last return furnished by him.

(2) Service of a notice or document in accordance with subsection (1) (b) shall, in the absence of proof to the contrary, be deemed to have been effected at the time when it would be delivered in the ordinary course of post.

(3) Any notice, return or document of any kind to be given to or lodged with the Commissioner or the Board for the purposes of this Act may be given to or lodged with the Commissioner or the Board, by leaving it at the office of the Commissioner or the Board, with a person apparently employed in the administration of this Act.

40a. (1) A person convicted of an offence against any provision of this Act in respect of a continuing act or omission—

Continuing offences.

(a) shall be liable, in addition to the penalty otherwise applicable to that offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence;

and

(b) shall, if the act or omission continues after he is convicted, be guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to that further offence, to a penalty for each day during which the act or omission continued after that conviction of not more than one-tenth of the maximum penalty prescribed for that offence.

(2) Where an offence against a provision of this Act consists of an omission to do something that is required to be done, the omission shall, for the purposes of subsection (1) of this section, be deemed to continue for so long as the thing required to be done remains undone after the expiration of the period for compliance with the requirement.

20. Section 42a of the principal Act is amended—

Amendment of s. 42a—
Evidentiary provisions.

(a) by inserting before paragraph (a) of subsection (1) the following paragraph:

(aa) the person named in the certificate was at the time or during the period specified in the certificate an employer;

(b) by striking out subsection (2) and substituting the following subsections:

(2) In any proceedings against a person for failing or neglecting duly to lodge a return with the Commissioner, a certificate in writing purporting to be signed by the Commissioner certifying that the return has not been received from that person by any person authorized by the Commissioner to receive returns, shall, in the absence of proof to the contrary, be taken as proof that the defendant has failed or neglected duly to lodge the return.

(2a) In any proceedings against a person for failing or neglecting duly to lodge a notice or return with the Board, a certificate in writing purporting to be under the seal of the Board certifying that the notice or return has not been received from that person by any person authorized by the Board to receive notices or returns, shall, in the absence of proof to the contrary, be taken as proof that the defendant has failed or neglected duly to lodge the notice or return.;

and

(c) by inserting in paragraph (a) of subsection (3) after the word "certificate" the passage "within the period specified in the certificate".

Amendment of
s. 43—
Regulations.

21. Section 43 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) Without limiting the generality of subsection (1), those regulations may—

- (a) require persons who are employers to register with the Board;
- (b) require employers or former employers to notify the Board or the Commissioner of specified matters;
- (c) prescribe penalties, not exceeding five hundred dollars, for any breach of, or failure to comply with, the regulations.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 18 of 1982

An Act to amend the Parliamentary Superannuation Act, 1974-1981.

[Assented to 11 March 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Parliamentary Superannuation Act Amendment Act 1982". Short titles.

(2) The Parliamentary Superannuation Act, 1974-1981, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Parliamentary Superannuation Act, 1974-1982".

2. This Act shall come into operation on a day to be fixed by proclamation. Commence-
ment.

3. Section 5 of the principal Act is amended— Amendment of
s. 5—
Interpretation.

(a) by striking out the definition of "additional salary" in subsection (1) and substituting the following definition:

"additional salary" means the annual amount payable by way of additional salary within the meaning of the Parliamentary Salaries and Allowances Act, 1965-1978, for ministerial office or for being an officer of Parliament or by way of any other remuneration for the time being declared by proclamation to be additional salary for the purposes of this Act;;

and

(b) by inserting in the definition of "salary" in subsection (1) after the word "means" the passage "the annual amount payable as".

4. Section 17 of the principal Act is amended— Amendment of
s. 17—
Amount of
pension on
retirement.

(a) by striking out from subsection (2) the definition of "HS" and substituting the following definition:

HS is the sum of BS and the amount arrived at by calculating the total amount that would have been payable to the former member by way of additional salary—

(a) upon the assumption that the rates of additional salary applicable on the date of his retirement had applied during the whole of his period of service; and

(b) where he held prescribed offices during his period of service for a total period of more than six years—by taking into account only periods of his service for which he held prescribed office that equal in aggregate six years, those periods that would have been the most remunerative for him in terms of additional salary at the rates referred to in paragraph (a) being first taken into account and (if necessary) those periods that would have been the next most remunerative for him in terms of additional salary at those rates being next taken into account and so on until the periods equal in aggregate six years;:

and

(b) by inserting after subsection (2a) the following subsection:

(2b) For the purposes of subsection (2), if a member held a prescribed office during his period of service and the prescribed office does not exist on the date of his retirement, the rate of additional salary applicable to that office on that date shall be deemed to be a rate of salary determined by the Public Actuary having regard to the rate of additional salary last applicable to that office before the date of retirement of the member and the movements (if any) in salaries and additional salaries up to date of retirement of the member.

Amendment of
s. 24—
Pension for
spouse of
deceased
pensioner.

5. Section 24 of the principal Act is amended—

(a) by inserting in the definition of “the appropriate factor” in subsection (3) after the passage “became a pensioner” the passage “, or, where he commuted a percentage of his pension, by the amount of the pension to which he was entitled immediately after he commuted that percentage”;

(b) by striking out paragraph (b) of the definition of “the relevant amount” in subsection (3) and substituting the following paragraph:

(b) in relation to a member who was in receipt of additional salary at any time during his service—the sum of the annual salary of the member immediately before he became a member and one-sixth of the amount arrived at by calculating the total amount that would have been payable to the member by way of additional salary—

(i) upon the assumption that the rates of additional salary applicable immediately before he became a pensioner had applied during the whole of his period of service;

and

- (ii) where he held prescribed offices during his period of service for a total period of more than six years—by taking into account only periods of his service for which he held prescribed office that equal in aggregate six years, those periods that would have been the most remunerative for him in terms of additional salary at the rates referred to in subparagraph (i) being first taken into account and (if necessary) those periods that would have been the next most remunerative for him in terms of additional salary at those rates being next taken into account and so on until the periods equal in aggregate six years.;

and

- (c) by inserting after subsection (4) the following subsection:

(5) For the purposes of subsection (3), if a member held a prescribed office during his period of service and the prescribed office did not exist immediately before he became a pensioner, the rate of additional salary applicable to that office immediately before he became a pensioner shall be deemed to be a rate of salary determined by the Public Actuary having regard to the rate of additional salary last applicable to that office before the member became a pensioner and the movements (if any) in salaries and additional salaries up to the date on which the member became a pensioner.

6. Section 36 of the principal Act is amended—

- (a) by striking out subsections (4a), (4b) and (4c);
- (b) by inserting in paragraph (c) of subsection (6) before the word “he” the passage “within three months after becoming a member or within such further period as the Trustees may allow,”;

and

- (c) by inserting after subsection (7) the following subsections:

(8) Where the Trustees allow a member a further period to pay an amount under subsection (1), (3) or (6), they may impose such conditions (including a condition requiring payment of interest on that amount) as they think fit, and a member shall not be regarded as having paid that amount within the further period allowed unless he complies with those conditions.

(9) The Trustees may vary or revoke a condition under subsection (8).

Amendment of
s. 36—
Certain
previous
service to
be counted.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 19 of 1982

An Act to make provision with respect to the exploration for and the exploitation of the petroleum resources, and certain other resources, of certain submerged lands adjacent to the coasts of South Australia, to amend the Off-shore Waters (Application of Laws) Act, 1976-1980, and for other purposes.

[Assented to 11 March 1982]

WHEREAS in accordance with international law Australia as a coastal State has sovereign rights over the Continental Shelf beyond the limits of Australian territorial waters for the purpose of exploring it and exploiting its natural resources:

AND WHEREAS Australia is a party to the Convention on the Continental Shelf signed at Geneva on 29 April 1958 in which those rights are defined:

AND WHEREAS by the *Seas and Submerged Lands Act 1973* of the Commonwealth it is declared and enacted that the sovereignty in respect of the territorial sea of Australia and in respect of the airspace over it and in respect of its sea-bed and subsoil, and the sovereignty in respect of certain internal waters of Australia and in respect of the airspace over those waters and in respect of the sea-bed and subsoil beneath those waters, is vested in and exercisable by the Crown in right of the Commonwealth:

AND WHEREAS the Parliaments of the States and the Legislative Assembly of the Northern Territory have certain legislative powers in respect of the sea-bed and subsoil referred to in the last preceding recital and the Parliament of the Commonwealth has vested in the Crown in right of each of the States and the Crown in right of the Northern Territory certain proprietary rights in respect of that sea-bed and subsoil:

AND WHEREAS it has been agreed between the Commonwealth, the States and the Northern Territory that, in place of the scheme provided for by an Agreement between the Commonwealth and the States dated 16 October 1967—

- (a) legislation of the Parliament of the Commonwealth in respect of the exploration for and the exploitation of the petroleum resources of submerged lands should be limited to the resources of lands

beneath waters that are beyond the outer limits of the territorial sea adjacent to the States and the Northern Territory (being outer limits based, unless and until otherwise agreed, on the breadth of that sea being three nautical miles), and that the States and the Northern Territory should share in the administration of that legislation;

- (b) legislation of the Parliament of each State should apply in respect of the exploration for and the exploitation of the petroleum resources of such part of the submerged lands in an area adjacent to the State as is on the landward side of the waters referred to in paragraph (a);
- (c) legislation of the Legislative Assembly of the Northern Territory should apply in respect of the exploration for and the exploitation of the petroleum resources of such part of the submerged lands in an area adjacent to the Northern Territory as is on the landward side of the waters referred to in paragraph (a);

and

- (d) the Commonwealth, the States and the Northern Territory should endeavour to maintain, as far as practicable, common principles, rules and practices in the regulation and control of the exploration for and the exploitation of the petroleum resources of all the submerged lands referred to above that are on the seaward side of the inner limits of the territorial sea of Australia.

BE IT THEREFORE ENACTED by the Governor of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PART I

PRELIMINARY

DIVISION I—INTERPRETATION, APPLICATION AND CONSTRUCTION OF ACT

DIVISION I

1. (1) This Act may be cited as the "Petroleum (Submerged Lands) Act, 1982". Short title.

(2) This Act shall come into operation on the first day on which the following Acts of the Commonwealth, with or without amendments, are in operation, namely, the *Seas and Submerged Lands Amendment Act 1980*, the *Coastal Waters (State Title) Act 1980* and the *Petroleum (Submerged Lands) Amendment Act 1980*.

(3) The Minister shall as soon as is practicable after the commencement of this Act cause notice of the commencement to be published in the *Gazette*.

2. (1) The Acts mentioned in the first schedule are repealed or amended to the extent that they are therein expressed to be repealed or amended.

Repeals,
amendments
and
transitional
provisions.

(2) The scheme agreed on between the Governments of the Commonwealth, the States and the Northern Territory, being the scheme set out in the fourth schedule, so far as that scheme relates to the operation of this Act has the force of law by virtue of this section.

(3) For the purposes of the scheme set out in the fourth schedule, as in force by virtue of this section, this Act is the State Act of South Australia and the Minister is the Designated Authority under this Act.

(4) A reference to the Designated Authority in a new permit (within the meaning of the scheme set out in the fourth schedule) or a new pipeline licence (within the meaning of that scheme) shall for the purposes of that permit or pipeline licence and this Act be read as a reference to the Minister.

(5) The provisions set out in the fifth schedule have the force of law by virtue of this section.

Arrangement.

3. This Act is divided into Parts and Divisions as follows:

PART I—PRELIMINARY

DIVISION I—INTERPRETATION, APPLICATION AND CONSTRUCTION OF ACT

DIVISION II—ADMINISTRATION OF THE COMMONWEALTH ADJACENT AREA

PART II—APPLICATION OF LAWS

PART III—MINING FOR PETROLEUM

DIVISION I—PRELIMINARY

DIVISION II—EXPLORATION PERMITS FOR PETROLEUM

DIVISION III—PRODUCTION LICENCES FOR PETROLEUM

DIVISION IV—PIPELINE LICENCES

DIVISION V—REGISTRATION OF INSTRUMENTS

DIVISION VI—GENERAL

DIVISION VII—FEES AND ROYALTIES

PART IV—REGULATIONS

Interpretation.

4. (1) In this Act, unless the contrary intention appears—

“access authority” means an access authority under Part III:

“application for a primary licence” means an application under section 39 (1) or (2):

“application for a secondary licence” means an application under section 39 (3):

“approved” means approved by the Minister:

“block” means a block constituted as provided by section 16:

“construct” includes “place” and “construction” has a corresponding meaning:

“corresponding law” means an Act of another State or a law in force in a Territory of the Commonwealth giving effect to the agreement between the Commonwealth, the States and the Northern Territory referred to in the preamble to this Act:

“document” includes any map, book, record or writing:

“good oil-field practice” means all those things that are generally accepted as good and safe in the carrying on of exploration for petroleum, or in operations for the recovery of petroleum, as the case may be:

“graticular section” means a section referred to in section 16:

“inspector” means a person appointed under section 124:

“licence” means a production licence for petroleum under Part III:

“licence area” means the area constituted by the blocks that are the subject of a licence:

“licensee” means the registered holder of a licence:

“location” means a block or blocks in respect of which a declaration under section 36 is in force:

“natural resources” has the same meaning as in the Convention:

“partly cancelled” means—

(a) in relation to a permit or licence—cancelled as to one or more but not all of the blocks the subject of the permit or licence; and

(b) in relation to a pipeline licence—cancelled as to a part of the pipeline the subject of the licence:

“partly determined”, in relation to a permit, means determined as to one or more but not all of the blocks the subject of the permit:

“permit” means an exploration permit for petroleum under Part III:

“permit area” means the area constituted by the blocks that are the subject of a permit:

“permittee” means the registered holder of a permit:

“petroleum” means—

(a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state;

(b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state;

or

(c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, and one or more of the following, that is to say, hydrogen-sulphide, nitrogen, helium and carbon-dioxide,

and includes any petroleum as defined by paragraph (a), (b) or (c) of this definition that has been returned to a natural reservoir in the adjacent area:

“petroleum pool” means a naturally occurring discrete accumulation of petroleum:

“pipeline” means a pipe or system of pipes in the adjacent area for conveying petroleum but does not include a pipe or system of pipes—

(a) for returning petroleum to a natural reservoir;

(b) for conveying petroleum for use for the purposes of petroleum exploration operations or operations for the recovery of petroleum;

(c) for conveying petroleum that is to be flared or vented;

or

(d) for conveying petroleum from a well to a terminal station without passing through another terminal station, whether the terminal station to which the petroleum is conveyed is in the adjacent area or not:

“pipeline licence” means a licence under Part III to construct and operate a pipeline:

“pipeline licensee” means the registered holder of a pipeline licence:

“primary entitlement”, in relation to a permittee, means the number of blocks forming part of a location in the permit area in respect of which that permittee may make an application under section 39 (1):

“primary licence” means a licence granted on an application under section 39 (1) or (2):

“pumping station” means equipment for pumping petroleum or water and includes any structure associated with that equipment:

“register” means the register kept in pursuance of Division 5 of Part III:

“registered holder”, in relation to a permit, licence, pipeline licence or access authority, means the person whose name is for the time being shown in the register as being the holder of the permit, licence, pipeline licence or access authority:

“royalty period”, in relation to a permit or licence, means—

(a) the period from and including the date from which the permit or licence has effect to the end of the month of the year during which that date occurs;

and

(b) each month thereafter:

“secondary licence” means a licence granted on an application under section 39 (3):

“secondary line” means a pipe or system of pipes for any purpose referred to in paragraphs (a), (b), (c) and (d) of the definition of “pipeline”:

“special prospecting authority” means a special prospecting authority under Part III:

“tank station” means a tank or system of tanks for holding or storing petroleum and includes any structure associated with that tank or system of tanks:

“terminal station” means a pumping station, a tank station or a valve station declared to be a terminal station under section 62 or under the Commonwealth Act or a corresponding law:

“the adjacent area” means, subject to subsection (2), so much of the area the boundary of which is described in the third schedule as is part of the territorial sea of Australia, including the territorial sea adjacent to any island forming part of South Australia, and includes, subject to subsection (3), an area which—

(a) is within the area the boundary of which is described in the third schedule;

(b) is seaward of the coastline of South Australia at mean low water and landward of the inner limit of the territorial sea of Australia;

and

(c) was, immediately before the commencement of this Act, the subject of an exploration permit for petroleum subsisting under the Commonwealth Act:

“the Commonwealth Act” means the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth as amended from time to time and any Act of the Commonwealth with which that Act is incorporated:

“the Convention” means the Convention entitled “Convention on the Continental Shelf” signed at Geneva on 29 April 1958, being the Convention a copy of which in the English language is set out in the second schedule:

“the Joint Authority” means the Commonwealth-South Australia Offshore Petroleum Joint Authority established by the Commonwealth Act:

“the relinquished area” means—

(a) in relation to a permit or licence that has expired—the area constituted by the blocks in respect of which the permit or licence was in force but has not been renewed;

(b) in relation to a permit that has been wholly determined or partly determined—the area constituted by the blocks as to which the permit was so determined;

(c) in relation to a permit or licence that has been wholly cancelled or partly cancelled—the area constituted by the blocks as to which the permit or licence was so cancelled;

(d) in relation to a pipeline licence that is no longer in force—the part of the adjacent area in which the pipeline was constructed;

(e) in relation to a pipeline licence that has been wholly cancelled or partly cancelled—the part of the adjacent area in which the pipeline or the part of the pipeline, as the case may be, was constructed;

and

(f) in relation to a special prospecting authority or access authority that has been surrendered or cancelled, or has expired—the area constituted by the blocks in respect of which that authority was in force:

“valve station” means equipment for regulating the flow of petroleum and includes any structure associated with that equipment:

“vessel” means a vessel used in navigation, other than air navigation, and includes a barge, lighter or other floating vessel:

“water line” means a pipe or system of pipes for conveying water in connection with petroleum exploration operations or operations for the recovery of petroleum:

“well” means a hole in the sea-bed or subsoil made by drilling, boring or any other means in connection with exploration for petroleum or operations for the recovery of petroleum but does not include a seismic shot hole:

PART I
DIVISION I

“wholly cancelled”, in relation to a permit, licence or pipeline licence, means cancelled as to all the blocks, or as to the whole of the pipeline, the subject of the permit, licence or pipeline licence:

“wholly determined”, in relation to a permit, means determined as to all the blocks the subject of the permit.

(2) If at any time the breadth of the territorial sea of Australia is determined or declared to be greater than three nautical miles, the definition of “the adjacent area” in subsection (1) continues to have effect as if the breadth of the territorial sea of Australia had continued to be three nautical miles.

(3) Upon an area described in paragraphs (a), (b) and (c) of the definition of “the adjacent area” becoming an area which is—

(a) not the subject of a permit;

(b) not the subject of a licence;

and

(c) not the subject of an application for a licence,

the area ceases to be part of the adjacent area.

(4) In this Act, a reference to the term of a permit, licence, pipeline licence, special prospecting authority or access authority is a reference to the period during which the permit, licence, pipeline licence, special prospecting authority or access authority remains in force and a reference to the date of expiration of a permit, licence, pipeline licence, special prospecting authority or access authority is a reference to the day on which the permit, licence, pipeline licence, special prospecting authority or access authority ceases to have effect.

(5) In this Act, a reference to a year of the term of a permit, licence or pipeline licence is a reference to a period of one year commencing on the date from and including which the permit, licence or pipeline licence, as the case may be, has effect or on any anniversary of that date.

(6) In this Act, a reference to the renewal, or to the grant of a renewal, of a permit is a reference to the grant of a permit in respect of all or some of the blocks specified in the firstmentioned permit to commence on the day after the date of expiration of the firstmentioned permit or on the day after the date of expiration of the permit granted upon a previous renewal of the firstmentioned permit.

(7) In this Act, a reference to the renewal, or to the grant of a renewal, of a licence in respect of the blocks specified in the licence is a reference to the grant of a licence in respect of those blocks to commence on the day after the date of expiration of the firstmentioned licence or on the day after the date of expiration of the licence granted upon a previous renewal of the firstmentioned licence.

(8) In this Act, a reference to the renewal, or to the grant of a renewal, of a pipeline licence in respect of a pipeline is a reference to the grant of a pipeline licence in respect of that pipeline to commence on the day after the date of expiration of the firstmentioned pipeline licence or on the day after the date of expiration of the pipeline licence granted upon a previous renewal of the firstmentioned pipeline licence.

(9) In this Act, a reference to a pipeline includes a reference to a part of a pipeline.

(10) In this Act, a reference to a permit, licence, pipeline licence or access authority is reference to the permit, licence, pipeline licence or access authority as varied for the time being under this Act.

(11) The power conferred by this Act to make, grant or issue any instrument shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like conditions, if any, to repeal, rescind, revoke, amend or vary any such instrument.

(12) For the purposes of this Act—

(a) the space above or below the adjacent area shall be deemed to be in that area;

and

(b) the space above or below an area that is part of the adjacent area shall be deemed to be in that part.

5. This Act applies to all natural persons, whether Australian citizens or not and whether resident in South Australia or not, and to all corporations, whether incorporated or carrying on business in South Australia or not.

Application
of Act.

6. (1) Where a well-head is situated in a licence area and the well from that well-head is inclined so as to enter a petroleum pool, being a pool that does not extend to that licence area, at a place within an adjoining licence area of the same licensee, any petroleum recovered through that well shall be deemed to have been recovered in that adjoining licence area under the licence in respect of that area.

Petroleum
pool extending
into two
licence areas.

(2) Where a petroleum pool is partly in one licence area and partly in an adjoining licence area of the same licensee and petroleum is recovered from that pool through a well or wells in one or both of the licence areas, there shall be deemed to have been recovered in each of the licence areas, under the licence in respect of that area, such proportion of all petroleum so recovered as may reasonably be treated as being derived from that area, having regard to the nature and probable extent of the pool, and the respective proportions shall be determined in accordance with subsection (3).

(3) The proportions to be determined for the purposes of subsection (2) may be determined by agreement between the licensee and the Minister or, in the absence of agreement, may be determined by the Supreme Court on the application of the licensee or the Minister.

(4) Where a petroleum pool is partly in a licence area and partly in an area (in this subsection referred to as “the Commonwealth licence area”) in which the licensee has authority under the Commonwealth Act to explore for, or recover, petroleum, and petroleum is recovered from that pool through a well or wells in the licence area, the Commonwealth licence area or both, there shall be deemed to have been recovered in the licence area such proportion of all petroleum so recovered as may reasonably be treated as being derived from that area, having regard to the nature and probable extent of the pool, and that proportion shall be determined in accordance with subsection (5).

(5) The proportion to be determined for the purposes of subsection (4) may be determined by agreement between the licensee, the Joint Authority and the Minister or, in the absence of agreement, may be determined by the Supreme Court on the application of the licensee, the Joint Authority or the Minister.

(6) Where a petroleum pool is partly in a licence area and partly in an area (in this section called “the other State licence area”) in which the licensee has authority, under a corresponding law, to explore for or recover, petroleum, and petroleum is recovered from that pool through a well or wells in the licence area, the other State licence area or both, there shall be deemed to have been recovered

in the licence area such proportion of all petroleum so recovered as may reasonably be treated as being derived from that area, having regard to the nature and probable extent of the pool, and that proportion shall be determined in accordance with subsection (7).

(7) The proportion to be determined for the purposes of subsection (6) may be determined by agreement between the licensee, the Minister and the Minister of the other State administering the corresponding law or, in the absence of agreement, may be determined by the Supreme Court on the application of any of those persons.

(8) Where—

(a) a petroleum pool is partly in a licence area and partly in another area, being an area which is outside the adjacent area and in which the licensee has, under the Commonwealth Act or a corresponding law, authority to explore for, or recover, petroleum;

(b) petroleum is recovered from that pool;

and

(c) the Supreme Court of another State makes a determination, under the Commonwealth Act or a corresponding law, of the proportion of the petroleum recovered from that pool that is, for the purposes of the Commonwealth Act or the corresponding law, to be deemed to have been recovered from the other area,

the Supreme Court shall not make a determination under this section that is inconsistent with the determination of the Supreme Court of the other State.

(9) Where—

(a) a petroleum pool is partly in a licence area and partly in another area, whether in the adjacent area or not, in respect of which another person has authority, whether under this Act, the Commonwealth Act or a corresponding law, to explore for or recover petroleum;

(b) a unit development agreement in accordance with section 58 is in force between the licensee and that other person;

and

(c) petroleum is recovered from that pool through a well or wells in the licence area, the other area or both,

there shall be deemed to have been recovered in the licence area such proportion of all petroleum so recovered as is specified in, or determined in accordance with, the agreement.

(10) In this section a reference to a licence, a licensee or a licence area shall be read as including a reference to a permit, a permittee or a permit area.

Points, etc., to be ascertained by reference to Australian Geodetic Datum.

7. (1) Where, for the purposes of this Act, or for the purposes of an instrument under this Act, it is necessary to determine the position on the surface of the Earth of a point, line or area, that position shall be determined by reference to a spheroid having its centre at the centre of the Earth and a major (equatorial) radius of 6 378 160 metres and a flattening of $\frac{100}{29825}$ and by reference to the position of the Johnston Geodetic Station in the Northern Territory of Australia.

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DIVISION I

(2) That station shall be taken to be situated at 133 degrees, 12 minutes and 30.0771 seconds of East Longitude and at 25 degrees, 56 minutes and 54.5515 seconds of South Latitude and to have a ground level of 571.2 metres above the spheroid referred to in subsection (1).

DIVISION II—ADMINISTRATION OF THE COMMONWEALTH ADJACENT AREA

DIVISION II

8. In this Division “the Commonwealth adjacent area” means the adjacent area in respect of South Australia determined in accordance with section 5A of the Commonwealth Act.

“Commonwealth adjacent area.”

9. (1) The Minister may exercise any power which the Commonwealth Act is expressed to authorize him to exercise as a member of the Joint Authority.

Minister as member of Joint Authority.

(2) The Minister shall perform any function which the Commonwealth Act is expressed to require him to perform as a member of the Joint Authority.

10. The Minister is authorized to perform the functions and exercise the powers which the Commonwealth Act is expressed to require or empower the Designated Authority in respect of the Commonwealth adjacent area to perform or exercise.

Minister as Designated Authority.

11. Where, in the exercise of a power which the Commonwealth Act is expressed to confer upon the Designated Authority in respect of the Commonwealth adjacent area, the Minister delegates a power to a person who is an officer in the public service or who holds any office in the service of the State of South Australia, the person may exercise the power.

Delegations under Commonwealth Act.

12. An officer in the public service of South Australia shall perform any function which the Minister, as the Designated Authority in respect of the Commonwealth adjacent area, or as a member of the Joint Authority, requires him to perform in relation to the Commonwealth Act.

Public Servants performing functions under Commonwealth Act.

PART II

PART II

APPLICATION OF LAWS

13. (1) Notwithstanding anything to the contrary in the Off-shore Waters (Application of Laws) Act, 1976-1980, the regulations may provide that such of the provisions which apply in the adjacent area by virtue of that Act as are specified in the regulations—

Modification of the applied provisions.

(a) do not apply;

or

(b) apply with such modifications as are specified in the regulations,

to or in relation to, acts, omissions, matters, circumstances or things touching, concerning, arising out of or connected with the exploration of the sea-bed or subsoil of the adjacent area for petroleum or the exploitation of the natural resources, being petroleum, of that sea-bed or subsoil.

PART II

(2) Without limiting the operation of subsection (1) or of regulations under that subsection, the following shall, for the purposes of that subsection and of any such regulations, be deemed to be acts, omissions, matters, circumstances or things of the kind referred to in that subsection—

(a) any—

(i) act or omission that takes place in, on, above, below or in the vicinity of;

or

(ii) matter, circumstance or thing that exists or arises with respect to or in connection with,

a vessel, aircraft, structure or installation, or equipment or other property, that is in the adjacent area for any reason touching, concerning, arising out of or connected with the exploration of the sea-bed or subsoil of the adjacent area for petroleum or the exploitation of the natural resources, being petroleum, of that sea-bed or subsoil;

(b) any act or omission of, or matter or circumstance concerning, a person who—

(i) is in the adjacent area for a reason of the kind referred to in paragraph (a);

or

(ii) is in, on, above, below or in the vicinity of a vessel, aircraft, structure or installation, or equipment or other property, that is in the adjacent area for a reason of the kind referred to in paragraph (a);

or

(c) any act or omission of, or matter or circumstance concerning, a person in respect of his carrying on any operation or doing any work in the adjacent area for a reason of the kind referred to in paragraph (a).

(3) For the purposes of this section, “modification” includes the omission or addition of a provision or the substitution of a provision for another provision.

Jurisdiction
of State
courts.

14. The jurisdiction with which the several courts of South Australia are invested by the Off-shore Waters (Application of Laws) Act, 1976-1980, extends to all matters arising under any modification of the provisions which apply in the adjacent area by virtue of that Act effected by regulations under section 13.

PART III

PART III

MINING FOR PETROLEUM

DIVISION I—PRELIMINARY

DIVISION I

15. (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him delegate to a person any of his powers or functions under this Act other than this power of delegation. Delegation.

(2) A power or function so delegated, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Minister.

(3) A delegation under this section may be expressed as a delegation to the person for the time being holding, or performing the duties of, a specified office under the Commonwealth, a State or a Territory.

(4) A delegation under this section made at any time by a person who is at that time the Minister continues in force notwithstanding that at some subsequent time a different person is the Minister or there is no person who is the Minister, but such a delegation may be revoked or varied by any person who is for the time being the Minister.

(5) A delegation under this section of a power or function does not prevent the exercise of the power or performance of the function by the Minister.

(6) A copy of each instrument making, varying or revoking a delegation shall be published in the *Gazette*.

16. (1) For the purposes of this Act, the surface of the Earth shall be deemed to be divided— Graticulation
of Earth's
surface.

(a) by the meridian of Greenwich and by meridians that are at a distance from that meridian of five minutes, or a multiple of five minutes, of longitude;

and

(b) by the equator and by parallels of latitude that are at a distance from the equator of five minutes, or a multiple of five minutes, of latitude,

into sections, each of which is bounded—

(c) by portions of two of those meridians that are at a distance from each other of five minutes of longitude;

and

(d) by portions of two of those parallels of latitude that are at a distance from each other of five minutes of latitude.

(2) For the purposes of this Act—

(a) a graticular section that is wholly within the adjacent area constitutes a block;

and

(b) if a part only of a graticular section is, or parts only of a graticular section are, within the adjacent area, the area of that part, or of those parts, constitutes a block.

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DIVISION I

(3) In this Act—

- (a) a reference to a block that is constituted by a graticular section includes a reference to a block that is constituted by the area of a part only, or by the areas of parts only, of a graticular section; and
- (b) a reference to a graticular section that constitutes a block includes a reference to a graticular section part only of which constitutes, or parts only of which constitute, a block.

Reservation
of blocks.

17. (1) The Minister may, by instrument published in the *Gazette*, declare that a block specified in the instrument (not being a block in respect of which a permit or licence is in force or over or in which there is a pipeline) shall not be the subject of a permit, licence, special prospecting authority or access authority and that a pipeline licence shall not be granted in respect of a pipeline over or in that block.

(2) While a declaration under subsection (1) remains in force in respect of a block, a permit, licence, special prospecting authority or access authority shall not be granted in respect of that block and a pipeline licence shall not be granted in respect of a pipeline over or in that block.

DIVISION II

DIVISION II—EXPLORATION PERMITS FOR PETROLEUM

Exploration
for petroleum.

18. A person shall not explore for petroleum in the adjacent area except—

- (a) under and in accordance with a permit;
- or
- (b) as otherwise permitted by this Part.

Penalty: \$50 000 or imprisonment for five years, or both.

Advertisement
of blocks.

19. (1) The Minister may, by instrument published in the *Gazette*—

- (a) invite applications for the grant of a permit in respect of the block or blocks specified in the instrument;
- and
- (b) specify a period within which applications may be made.

(2) The Minister may, for reasons that he thinks sufficient, in an instrument under subsection (1), direct that section 20 (2) or (3) does not apply, or that both of those subsections do not apply, to or in relation to the applications.

(3) Where an instrument is published under subsection (1) and—

- (a) no application is made within the period specified in the instrument;
- or
- (b) after consideration of the applications, a permit—
- (i) is not granted on any of those applications;
- or
- (ii) is granted in respect of some but not all of the blocks specified in the instrument,

the Minister may cause a notification accordingly to be published in the *Gazette* and may at any subsequent time receive an application for the grant of a permit

in respect of some or all of the blocks specified in the instrument, not being blocks in respect of which a permit was granted.

(4) The Minister shall not receive an application under subsection (3) during any period during which an application may be made in pursuance of an invitation under subsection (1).

(5) The Minister may, for reasons that he thinks sufficient, upon request in writing served on him, direct that section 20 (2) or (3) does not apply, or that both of those subsections do not apply, to or in relation to an application made under subsection (3).

20. (1) An application under section 19—

Application
for permits.

- (a) shall be in accordance with an approved form;
 - (b) shall be made in an approved manner;
 - (c) shall be in respect of not more than 400 blocks;
 - (d) shall be accompanied by particulars of—
 - (i) the proposals of the applicant for work and expenditure in respect of the blocks specified in the application;
 - (ii) the technical qualifications of the applicant and of his employees;
 - (iii) the technical advice available to the applicant;
 and
 - (iv) the financial resources available to the applicant;
 - (e) may set out other matters that the applicant wishes the Minister to consider;
- and
- (f) shall be accompanied by a fee of \$3 000.

(2) The number of blocks specified in the application—

- (a) if sixteen blocks or more are available—shall not be less than sixteen;
- or
- (b) if less than sixteen blocks are available—shall be the number available.

(3) The blocks specified in the application shall be blocks that are constituted by graticular sections that—

- (a) constitute a single area;
- and
- (b) are such that each graticular section in that area has a side in common with at least one other graticular section in that area.

(4) The Minister may, at any time, by instrument in writing served on the applicant, require him to furnish, within the time specified in the instrument, further information in writing in connection with his application.

(5) Where a permit is not granted, an amount equal to nine-tenths of the fee paid in accordance with subsection (1) shall be refunded to the applicant.

21. (1) Where an application has been made under section 19, the Minister may—

(a) by instrument in writing served on the applicant, inform the applicant—

(i) that he is prepared to grant to the applicant a permit in respect of the block or blocks specified in the instrument;

and

(ii) that the applicant will be required to lodge a security for compliance with the conditions to which the permit, if granted, will from time to time be subject and with the provisions of this Part and of the regulations;

or

(b) refuse to grant a permit to the applicant.

(2) An instrument under subsection (1) shall contain—

(a) a summary of the conditions subject to which the permit is to be granted;

and

(b) a statement to the effect that the application will lapse if the applicant does not make a request under subsection (3) in respect of the grant of the permit and lodge with the Minister the security referred to in the instrument.

(3) An applicant on whom there has been served an instrument under subsection (1) may, within a period of one month after the date of service of the instrument on him, or within such further period, not exceeding one month, as the Minister, on application in writing served on him before the expiration of the firstmentioned period of one month, allows—

(a) by instrument in writing served on the Minister request the Minister to grant to him the permit;

and

(b) lodge with the Minister the security,

referred to in the firstmentioned instrument.

(4) Where an applicant on whom there has been served an instrument under subsection (1) of this section—

(a) has made a request under subsection (3);

and

(b) has lodged with the Minister the security referred to in the instrument,

within the period applicable under subsection (3), the Minister shall grant to him an exploration permit for petroleum in respect of the block or blocks specified in the instrument.

(5) Where an applicant on whom there has been served an instrument under subsection (1)—

(a) has not made a request under subsection (3);

or

- (b) has not lodged with the Minister the security referred to in the instrument,

within the period applicable under subsection (3), the application lapses upon the expiration of that period.

22. (1) Where—

- (a) a licence is surrendered or cancelled as to a block or blocks;

or

- (b) a permit is surrendered, cancelled or determined as to a block or blocks and, at the time of the surrender, cancellation or determination, the block was, or was included in, or the blocks were, or were included in, a location,

the Minister may, at any subsequent time, by instrument published in the *Gazette*, invite applications for the grant of a permit in respect of that block or such of those blocks as are specified in the instrument and specify a period within which applications may be made.

(2) Where an instrument is published under subsection (1) and—

- (a) no application is made within the period specified in the instrument;

or

- (b) after consideration of the applications, a permit is not granted,

in respect of the block or blocks specified in the instrument, the Minister may cause a notification accordingly to be published in the *Gazette* and may, at any subsequent time and without invitation under section 19 (1), receive an application for the grant of a permit in respect of the block specified in the instrument or, if more than one block was specified in the instrument, in respect of one or more of the blocks so specified.

(3) The Minister shall not receive an application under subsection (2) during any period during which an application may be made in pursuance of an invitation under subsection (1) or section 19 (1).

(4) An application under this section—

- (a) shall be in accordance with an approved form;

- (b) shall be made in an approved manner;

- (c) shall be accompanied by the particulars referred to in section 20 (1) (d);

- (d) shall specify an amount that the applicant is prepared to pay to the Minister, in addition to the fee referred to in section 23 (1) (a), in respect of the grant of a permit to him on the application;

and

- (e) may set out any other matters that the applicant wishes the Minister to consider.

(5) The Minister may, at any time, by instrument in writing served on the applicant, require him to furnish, within the time specified in the instrument, further information in writing in connection with his application.

Application
for permit
in respect of
surrendered,
etc. blocks.

PART III

DIVISION II

Application
fee, etc.

23. (1) An application under section 22 shall be accompanied by—

(a) a fee of \$3 000;

and

(b) a deposit of 10 per centum of the amount specified in the application under section 22 (4) (d).

(2) Where a permit is not granted on the application—

(a) an amount equal to nine-tenths of the fee paid in accordance with subsection (1);

and

(b) subject to subsection (3), the amount of the deposit,

shall be refunded to the applicant.

(3) Where an applicant on whom there has been served an instrument under section 24 does not request the Minister in accordance with section 25 to grant to him the permit referred to in the instrument, the deposit shall not, unless the Minister otherwise determines, be refunded to the applicant.

Consideration
of applications.

24. (1) Where, at the expiration of the period specified in an instrument under section 22 (1), only one application has been made under that subsection in respect of the block or blocks specified in the instrument, the Minister may reject the application or may, by instrument in writing served on the applicant, inform the applicant that he is prepared to grant to him a permit in respect of that block or those blocks.

(2) Where, at the expiration of the period specified in an instrument under section 22 (1), two or more applications have been made under that subsection in respect of the block or blocks specified in the instrument, the Minister may reject any or all of the applications and, if he does not reject all of the applications, may—

(a) if only one application remains unrejected—by instrument in writing served on the applicant;

or

(b) if two or more applications remain unrejected—by instrument in writing served on the applicant, or on one of the applicants, whose application has not been rejected and who has specified as the amount that he is prepared to pay in respect of the grant of a permit to him an amount that is not less than the amount specified by any other applicant whose application has not been rejected,

inform him that he is prepared to grant to him a permit in respect of that block or those blocks.

(3) Where an application is made under section 22 (2), the Minister may reject the application or may, by instrument in writing served on the applicant, inform the applicant that he is prepared to grant to him a permit in respect of the block or blocks specified in the application.

(4) Where the Minister serves on an applicant an instrument under this section, he shall, by the instrument, inform the applicant that he will be required to lodge a security for compliance with the conditions to which the permit, if granted, will from time to time be subject and with the provisions of this Part and of the regulations.

(5) An instrument under this section shall contain—

- (a) a summary of the conditions subject to which the permit is to be granted;
- and
- (b) a statement to the effect that the application will lapse if the applicant does not—
 - (i) make a request under section 25 (1);
 - (ii) pay the balance of the amount to be paid in respect of the grant of the permit to him or enter into an agreement under section 108 in respect of that balance;
 - and
 - (iii) lodge with the Minister the security referred to in the instrument.

25. (1) An applicant on whom there has been served an instrument under section 24 may, within a period of three months after the date of service of the instrument on him, or within such further period, not exceeding three months, as the Minister, on application in writing served on him before the expiration of the firstmentioned period of three months, allows—

Request by applicant for grant of permit in respect of advertised blocks.

- (a) by instrument in writing served on the Minister, request the Minister to grant to him the permit referred to in the firstmentioned instrument;
- (b) pay the balance of the amount to be paid in respect of the grant of the permit to him or enter into an agreement under section 108 in respect of that balance;
- and
- (c) lodge with the Minister the security referred to in the firstmentioned instrument.

(2) Where an applicant on whom there has been served an instrument under section 24—

- (a) has not made a request under subsection (1);
- (b) has not paid the balance of the amount to be paid in respect of the grant of the permit to him or entered into an agreement under section 108 in respect of that balance;
- or
- (c) has not lodged with the Minister the security referred to in the instrument,

within the period applicable under subsection (1), the application lapses upon the expiration of that period.

(3) Where the application of an applicant on whom there has been served an instrument under section 24 (2) lapses as provided by subsection (2), section 24 (2) applies in respect of the application or applications, if any, then remaining unrejected.

26. Where a person on whom there has been served an instrument under section 24—

Grant of permit on request.

- (a) has made a request under section 25 (1);

PART III
DIVISION II

(b) has paid the balance of the amount to be paid in respect of the grant of a permit to him or has entered into an agreement under section 108 in respect of that balance;

and

(c) has lodged with the Minister the security referred to in the instrument,

within the period applicable under section 24 (1), the Minister shall grant to that person an exploration permit for petroleum in respect of the block or blocks specified in the instrument.

Rights
conferred
by permit.

27. A permit, while it remains in force, authorizes the permittee subject to this Act and in accordance with the conditions to which the permit is subject, to explore for petroleum and to carry on such operations and execute such works as are necessary for that purpose in the permit area.

Term of
permit.

28. Subject to this Part, a permit remains in force—

(a) in the case of a permit granted otherwise than by way of the renewal of a permit—for a period of six years commencing on the day on which the permit is granted;

and

(b) in the case of a permit granted by way of the renewal of a permit—for a period of five years commencing on the day on which the permit is granted.

Application
for renewal
of permit.

29. (1) Subject to section 30, a permittee may, from time to time, make an application to the Minister for the renewal of the permit in respect of such of the blocks the subject of the permit as are specified in the application.

(2) An application for the renewal of the permit—

(a) shall be in accordance with an approved form;

(b) subject to subsection (3) shall be made in an approved manner not less than three months before the date of expiration of the permit;

and

(c) shall be accompanied by a fee of \$300.

(3) The Minister may, for reasons that he thinks sufficient, receive an application for the renewal of the permit less than three months before, but not in any case after, the date of expiration of the permit.

Application for
renewal of
permit to be
in respect of
reduced area.

30. (1) Subject to subsection (3), the number of blocks in respect of which an application for the renewal of a permit may be made shall not exceed the number calculated as follows:

(a) where the number of blocks in respect of which the permit is in force is a number that is divisible by two without remainder—one-half of that number;

or

(b) where the number of blocks in respect of which the permit is in force is a number that is one less or one more than a number that is divisible by four without remainder—one-half of that last-mentioned number.

(2) A block that is, or is included in, a location and in respect of which the permit is in force shall not be regarded as a block in respect of which the permit is in force for the purpose of making a calculation under subsection (1).

(3) An application for the renewal of a permit may include, in addition to the blocks referred to in subsection (1), a block that is, or is included in, a location and in respect of which the permit is in force, or two or more such blocks.

(4) The blocks specified in an application for the renewal of a permit shall be blocks that are constituted by, or are within, graticular sections that—

(a) constitute a single area or a number of discrete areas;

and

(b) are such that each graticular section in the area, or in each area, has a side in common with at least one other graticular section in that area.

(5) Where the number of blocks in respect of which an application for the renewal of a permit may be made is sixteen or more, each area constituted by blocks in respect of which the application is made shall be constituted by not less than sixteen blocks.

(6) Where the maximum number of blocks in respect of which an application for the renewal of a permit may be made in accordance with the preceding provisions of this section is less than sixteen, the Minister may, by instrument in writing served on the permittee—

(a) inform the permittee that the number of blocks in respect of which the application may be made is such number, not exceeding sixteen, as is specified in the instrument;

and

(b) give such directions as he thinks fit concerning the blocks in respect of which the application may be made.

(7) The Minister may, for reasons that he thinks sufficient—

(a) direct that subsections (4) and (5) do not apply to or in relation to a proposed application for the renewal of a permit;

and

(b) give such directions as he thinks fit concerning the blocks in respect of which that application may be made.

31. (1) Where a permittee makes an application for the renewal of a permit, the Minister—

Grant or
refusal of
renewal of
permit.

(a) shall, if the permittee has complied with the conditions to which the permit is subject and with the provisions of this Part and of the regulations;

or

(b) may, if the permittee has not so complied and the Minister is satisfied that, although the permittee has not so complied, special circumstances exist that justify the granting of the renewal of the permit,

inform the permittee, by instrument in writing served on the permittee—

(c) that he is prepared to grant to him the renewal of the permit;

and

(d) that he will be required to lodge a security for compliance with the conditions to which the permit, if the renewal is granted, will from time to time be subject and with the provisions of this Part and of the regulations.

(2) If the permittee has not complied with the conditions to which the permit is subject and with the provisions of this Part and of the regulations, and if the Minister is not satisfied that special circumstances exist that justify the granting of the renewal of the permit, the Minister shall, subject to subsection (3), by instrument in writing served on the permittee, refuse to grant the renewal of the permit.

(3) The Minister shall not refuse to grant the renewal of the permit unless—

(a) he has, by instrument in writing served on the permittee, given not less than one month's notice of his intention to refuse to grant the renewal of the permit;

(b) he has served a copy of the instrument on such other persons, if any, as he thinks fit;

(c) he has, in the instrument—

(i) given particulars of the reasons for the intention;

and

(ii) specified a date on or before which the permittee or a person on whom a copy of the instrument is served may, by instrument in writing served on the Minister, submit any matters that he wishes the Minister to consider;

and

(d) he has taken into account any matters so submitted to him on or before the specified date by the permittee or by a person on whom a copy of the firstmentioned instrument has been served.

(4) An instrument referred to in subsection (1) shall contain—

(a) a summary of the conditions to which the permit, on the grant of the renewal, is to be subject;

and

(b) a statement to the effect that the application will lapse if the permittee does not make a request under subsection (5) and lodge with the Minister the security referred to in the instrument.

(5) A permittee on whom there has been served an instrument under subsection (1) may, within a period of one month after the date of service of the instrument on him—

(a) by instrument in writing served on the Minister request the Minister to grant to him the renewal of the permit;

and

(b) lodge with the Minister the security referred to in the firstmentioned instrument.

(6) Where a permittee on whom there has been served an instrument under subsection (1)—

(a) has made a request under subsection (5);

and

(b) has lodged with the Minister the security referred to in the instrument,

within the period referred to in subsection (5), the Minister shall grant to him the renewal of the permit.

(7) Where a permittee on whom there has been served an instrument under subsection (1)—

(a) has not made a request under subsection (5);

or

(b) has not lodged with the Minister the security referred to in the instrument,

within the period referred to in subsection (5), the application lapses upon the expiration of that period.

(8) Where—

(a) an application for the renewal of a permit has been made;

and

(b) the permit expires—

(i) before the Minister grants, or refuses to grant, the renewal of the permit;

or

(ii) before the application lapses as provided by subsection (7),

the permit shall be deemed to continue in force in all respects—

(c) until the Minister grants, or refuses to grant, the renewal of the permit;

or

(d) until the application so lapses,

whichever first happens.

32. (1) A permit may be granted subject to such conditions as the Minister thinks fit and specifies in the permit.

Conditions of permit.

(2) The conditions referred to in subsection (1) may include conditions with respect to—

(a) work to be carried out by the permittee in or in relation to the permit area during the term of the permit;

(b) amounts to be expended by the permittee in the carrying out of such work;

or

(c) both those matters,

and the conditions may require the permittee to comply with directions given in accordance with the permit concerning the matters referred to in paragraphs (a) and (b).

33. (1) Where petroleum is discovered in a permit area, the permittee—

(a) shall forthwith inform the Minister of the discovery;

and

(b) shall, within a period of three days after the date of the discovery, furnish to the Minister particulars in writing of the discovery.

(2) Where petroleum is discovered in a permit area, the Minister may, from time to time, by instrument in writing served on the permittee, direct the permittee to furnish to him, within the period specified in the instrument, particulars in writing of any one or more of the following:

(a) the chemical composition and physical properties of the petroleum;

(b) the nature of the subsoil in which the petroleum occurs;

and

(c) any other matters relating to the discovery that are specified by the Minister in the instrument.

(3) A person to whom a direction is given under subsection (2) shall comply with the direction.

Penalty: \$10 000.

Directions by
 Minister on
 discovery of
 petroleum.

34. (1) Where petroleum is discovered in a permit area, the Minister may, by instrument in writing served on the permittee, direct the permittee to do, within the period specified in the instrument, such things as the Minister thinks necessary and specified in the instrument to determine the chemical composition and physical properties of that petroleum and to determine the quantity of petroleum in the petroleum pool to which the discovery relates or, if part only of that petroleum pool is within the permit area, in such part of that petroleum pool as is within the permit area.

(2) A person to whom a direction is given under subsection (1) shall comply with the direction.

Penalty: \$10 000.

Nomination of
 block for
 purposes of
 declaring
 location.

35. (1) Where a permit is in force in respect of a discovery block (not being a block that is, or is included in, a location) the permittee—

(a) may;

or

(b) shall, if required to do so by the Minister by instrument in writing served on the permittee,

by instrument in writing served on the Minister nominate a block in respect of which the permit is in force for the purpose of the making of a declaration under section 36.

(2) Where a permittee who has been required, by instrument in writing served on him under subsection (1), to nominate a block does not, within a period of three months after the date of service of the instrument on him, or within such further period as the Minister, on application in writing served on him before the expiration of that period of three months, allows, nominate the block, the Minister may, by instrument in writing served on the permittee, nominate the block.

(3) Where a permittee or the Minister nominates a block under this section, he shall specify in the instrument of nomination a discovery block to form part of the location to be declared under section 36, but this subsection does not prevent other discovery blocks in the permit area forming part of the location.

(4) A block shall not be nominated under subsection (1) or (2)—

(a) if it is, or is included in, a location;

or

(b) if it is such that, if the block were so nominated and the declaration under section 36 were made, the discovery block specified in the instrument of nomination would not form part of the location.

(5) Where a discovery block in a permit area immediately adjoins another discovery block and that other discovery block—

(a) is a block—

(i) in respect of which the permit is in force;

(ii) that is, or is included in, a location;

and

(iii) that was specified under subsection (3) in relation to the declaration of that location;

or

(b) is a block—

(i) that was specified under subsection (3) in relation to the declaration of a location;

and

(ii) in respect of which the permit has ceased to be in force by reason of the operation of section 43 (5),

the permittee shall not, without the consent of the Minister, specify the first-mentioned discovery block under subsection (3).

(6) The Minister may, for reasons that he thinks sufficient, refuse to give his consent under subsection (5).

(7) In this section, “discovery block” means a block in which petroleum has been discovered.

36. (1) Where a permittee or the Minister has nominated a block under section 35, the Minister shall, by instrument published in the *Gazette*, declare—

Declaration
of location.

(a) that block;

and

(b) such of the blocks that immediately adjoin that block as are blocks in respect of which the permit is in force and are not included in a location,

to be a location for the purposes of this Part.

(2) Where the registered holder of a permit that is in force in respect of a block or blocks declared under subsection (1) to be a location, by instrument in writing served on the Minister, requests that, for the reasons specified in the

PART III
DIVISION II

instrument, the declaration be revoked, the Minister may, if he is of the opinion that those reasons are sufficient to justify his doing so, by instrument published in the *Gazette*, revoke the declaration.

Immediately adjoining blocks.

37. For the purposes of sections 35 and 36, a block immediately adjoins another block if the graticular section that constitutes or includes that block and the graticular section that constitutes or includes that other block—

- (a) have a side in common;
- or
- (b) are joined together at one point only.

DIVISION III

DIVISION III—PRODUCTION LICENCES FOR PETROLEUM

Recovery of petroleum in adjacent area.

38. A person shall not carry on operations for the recovery of petroleum in the adjacent area except—

- (a) under and in accordance with a licence;
- or
- (b) as otherwise permitted by this Part.

Penalty: \$50 000 or imprisonment for five years, or both.

Application by permittee for licence.

39. (1) A permittee whose permit is in force in respect of a block that constitutes, or the blocks that constitute, a location may, within the application period, make an application to the Minister for the grant of a licence—

- (a) where nine blocks constitute the location concerned—in respect of five of those blocks;
- (b) where eight or seven blocks constitute the location concerned—in respect of four of those blocks;
- (c) where six or five blocks constitute the location concerned—in respect of three of those blocks;
- (d) where four or three blocks constitute the location concerned—in respect of two of those blocks;
- (e) where two blocks constitute the location concerned—in respect of one of those blocks;
- or
- (f) where one block constitutes the location concerned—in respect of that block.

(2) A permittee whose permit is in force in respect of blocks that constitute a location—

- (a) instead of making an application under subsection (1) in respect of his primary entitlement, may, within the application period, make an application to the Minister for the grant of a licence in respect of a number of those blocks that is less than his primary entitlement;

and

- (b) may, from time to time within that period, make an application to the Minister for the variation of that licence to include in the licence area a number of those blocks that does not exceed the number, if any, by which his primary entitlement exceeds the number of blocks in respect of which that licence was granted and the number of blocks, if any, included in that licence by reason of any previous variations of that licence.

(3) Where—

- (a) a permittee makes an application under subsection (1) in respect of his primary entitlement;

or

- (b) a permittee to whom a licence has been granted in respect of a number of blocks that is less than his primary entitlement makes an application under subsection (2) for a variation of that licence, and the number of blocks in respect of which that licence was granted, together with the number of blocks included, and sought to be included, in the licence area by reason of applications under that subsection, is his primary entitlement,

the permittee may, within the application period, make an application to the Minister for the grant of a licence in respect of any of the other blocks forming part of the location concerned.

(4) The application period in respect of an application under this section by a permittee is—

- (a) the period of two years after the date on which the block that constitutes the location concerned was, or the blocks that constitute the location concerned were, declared to be a location;

or

- (b) such other period, not less than two years or more than four years after that date, as the Minister, on application by the permittee, in writing, served on the Minister before the expiration of the period of two years referred to in paragraph (a), allows.

40. (1) An application under section 39—

Application for
licence.

- (a) shall be in accordance with an approved form;
- (b) shall be made in an approved manner;
- (c) shall be accompanied by particulars of the proposals of the applicant for work and expenditure in respect of the area comprised in the blocks specified in the application;
- (d) may set out any other matters that the applicant wishes the Minister to consider;

and

- (e) shall in the case of an application for the grant of a licence be accompanied by a fee of \$600.

(2) The Minister may, at any time, by instrument in writing served on the applicant, require him to furnish, within the period specified in the instrument, further information in writing in connection with his application.

PART III

DIVISION III

Determination
of rate of
royalty.

41. (1) Where an application for a primary licence has been made and, before or after the grant of the primary licence, the applicant makes an application for a secondary licence, the Minister shall determine a rate at which royalty is to be payable in respect of petroleum recovered, whether under the primary licence or under the secondary licence, being a rate that is not less than 11 per centum or more than $12\frac{1}{2}$ per centum of the value at the well-head of that petroleum.

(2) The Minister shall not, under subsection (1), determine the rate at which royalty is to be payable unless he has given to the applicant an opportunity to confer with him concerning that rate.

Notification as
to grant of
licence.

42. (1) Where an application for the grant of a licence has been made under section 39 and the applicant has furnished any further information required by the Minister under section 40 (2), the Minister, by instrument in writing served on the applicant—

(a) shall inform the applicant that he is prepared to grant to him a licence in respect of the blocks specified in the application;

and

(b) may inform the applicant that the applicant will be required to lodge a security for compliance with the conditions to which the licence, if granted, will from time to time be subject and with the provisions of this Part and of the regulations.

(2) An instrument under subsection (1) shall—

(a) contain a summary of the conditions subject to which the licence is to be granted;

(b) if the instrument relates to an application for a secondary licence—specify the rate of royalty determined by the Minister in pursuance of section 41 (1);

and

(c) contain a statement to the effect that the application will lapse—

(i) if the applicant does not make a request under section 43 (1) in respect of the grant of the licence;

or

(ii) in a case where the Minister informs the applicant that he will be required to lodge a security as mentioned in paragraph (b) of subsection (1)—if the applicant does not lodge that security with the Minister.

Grant of
licence.

43. (1) An applicant on whom there has been served an instrument under section 42 (1) may, within a period of three months after the date of service of the instrument on him, or within such further period, not exceeding three months, as the Minister, on application in writing served on him before the expiration of the firstmentioned period of three months, allows—

(a) by instrument in writing served on the Minister request the Minister to grant to him the licence referred to in the firstmentioned instrument;

and

(b) if the Minister has informed him that he will be required to lodge a security as mentioned in section 42 (1) (b), lodge that security with the Minister.

(2) Where an applicant on whom there has been served an instrument under section 42 (1)—

(a) has made a request under subsection (1);

and

(b) if the Minister has informed the applicant that he will be required to lodge a security as mentioned in section 42 (1) (b), has lodged that security with the Minister,

within the period applicable under subsection (1), the Minister shall grant to the applicant a production licence for petroleum in respect of the blocks specified in the application.

(3) A secondary licence shall not be granted to a permittee in respect of any one or more of the blocks that constitute a location unless—

(a) a primary licence has been granted in respect of a block or blocks forming part of that location;

and

(b) the number of blocks in respect of which the primary licence was granted, together with the number of blocks included in that licence by reason of variations of the licence under section 44, is the permittee's primary entitlement.

(4) Where an applicant on whom there has been served an instrument under section 42 (1)—

(a) has not made a request under subsection (1);

or

(b) if the Minister has informed the applicant that he will be required to lodge a security as mentioned in section 42 (1) (b), has not lodged that security with the Minister,

within the period applicable under subsection (1), the application lapses upon the expiration of that period.

(5) From and including the day on which a licence granted under this section has effect, the permit in respect of the blocks in respect of which the licence was granted ceases to be in force in respect of those blocks.

44. (1) Where an application is made under section 39 (2) for a variation of a licence, the Minister shall, by instrument in writing served on the licensee, vary the licence to include in the licence area the blocks specified in the application.

Variation of
licence area.

(2) From and including the day from and including which a variation of a licence under this section has effect—

(a) the blocks included in the licence area by reason of the variation are, subject to this Part, for the remainder of the term of the licence, blocks in respect of which the licence is in force;

and

(b) the permit that is in force in respect of the blocks so included ceases to be in force in respect of those blocks.

PART III

DIVISION III

Determination
of permit as
to block not
taken up by
licensee.

45. (1) Subject to subsection (2), where—

(a) a permittee who may make an application under section 39 in respect of a block does not, within the application period, make the application;

or

(b) all applications made by a permittee under that section in respect of a block have lapsed,

the permit is determined as to that block and the determination has effect—

(c) in a case referred to in paragraph (a)—
upon the expiration of the application period;

and

(d) in a case referred to in paragraph (b)—

(i) upon the expiration of the application period;

or

(ii) upon the lapsing of the last of the applications referred to in that paragraph,

whichever is the later.

(2) Where a permittee makes an application for a secondary licence—

(a) the permit is determined as to any blocks forming part of the location concerned that are not the subject of that application or of any application for a primary licence or for the variation of such a licence;

and

(b) the determination has effect upon the making of the application.

(3) Where the block or blocks constituting a location are no longer the subject of a permit the Minister shall, by instrument published in the *Gazette*, revoke the declaration made under section 36 (1) in respect of that location.

Application for
licence in
respect of
surrendered,
etc., blocks.

46. (1) Where—

(a) a licence is surrendered or cancelled as to a block;

or

(b) a permit is surrendered, cancelled or determined as to a block—

(i) that, at the time of the surrender, cancellation or determination, was, or was included in, a location;

and

(ii) in which, in the opinion of the Minister, there is petroleum, the Minister may, at any subsequent time, by instrument published in the *Gazette*—

(c) invite applications for the grant of a licence in respect of that block;

and

(d) specify a period within which applications may be made.

- (2) The Minister shall, in an instrument under subsection (1), state—
- (a) that an applicant is required to specify an amount that he would be prepared to pay in respect of the grant of a licence to him on his application;
- or
- (b) that an applicant is required to specify a rate of royalty that he would be prepared to pay, if a licence were granted to him on his application, in respect of petroleum recovered under the licence, being a rate that exceeds 10 per centum of the value at the well-head of that petroleum.

(3) Where the Minister, in an instrument under subsection (1), states that an applicant is required to specify a rate of royalty as mentioned in paragraph (b) of subsection (2), the Minister may, in that instrument, state that an applicant on whose application he is prepared to grant a licence will also be required to pay to him, in respect of the grant of the licence to the applicant, the amount specified in that behalf in that instrument.

- (4) Where an instrument is published under subsection (1) and—
- (a) no application is made within the period specified in the instrument;
- or
- (b) after consideration of the applications, a licence is not granted,

in respect of the block specified in the instrument, the Minister may cause a notification accordingly to be published in the *Gazette* and may, at any subsequent time and without invitation under subsection (1), receive an application for the grant of a licence in respect of that block.

(5) The Minister shall not receive an application under subsection (4) during any period during which an application may be made in pursuance of an invitation under subsection (1).

- (6) An application under this section—
- (a) shall be in accordance with an approved form;
 - (b) shall be made in an approved manner;
 - (c) shall be accompanied by the particulars referred to in section 40 (1) (c);
 - (d) in the case of an application under subsection (1), shall specify, in accordance with the requirement in the instrument by which applications were invited, the amount or the rate of royalty that the applicant would be prepared to pay;
 - (e) in the case of an application under subsection (4), shall specify—
 - (i) an amount that the applicant would be prepared to pay in respect of the grant of a licence to him on the application;
 - (ii) a rate of royalty that the applicant would be prepared to pay in respect of petroleum recovered under the licence, being a rate that exceeds 10 per centum of the value at the well-head of that petroleum;

or

(iii) such an amount and such a rate;

and

(f) may set out any other matters that the applicant wishes the Minister to consider.

(7) The Minister may, at any time, by instrument in writing served on the applicant, require him to furnish, within the period specified in the instrument, further information in connection with his application.

Application
fee, etc.

47. (1) An application under section 46 shall be accompanied by—

(a) a fee of \$3 000;

and

(b) a deposit—

(i) if the application is made under section 46 (1) or (4) and the applicant has specified an amount that he would be prepared to pay in respect of the grant of a licence to him on the application—of 10 per centum of that amount;

or

(ii) if the application is made under section 46 (1) and the Minister has, in the instrument by which applications were invited, stated an amount that the applicant will be required to pay in respect of the grant of a licence—of 10 per centum of that amount.

(2) Where a licence is not granted on the application—

(a) an amount equal to nine-tenths of the fee paid in accordance with subsection (1);

and

(b) subject to subsection (3), the amount of the deposit,

shall be refunded to the applicant.

(3) Where an applicant on whom there has been served an instrument under section 48 (1) or (3) does not request the Minister, under section 48 (6), to grant to him the licence referred to in the instrument, the deposit shall not, unless the Minister otherwise determines, be refunded to the applicant.

Request by
applicant for
grant of licence.

48. (1) Where, at the expiration of the period specified in an instrument under section 46 (1), only one application has been made under that subsection in respect of the block specified in the instrument, the Minister may reject the application or may, by instrument in writing served on the applicant, inform him that he is prepared to grant him a licence in respect of that block.

(2) Where, at the expiration of the period specified in an instrument under section 46 (1), two or more applications have been made under that subsection in respect of the block specified in the instrument, the Minister may reject any or all of the applications and, if he does not reject all of the applications, may—

(a) if only one application remains unrejected—by instrument in writing served on the applicant;

or

- (b) if two or more applications remain unrejected—by instrument in writing served on the applicant, or on one of the applicants, whose application has not been rejected and who has specified in his application an amount, or a rate of royalty, that he would be prepared to pay that is not less than the amount, or the rate of royalty, specified in the application of any other applicant whose application has not been rejected,

inform the applicant—

- (c) that the Minister is prepared to grant to the applicant a licence in respect of that block;

and

- (d) that the applicant will be required to pay—

(i) the amount specified in the application;

(ii) royalty at the rate specified in the application;

or

(iii) royalty at the rate specified in the application and the amount specified in the instrument under section 46 (1),

as the case may be.

(3) Where an application is made under section 46 (4), the Minister may reject the application or may, by instrument in writing served on the applicant, inform the applicant—

- (a) that he is prepared to grant to him a licence in respect of that block;

and

- (b) that the applicant will be required to pay—

(i) the amount specified in the application;

(ii) royalty at the rate specified in the application;

or

(iii) the amount, and royalty at the rate, specified in the application,

as the case may be.

(4) The Minister may, by an instrument served on an applicant under any of the preceding provisions of this section, inform the applicant that he will be required to lodge a security for compliance with the conditions to which the licence, if granted, will from time to time be subject and with the provisions of this Part and of the regulations.

(5) An instrument under any of the preceding provisions of this section shall contain—

- (a) a summary of the conditions subject to which the licence is to be granted;

- (b) a statement of the balance of the amount, if any, that the applicant will be required to pay in respect of the grant of the licence to him;

and

- (c) a statement to the effect that the application will lapse—
- (i) if the applicant does not make a request under subsection (6);
 - (ii) in a case where the instrument contains a statement referred to in paragraph (b)—if the applicant does not pay the balance of the amount referred to in that statement or enter into an agreement under section 108 in respect of that balance;
- or
- (iii) in a case where the Minister informs the applicant that he will be required to lodge a security as mentioned in subsection (4)—if the applicant does not lodge that security with the Minister.

(6) An applicant on whom there has been served an instrument under any of the preceding provisions of this section may, within a period of three months after the date of service of the instrument on him, or within such further period, not exceeding three months, as the Minister, on application in writing served on him before the expiration of the firstmentioned period of three months, allows—

- (a) by instrument in writing served on the Minister, request the Minister to grant to him the licence;
 - (b) if the firstmentioned instrument contains a statement of the balance of an amount that the applicant will be required to pay in respect of the grant of the licence to him—pay that balance or enter into an agreement under section 108 in respect of that balance;
- and
- (c) if the Minister has informed him that he will be required to lodge a security as mentioned in subsection (4), lodge that security with the Minister.

(7) Where an applicant on whom there has been served an instrument under subsection (1), (2) or (3)—

- (a) has not made a request under subsection (6);
 - (b) if the instrument contains a statement of the balance of an amount that the applicant will be required to pay in respect of the grant of a licence to him—has not paid that balance or entered into an agreement under section 108 in respect of that balance;
- or
- (c) if the Minister has informed the applicant that he will be required to lodge a security as mentioned in subsection (4)—has not lodged that security with the Minister,

within the period applicable under subsection (6), the application lapses upon the expiration of that period.

(8) Where the application of an applicant on whom there has been served an instrument under subsection (2) lapses as provided by subsection (7), subsection (2) applies in respect of the application or applications, if any, then remaining unrejected.

49. Where an applicant on whom there has been served an instrument under section 48—

- (a) has made a request under section 48 (6);
- (b) if the instrument contains a statement of the balance of an amount that the applicant will be required to pay in respect of the grant of a licence to him—has paid that balance or entered into an agreement under section 108 in respect of that balance;

and

- (c) if the Minister has informed him that he will be required to lodge a security as mentioned in section 48 (4), has lodged that security with the Minister,

within the period applicable under section 48 (6), the Minister shall grant to him a production licence for petroleum in respect of the block specified in the instrument.

50. (1) Where a licence (in this section called “the original licence”) is in force in respect of two or more blocks (not being blocks that form, or form part of, a location), the licensee may make an application to the Minister for the grant to him of two or more licences in respect of the blocks the subject of the original licence in exchange for the original licence.

Grant of
licences in
respect of
individual
blocks.

(2) An application under subsection (1)—

- (a) shall be in accordance with an approved form;
- (b) shall be made in an approved manner;
- (c) shall specify the number of licences required;
- (d) shall specify the block or blocks the subject of the original licence in respect of which each licence is sought;

and

- (e) shall be accompanied by a fee of \$300.

(3) The Minister may, by instrument in writing served on a licensee who has made an application under this section, require him to lodge, in respect of a licence to be granted to him under this section, a security for compliance with the conditions to which the licence is from time to time subject and with the provisions of this Part and the regulations.

(4) Where a licensee—

- (a) has made an application under this section;

and

- (b) if the Minister has required the licensee to lodge a security as mentioned in subsection (3) has lodged that security with the Minister,

the Minister shall grant to the licensee production licences for petroleum in accordance with the application.

(5) A licence granted on an application under this section—

- (a) remains in force, subject to this Part, but notwithstanding section 52, for the remainder of the term of the original licence;

and

PART III
DIVISION III

(b) shall be granted subject to conditions corresponding as nearly as may be to the conditions to which the original licence was subject.

(6) Where licences are granted on an application under this section—

(a) the original licence is, by force of this subsection, determined;

and

(b) the determination has effect from and including the day on which those licences have effect.

Rights
conferred by
licence.

51. A licence, while it remains in force, authorizes the licensee, subject to this Act and in accordance with the conditions to which the licence is subject—

(a) to recover petroleum in the licence area and to recover petroleum from the licence area in another area to which he has lawful access for that purpose;

(b) to explore for petroleum in the licence area;

and

(c) to carry on such operations and execute such works in the licence area as are necessary for those purposes.

Term of
licence.

52. Subject to this Part, a licence remains in force—

(a) in the case of a licence granted otherwise than by way of renewal of a licence—for the period of 21 years commencing on the day on which the licence is granted;

(b) in the case of a licence granted by way of the first renewal of a licence—for the period of 21 years commencing on the day on which the licence is granted;

and

(c) in the case of a licence granted by way of the renewal, other than the first renewal, of a licence—for such period, commencing on the day on which the licence is granted, as the Minister determines and specifies in the licence, being a period not exceeding 21 years.

Application
for renewal
of licence.

53. (1) A licensee may, from time to time, make an application to the Minister for the renewal of the licence.

(2) An application for the renewal of the licence—

(a) shall be in accordance with an approved form;

(b) subject to subsection (3), shall be made in an approved manner not less than six months before the day on which the licence ceases to have effect;

(c) shall be accompanied by particulars of the proposals of the licensee for work and expenditure in respect of the licence area;

and

(d) shall be accompanied by a fee of \$600.

(3) The Minister may, for reasons that he thinks sufficient, receive an application for the renewal of the licence less than six months before, but not in any case after, the day on which the licence ceases to have effect.

54. (1) Where a licensee who has complied with the conditions to which the licence is subject and with the provisions of this Part and of the regulations makes an application under section 53 for the renewal of the licence, the Minister—

Grant or
refusal of
renewal of
licence.

- (a) shall, if the application is in respect of the first renewal of the licence;
- or
- (b) may, if the application is in respect of a renewal other than the first renewal of the licence,

inform the licensee, by instrument in writing served on the licensee, that he is prepared to grant to him the renewal of the licence.

(2) Where a licensee who has not complied with the conditions to which the licence is subject and with the provisions of this Part and of the regulations makes an application under section 53 for the renewal of the licence, the Minister, if he is satisfied that, although the licensee has not so complied, special circumstances exist that justify the granting of the renewal of the licence, may inform the licensee, by instrument in writing served on the licensee, that he is prepared to grant to him the renewal of the licence.

(3) If a licensee has not complied with the conditions to which the licence is subject and with the provisions of this Part and of the regulations, and if the Minister is not satisfied that special circumstances exist that justify the granting of the renewal of the licence, the Minister shall, subject to subsection (4), by instrument in writing served on the licensee, refuse to grant the renewal of the licence.

(4) The Minister shall not, under subsection (3), refuse to grant the renewal of a licence unless—

- (a) he has, by instrument in writing served on the licensee, given not less one month's notice of his intention to refuse to grant the renewal of the licence;
- (b) he has served a copy of the instrument on such other persons, if any, as he thinks fit;
- (c) he has, in the instrument—
 - (i) given particulars of the reasons for the intention;
 - and
 - (ii) specified a date on or before which the licensee or a person on whom a copy of the instrument is served may, by instrument in writing served on the Minister, submit any matters that he wishes the Minister to consider;

and

- (d) he has taken into account any matters so submitted to him on or before the specified date by the licensee or by a person on whom a copy of the firstmentioned instrument has been served.

(5) Where a licensee makes an application under section 53 in respect of a renewal other than the first renewal of the licence, the Minister may, by instrument in writing served on the licensee, refuse to grant the renewal of the licence.

(6) The Minister may, by an instrument served on a licensee under subsection (1) or (2) inform the licensee that he will be required to lodge a security for compliance with the conditions to which the licence, if the renewal is granted will from time to time be subject and with the provisions of this Part and of the regulations.

(7) An instrument under subsection (1) or (2) shall contain—

(a) a summary of the conditions to which the licence, on the grant of the renewal, is to be subject;

and

(b) a statement to the effect that the application will lapse—

(i) if the licensee does not make a request under subsection (8);

or

(ii) in a case where the Minister informs the licensee that he will be required to lodge a security as mentioned in subsection (6)—if the licensee does not lodge that security with the Minister.

(8) A licensee on whom there has been served an instrument under subsection (1) or (2) may, within a period of one month after the date of service of the instrument on him—

(a) by instrument in writing served on the Minister, request the Minister to grant to him the renewal of the licence;

and

(b) if the Minister has informed him that he will be required to lodge a security as mentioned in subsection (6) lodge that security with the Minister.

(9) Where a licensee on whom there has been served an instrument under subsection (1) or (2)—

(a) has made a request under subsection (8);

and

(b) if the Minister has informed him that he will be required to lodge a security as mentioned in subsection (6), has lodged that security with the Minister,

within the period referred to in subsection (8), the Minister shall grant to him the renewal of the licence.

(10) Where a licensee on whom there has been served an instrument under subsection (1) or (2)—

(a) has not made a request under subsection (8);

or

(b) if the Minister has informed him that he will be required to lodge a security as mentioned in subsection (6), has not lodged that security with the Minister,

within the period referred to in subsection (8), the application lapses upon the expiration of that period.

(11) Where—

(a) an application for the renewal of a licence is made under section 53;
and

(b) the licence expires—

(i) before the Minister grants, or refuses to grant, the renewal
of the licence;

or

(ii) before the application lapses as provided by subsection
(10),

the licence shall be deemed to continue in force in all respects—

(c) until the Minister grants, or refuses to grant, the renewal of the
licence;

or

(d) until the application so lapses,

whichever first happens.

55. A licence may be granted subject to such conditions as the Minister thinks fit and specifies in the licence. Conditions of licence.

56. (1) A licensee is required, during the first year of the term of the licence, to carry out in or in relation to the licence area, in connection with exploration for, or operations for the recovery of, petroleum in or from the licence area, approved works to the value of not less than the amount calculated by multiplying the sum of \$300 000 by the number of blocks in respect of which the licence is in force. Works to be carried out.

(2) A licensee is required, during each subsequent year of the term of the licence, to carry out in or in relation to the licence area, in connection with exploration for, or operations for the recovery of, petroleum in or from the licence area, approved works—

(a) if he did not recover petroleum in or from the licence area during the last preceding year of the term of the licence— to the value of not less than the amount calculated by multiplying the sum of \$300 000 by the number of blocks in respect of which the licence is in force;

or

(b) if he did recover petroleum in or from the licence area during the last preceding year of the term of the licence and the amount referred to in paragraph (a) exceeds the value of the petroleum so recovered—to the value of not less than the amount of the excess.

(3) Where, in respect of a year of the term of his licence, a licensee has not complied with subsection (1) or (2), the State is entitled to recover from the licensee, by action against the licensee in a court of competent jurisdiction, an amount equal to the value of the approved works that the licensee was required to carry out in or in relation to the licence area during that year of the term of the licence less the value of any approved works carried out by the licensee in or in relation to that area during that year.

(4) The Minister may, if he is satisfied that special circumstances exist that justify his doing so, by instrument in writing served on a licensee, exempt the licensee from compliance with the requirements of this section in respect of the year of the term of the licence specified in the instrument subject to such conditions, if any, as the Minister thinks fit and specifies in the instrument.

(5) For the purposes of this section—

(a) the quantity of any petroleum recovered by a licensee from a well during a year shall be ascertained in accordance with Division VII;

and

(b) the value of any petroleum is the value at the well-head of that petroleum ascertained in accordance with that division.

Directions
as to recovery
of petroleum.

57. (1) Where petroleum is not being recovered in a licence area and the Minister is satisfied that there is recoverable petroleum in that area, he may, by instrument in writing served on the licensee, direct the licensee to take all necessary and practicable steps to recover that petroleum.

(2) Where the Minister is not satisfied with the steps taken or being taken by a licensee to whom a direction has been given under subsection (1), the Minister may, by instrument in writing served on the licensee, give to the licensee such directions as the Minister thinks necessary for or in relation to the recovery of petroleum in the licence area.

(3) Where petroleum is being recovered in a licence area, the Minister may, for reasons that he thinks sufficient, by instrument in writing served on the licensee, direct the licensee to take all necessary and practicable steps to increase or reduce the rate at which the petroleum is being recovered to such rate as the Minister specifies in the instrument.

(4) Where the Minister is not satisfied with the steps taken or being taken by a licensee to whom a direction has been given under subsection (3), the Minister may, by instrument in writing served on the licensee, give to the licensee such directions as the Minister thinks necessary for or in relation to the increase or reduction of the rate at which petroleum is being recovered in the licence area.

“Unit
development.”

58. (1) In this section, the expression “unit development”—

(a) applies in relation to a petroleum pool that is partly in a particular licence area of a licensee and partly in a licence area of another licensee or in an area that is not within the adjacent area but in which a person other than the firstmentioned licensee is lawfully entitled to carry on operations for the recovery of petroleum from the pool;

and

(b) means the carrying on of operations for the recovery of petroleum from that pool under co-operative arrangements between the persons entitled to carry on such operations in each of those areas.

(2) A licensee may from time to time enter into an agreement in writing for or in relation to the unit development of a petroleum pool, but such an agreement does not have any force or effect unless it has been approved by the Minister.

(3) The Minister of his own motion or on application made to him in writing by—

(a) a licensee in whose licence area there is part of a particular petroleum pool;

or

(b) a person who is lawfully entitled to carry on operations for the recovery of petroleum in an area outside the adjacent area that includes part of a particular petroleum pool that extends into the adjacent area,

may, for the purpose of securing the more effective recovery of petroleum from the petroleum pool, direct any licensee whose licence area includes part of the petroleum pool to enter into an agreement in writing, within the period specified in the instrument, for or in relation to the unit development of the petroleum pool and to lodge the agreement with him forthwith in accordance with section 80.

(4) Where—

(a) a licensee who is directed, under subsection (3), to enter into an agreement for or in relation to the unit development of a petroleum pool does not enter into such an agreement within the specified period;

or

(b) a licensee enters into such an agreement but the agreement is not lodged with the Minister in accordance with subsection (3) or, if so lodged, is not approved under section 80,

the Minister may, by instrument in writing served on the licensee, direct the licensee to submit to him, within the period specified in the instrument, a scheme for or in relation to the unit development of the petroleum pool.

(5) At any time after the expiration of the period within which a scheme for or in relation to the unit development of a petroleum pool is to be submitted by a licensee under subsection (4), the Minister may, by instrument in writing served on the licensee, give to the licensee such directions as the Minister thinks necessary for the purpose of securing the more effective recovery of petroleum from the petroleum pool.

(6) Where a person is the licensee in respect of two or more licence areas in each of which there is part of a particular petroleum pool, the Minister may, by instrument in writing served on the licensee, give to the licensee such directions as the Minister thinks necessary for the purpose of securing the more effective recovery of petroleum from the petroleum pool.

(7) Where an agreement under this section is in force or the Minister has given directions under subsection (5) or (6), the Minister may, having regard to additional information that has become available, by instrument in writing served on the licensee or licensees concerned, give to the licensee or licensees such directions, or further directions, as the case may be, as he thinks necessary for the purpose of securing the more effective recovery of petroleum from the petroleum pool.

(8) The Minister shall not give a direction under subsection (6) or (7) unless he has given to the licensee or licensees concerned an opportunity to confer with him concerning the proposed direction.

(9) Directions under subsection (5), (6) or (7) may include directions as to the rate at which petroleum is to be recovered.

PART III
DIVISION III

(10) An agreement under this section is an instrument to which section 80 applies.

(11) The Minister shall—

- (a) if a petroleum pool extends, or is reasonably believed by him to extend, from the adjacent area into lands to which the laws of another State relating to the exploitation of petroleum resources apply, consult with the appropriate authority of that State concerning the exploitation of the petroleum pool;
- (b) if a petroleum pool extends, or is reasonably believed by him to extend, from the adjacent area into the adjacent area in respect of a State other than South Australia within the meaning of the Commonwealth Act, consult with the Designated Authority under the Commonwealth Act in respect of that State concerning the exploitation of the petroleum pool;

or

- (c) if both paragraph (a) and paragraph (b) apply, comply with both of those paragraphs.

(12) Where subsection (11) applies in relation to a petroleum pool, the Minister shall not approve an agreement under this section, or give a direction under this section, in relation to that petroleum pool except with the approval of any other authority or Designated Authority required by that subsection to be consulted.

DIVISION IV

Construction,
etc., of
pipelines, etc.

DIVISION IV—PIPELINE LICENCES

59. (1) A person shall not, in the adjacent area—

- (a) commence or continue the construction, or the alteration or reconstruction, of a pipeline;

or

- (b) operate a pipeline,

except under and in accordance with a pipeline licence.

(2) A person shall not, in the adjacent area—

- (a) commence or continue the construction, or the alteration or reconstruction, of a secondary line or water line;

or

- (b) operate a secondary line or water line,

except with and in accordance with a consent in writing of the Minister.

(3) A person shall not, in the adjacent area—

- (a) commence or continue the construction, or the alteration or reconstruction, of a pumping station, tank station or valve station;

or

- (b) operate a pumping station, tank station or valve station,

except under and in accordance with a pipeline licence or with and in accordance with a consent in writing of the Minister.

(4) A person shall not, in the adjacent area, commence to operate a pipeline, a secondary line or a water line unless—

- (a) in the case of a pipeline, it has been constructed and tested in accordance with the pipeline licence;
- (b) in the case of a secondary line or water line it has been constructed and tested in accordance with a consent in writing of the Minister;
- and
- (c) the Minister has certified in writing that he is satisfied that the pipeline, secondary line or water line, as the case may be, has been so constructed and tested and is fit to be operated.

(5) A person shall not, in the adjacent area, recommence to operate a pipeline, a secondary line or a water line, the previous operation of which was discontinued, except with and in accordance with a consent in writing of the Minister.

(6) The Minister may, for reasons that he thinks sufficient, refuse to give a consent or certificate for the purposes of this section and, where he gives a consent, may attach conditions to it.

(7) A person who fails to comply with a provision of this section or with a condition referred to in subsection (6) is guilty of an offence.

Penalty: \$50 000 or imprisonment for five years or both.

60. It is not an offence against section 59—

- (a) if, in an emergency in which there is a likelihood of loss or injury, or for the purpose of maintaining a pipeline, water line, pumping station, tank station, valve station or secondary line in good order or repair, a person does an act to avoid the loss or injury or to maintain the pipeline, water line, pumping station, tank station, valve station or secondary line in good order and repair and—
 - (i) as soon as practicable notifies the Minister of the act done;
 - and
 - (ii) complies with any directions given to him by the Minister;
- or
- (b) if a person does an act in compliance with a direction under this Act.

Acts done in an emergency, etc.

61. (1) Where—

- (a) the construction of a pipeline, water line, pumping station, tank station, valve station or secondary line is commenced, continued or completed in contravention of this Act;
- or
- (b) a pipeline, water line, pumping station, tank station, valve station or secondary line is altered or reconstructed in contravention of this Act,

Removal of pipeline, etc., constructed in contravention of Act.

the Minister may, by instrument in writing served on the appropriate person, direct him—

- (c) to make such alterations to the pipeline, water line, pumping station, tank station, valve station or secondary line as are specified in the instrument;
- or

- (d) to move the pipeline, water line, pumping station, tank station, valve station or secondary line to a specified place in, or to remove it from, the adjacent area,

within the period specified in the instrument.

- (2) For the purpose of subsection (1), the appropriate person is—

- (a) if the construction of the pipeline, water line, pumping station, tank station, valve station or secondary line has been completed—the owner of the pipeline, water line, pumping station, tank station, valve station or secondary line;

or

- (b) if the construction of the pipeline, water line, pumping station, tank station, valve station or secondary line has not been completed—the person for whom the pipeline, water line, pumping station, tank station, valve station or secondary line is being constructed.

(3) Where a person on whom there has been served an instrument under subsection (1) does not, within the period specified in the instrument or within such further period, if any, as the Minister, on application in writing served on him before the expiration of the firstmentioned period, allows, comply with the direction, the Minister may do all or any of the things required by the direction to be done.

(4) Costs and expenses incurred by the Minister under subsection (3) are a debt due by the person referred to in that subsection to the State and are recoverable in a court of competent jurisdiction.

Terminal station.

62. The Minister may, by instrument published in the *Gazette*, declare a pumping station, a tank station or a valve station in the adjacent area to be a terminal station.

Application for pipeline licence.

63. (1) An application for a pipeline licence—

- (a) shall be in accordance with an approved form;
- (b) shall be made in an approved manner;
- (c) shall be accompanied by particulars of—
- (i) the proposed design and construction of the pipeline;
 - (ii) the proposed size and capacity of the pipeline;
 - (iii) the proposals of the applicant for work and expenditure in respect of the construction of the pipeline;
 - (iv) the technical qualifications of the applicant and of his employees;
 - (v) the technical advice available to the applicant;
 - (vi) the financial resources available to the applicant;
- and
- (vii) any agreements entered into, or proposed to be entered into, by the applicant for or in relation to the supply or conveyance of petroleum by means of the pipeline;

(d) shall be accompanied by a plan, drawn to an approved scale, showing—

- (i) the route to be followed by the pipeline;
- (ii) the sites of pumping stations, tank stations, and valve stations to be used in connection with the pipeline;

and

- (iii) the site of any pumping station, tank station or valve station that the applicant desires to be declared under section 62 to be a terminal station in connection with the pipeline;

(e) may set out any other matters that the applicant wishes the Minister to consider;

and

(f) shall be accompanied by a fee of \$3 000.

(2) Where a notice is published in the *Gazette*—

(a) of an application by a person other than the licensee for a pipeline licence in respect of the construction of a pipeline for the conveyance of petroleum recovered in a licence area;

or

(b) of an application by a person other than the pipeline operator under the Commonwealth Act or a corresponding law for a pipeline licence in respect of the construction of a pipeline for the conveyance of petroleum recovered in a licence area under the Commonwealth Act or a corresponding law,

the licensee or, as the case may be, the pipeline operator under the Commonwealth Act or a corresponding law may, within a period of three months after the date of publication of the notice, or within such further period, not exceeding three months, as the Minister, on application in writing served on him before the expiration of the firstmentioned period of three months, allows, make an application for a pipeline licence referred to in paragraph (a) or (b), as the case requires, and in the application request that the application referred to in the notice be rejected.

(3) Where—

(a) a notice referred to in subsection (2) is published in the *Gazette*;

and

(b) a pipeline licence is granted to the licensee or to the pipeline operator under the Commonwealth Act or a corresponding law on an application under subsection (2),

the Minister shall, by instrument in writing served on the applicant, reject the application referred to in the notice.

(4) The Minister may, at any time, by instrument in writing served on a person who has made an application under this section, require him to furnish, within the time specified in the instrument, further information in writing in connection with his application.

(5) In this section, “pipeline operator under the Commonwealth Act or a corresponding law” has the same meaning as in section 64.

PART III

DIVISION IV

Grant or
refusal of
pipeline
licence.

64. (1) Where a person makes an application in accordance with section 63, the Minister—

(a) shall, if the application is—

(i) in respect of the construction in the adjacent area of a pipeline for the conveyance of petroleum recovered in a licence area in respect of which the applicant is the licensee and the licensee has complied with the conditions to which the licence is subject and with the provisions of this Part and of the regulations;

or

(ii) by a pipeline operator under the Commonwealth Act or a corresponding law;

or

(b) may, if the application is by any other person and has not been rejected under section 63 (3),

inform the applicant, by instrument in writing served on him, that the Minister is prepared to grant a pipeline licence to him.

(2) Where a licensee who has not complied with the conditions to which the licence is subject and with the provisions of this Part and of the regulations makes an application in accordance with section 63 for a pipeline licence in respect of the construction of a pipeline for the conveyance of petroleum recovered in the licence area, the Minister, if he is satisfied that, although the licensee has not so complied, special circumstances exist that justify the granting of a pipeline licence, may inform the licensee, by instrument in writing served on the licensee, that he is prepared to grant a pipeline licence to him.

(3) If a licensee who has not complied with the conditions to which the licence is subject and with the provisions of this Part and of the regulations makes an application in accordance with section 63 for a pipeline licence, and if the Minister is not satisfied that special circumstances exist that justify the granting of a pipeline licence, the Minister shall, subject to subsection (4), by instrument in writing served on the licensee, refuse to grant a pipeline licence.

(4) The Minister shall not, under subsection (3), refuse to grant a pipeline licence to a licensee unless—

(a) he has, by instrument in writing served on the licensee, given not less than one month's notice of his intention to refuse to grant the pipeline licence;

(b) he has served a copy of the instrument on such other persons, if any, as he thinks fit;

(c) he has, in the instrument—

(i) given particulars of the reasons for the intention;

and

(ii) specified a date on or before which the licensee or a person on whom a copy of the instrument is served may, by instrument in writing served on the Minister, submit any matters that he wishes the Minister to consider;

and

- (d) he has taken into account any matters so submitted to him on or before the specified date by the licensee or by a person on whom a copy of the firstmentioned instrument has been served.

(5) Where a person other than the licensee or the pipeline operator under the Commonwealth Act or a corresponding law makes an application in accordance with section 63 for a pipeline licence in respect of the construction of a pipeline for the conveyance of petroleum recovered in a licence area or, as the case may be, a licence area under the Commonwealth Act or a corresponding law, the Minister may, by instrument in writing served on the applicant, refuse to grant a pipeline licence.

(6) Where the Minister is required, or proposes, to serve on a person an instrument under subsection (1) or (2) he shall, by the instrument, inform that person that he will be required to lodge a security for compliance with the conditions to which the pipeline licence, if granted, will from time to time be subject and with the provisions of this Part and of the regulations.

(7) An instrument under subsection (1) or (2)—

- (a) shall specify the route to be followed by the pipeline;
- (b) shall contain a summary of the conditions subject to which the pipeline licence is to be granted;

and

- (c) shall contain a statement to the effect that the application will lapse if the applicant does not make a request under subsection (9) and lodge with the Minister the security referred to in the instrument.

(8) The route to be specified in an instrument under subsection (1) or (2) shall be—

- (a) the route shown in the plan accompanying the application;

or

- (b) if the Minister is of the opinion that, for any reason, that route is not appropriate—a route that, in the opinion of the Minister, is appropriate.

(9) A person on whom there has been served an instrument under subsection (1) or (2) may, within a period of three months after the date of service of the instrument on him, or within such further period, not exceeding three months, as the Minister, on application in writing served on him before the expiration of the firstmentioned period of three months, allows—

- (a) by instrument in writing served on the Minister, request the Minister to grant to him the pipeline licence;

and

- (b) lodge with the Minister the security referred to in the instrument so served on him.

(10) Where a person on whom there has been served an instrument under subsection (1) or (2)—

- (a) has made a request under subsection (9);

and

(b) has lodged with the Minister the security referred to in the instrument,

within the period applicable under subsection (9), the Minister shall grant to that person a licence to construct and operate a pipeline in respect of the pipeline specified in the instrument.

(11) Where a person on whom there has been served an instrument under subsection (1) or (2)—

(a) has not made a request under subsection (9);

or

(b) has not lodged with the Minister the security referred to in the instrument,

within the period applicable under subsection (9), the application lapses upon the expiration of that period.

(12) Where a pipeline licence is not granted on an application, an amount equal to nine-tenths of the fee paid in accordance with section 63 (1) (f) shall be refunded to the applicant.

(13) In this section, “pipeline operator under the Commonwealth Act or a corresponding law” means a person who is entitled under the Commonwealth Act or a corresponding law to carry on operations for the recovery of petroleum in an area outside the adjacent area and who the Minister is satisfied is or will be entitled to construct a pipeline from the firstmentioned area to the boundary of the adjacent area.

Rights
conferred
by pipeline
licence.

65. A pipeline licence, while it remains in force, authorizes the pipeline licensee, subject to this Act and in accordance with the conditions to which the pipeline licence is subject—

(a) to construct in the adjacent area—

(i) a pipeline of the design, construction, size and capacity specified in the pipeline licence along the route, and in the position in relation to the sea-bed in the adjacent area, so specified;

and

(ii) the pumping stations, tank stations, and valve stations so specified in the positions so specified;

(b) to operate that pipeline and those pumping stations, tank stations and valve stations;

and

(c) to carry on such operations, to execute such works and to do all such other things in the adjacent area as are necessary for or incidental to the construction and operation of that pipeline and of those pumping stations, tank stations and valve stations.

Term of
pipeline
licence.

66. (1) Subject to this Part, a pipeline licence remains in force—

(a) for a period of 21 years;

or

- (b) where the Minister is of the opinion that having regard to the dates of expiration of the licences that relate to the licence areas from which petroleum is, or is to be, conveyed by means of the pipeline, it is not necessary for the pipeline licence to remain in force for a period of 21 years—for such period less than 21 years as the Minister determines and specifies in the pipeline licence.

(2) The period for which a pipeline licence remains in force commences on the day on which the pipeline licence is granted.

67. (1) A pipeline licensee may, from time to time, make an application to the Minister for the renewal of the pipeline licence.

Application for renewal of pipeline licence.

(2) An application for the renewal of the pipeline licence—

- (a) shall be in accordance with an approved form;
- (b) subject to subsection (3), shall be made in an approved manner not less than six months before the day on which the pipeline licence ceases to have effect;
- and
- (c) shall be accompanied by a fee of \$600.

(3) The Minister may, for reasons that he thinks sufficient, receive an application for the renewal of the pipeline licence less than six months before, but not in any case after, the day on which the pipeline licence ceases to have effect.

68. (1) Where a pipeline licensee makes an application for the renewal of the pipeline licence under section 67, the Minister—

Grant or refusal of renewal of pipeline licence.

- (a) shall, if the pipeline licensee has complied with the conditions to which the pipeline licence is subject and with the provisions of this Part and of the regulations;
- or
- (b) may, if the pipeline licensee has not so complied and the Minister is satisfied that, although the pipeline licensee has not so complied, special circumstances exist that justify the granting of the renewal of the pipeline licence,

inform the pipeline licensee, by instrument in writing served on the pipeline licensee—

- (c) that the Minister is prepared to grant to the pipeline licensee the renewal of the pipeline licence;
- and
- (d) that the pipeline licensee will be required to lodge a security for compliance with the conditions to which the pipeline licence, if the renewal is granted, will from time to time be subject and with the provisions of this Part and of the regulations.

(2) If a pipeline licensee who has not complied with the conditions to which the pipeline licence is subject and with the provisions of this Part and of the regulations makes an application under section 67 for the renewal of the pipeline licence, and if the Minister is not satisfied that special circumstances exist that justify the granting of the renewal of the pipeline licence, the Minister shall, subject to subsection (3), by instrument in writing served on the pipeline licensee, refuse to grant the renewal of the pipeline licence.

(3) The Minister shall not refuse to grant the renewal of the pipeline licence unless—

(a) he has, by instrument in writing served on the pipeline licensee, given not less than one month's notice of his intention to refuse to grant the renewal of the pipeline licence;

(b) he has served a copy of the instrument on such other persons, if any, as he thinks fit;

(c) he has, in the instrument—

(i) given particulars of the reasons for the intention;

and

(ii) specified a date on or before which the pipeline licensee or a person on whom a copy of the instrument is served may, by instrument in writing served on the Minister, submit any matters that he wishes the Minister to consider;

and

(d) he has taken into account any matters so submitted to him on or before the specified date by the pipeline licensee or by a person on whom a copy of the firstmentioned instrument has been served.

(4) An instrument under subsection (1) shall contain—

(a) a summary of the conditions to which the pipeline licence, on the grant of the renewal, is to be subject;

and

(b) a statement to the effect that the application will lapse if the pipeline licensee does not make a request under subsection (5) and lodge with the Minister the security referred to in the instrument.

(5) A pipeline licensee on whom there has been served an instrument under subsection (1) may, within a period of one month after the date of service of the instrument on him—

(a) by instrument in writing served on the Minister, request the Minister to grant to him the renewal of the pipeline licence;

and

(b) lodge with the Minister the security referred to in the firstmentioned instrument.

(6) Where a pipeline licensee on whom there has been served an instrument under subsection (1)—

(a) has made a request under subsection (5);

and

(b) has lodged with the Minister the security referred to in the instrument,

within the period referred to in subsection (5), the Minister shall grant to him the renewal of the pipeline licence.

(7) Where a pipeline licensee on whom there has been served an instrument under subsection (1)—

(a) has not made a request under subsection (5);

or

- (b) has not lodged with the Minister the security referred to in the instrument,

within the period referred to in subsection (5), the application lapses upon the expiration of that period.

(8) Where—

- (a) an application for the renewal of a pipeline licence is made under section 67;

and

- (b) the pipeline licence expires—

- (i) before the Minister grants, or refuses to grant, the renewal of the pipeline licence;

or

(ii) before the application lapses as provided by subsection (7), the pipeline licence shall be deemed to continue in force in all respects—

- (c) until the Minister grants, or refuses to grant, the renewal of the pipeline licence;

or

- (d) until the application so lapses,

whichever first happens.

69. (1) A pipeline licence may be granted subject to such conditions as the Minister thinks fit and specifies in the pipeline licence.

Conditions of
pipeline
licence.

(2) The conditions referred to in subsection (1) may include a condition that the pipeline licensee shall complete the construction of the pipeline within the period specified in the pipeline licence.

(3) This section extends to a pipeline licence granted by way of the renewal of a pipeline licence and, in the case of a pipeline licence so granted, the conditions may include conditions varying or adding to the conditions of the previous licence and conditions requiring reconstruction or modification of the pipeline or of associated works.

70. (1) A pipeline licensee may, at any time, make an application to the Minister for the variation of the pipeline licence.

Variation of
pipeline licence
on application
by pipeline
licensee.

(2) An application under this section—

- (a) shall be in accordance with an approved form;
- (b) shall be made in an approved manner;
- (c) shall be accompanied by particulars of the proposed variation;
- (d) shall specify the reasons for the proposed variation;

and

- (e) shall be accompanied by a fee of \$300.

(3) The Minister may, at any time, by instrument in writing served on a person who has made an application under this section require him to furnish, within the period specified in the instrument, further information in writing in connection with his application.

(4) The Minister shall, in a notice published in the *Gazette* of an application under this section, specify a period within which a person may submit to the Minister, in writing, any matters that he wishes the Minister to consider in connection with the application.

(5) After considering any matters submitted to him under subsection (4) the Minister may, by instrument in writing, vary the pipeline licence to such extent as he thinks necessary or may refuse to vary the pipeline licence.

Variation of
pipeline licence
by Minister.

71. (1) The Minister may—

(a) at the request of—

(i) a Minister or a Minister of State of the Commonwealth;

or

(ii) a body established by a law of the Commonwealth or of the State;

and

(b) if, in his opinion, it is in the public interest so to do,

by instrument in writing served on a person who is a pipeline licensee or the holder of an instrument of consent under section 59 direct that person to make such changes in the design, construction, route or position of the pipeline, or of a water line, pumping station, tank station, valve station or secondary line to which the pipeline licence or instrument of consent relates, as are specified in the firstmentioned instrument, within the period specified in the firstmentioned instrument, and, if the person so directed is a pipeline licensee, shall vary the pipeline licence accordingly.

(2) A person to whom a direction is given under subsection (1) shall comply with the direction.

Penalty: \$50 000 or imprisonment for five years or both.

(3) Where the Minister gives a direction under subsection (1), and the person to whom the direction was given has complied with the direction, that person may bring an action in the Supreme Court against the Minister or Minister of State of the Commonwealth or body making the request.

(4) The Supreme Court shall hear the action, without a jury, and shall determine whether it is just that the whole or a portion of the reasonable cost of complying with the direction ought to be paid to the plaintiff by the defendant.

(5) If the Supreme Court determines that it is just that such a payment ought to be made, the Supreme Court shall determine the amount of the payment and give judgment accordingly.

Common
carrier.

72. The Minister may, by instrument in writing served on a pipeline licensee, direct the pipeline licensee to be a common carrier of petroleum in respect of the pipeline and thereupon the pipeline licensee is a common carrier of petroleum in respect of the pipeline.

Ceasing to
operate
pipeline.

73. (1) Except with the consent in writing of the Minister and subject to compliance with such conditions, if any, as are specified in the instrument of consent, a pipeline licensee shall not cease to operate the pipeline.

Penalty: \$50 000 or imprisonment for five years or both.

(2) It is not an offence against subsection (1) if the failure of the pipeline licensee to operate the pipeline—

- (a) was in the ordinary course of operating the pipeline;
- (b) was for the purpose of repairing or maintaining the pipeline;
- or
- (c) was in an emergency in which there was a likelihood of loss or injury.

DIVISION V—REGISTRATION OF INSTRUMENTS

DIVISION V

74. For the purposes of this Part, the Minister shall keep a register of permits, licences, pipeline licences and access authorities granted by him.

Register of certain instruments to be kept.

75. (1) The Minister shall enter in the register a memorial in respect of each permit, licence, pipeline licence or access authority—

Particulars to be entered in register.

- (a) specifying the name of the holder of the permit, licence, pipeline licence or access authority;
 - (b) in the case of a permit or licence, setting out an accurate description (including, where convenient, a map) of the permit area or licence area;
 - (c) in the case of an access authority, setting out an accurate description (including, where convenient, a map) of the area in respect of which the access authority is in force;
 - (d) in the case of a pipeline licence, setting out a description of the route of the pipeline;
 - (e) specifying the term of the permit, licence, pipeline licence or access authority;
 - (f) setting out such other matters and things as are required by this Part to be entered in the register;
- and
- (g) setting out such further matters relating to the registered holder or to the terms and conditions of the permit, licence, pipeline licence or access authority as the Minister deems proper and expedient in the public interest.

(2) The Minister shall enter in the register a memorial of—

- (a) any instrument varying, cancelling, surrendering or otherwise affecting a permit, licence, pipeline licence or access authority;
 - (b) any instrument under section 58 (5), (6) or (7);
 - (c) any agreement under section 108;
- and
- (d) any instrument varying or revoking an instrument referred to in paragraph (a) or (b).

(3) It is a sufficient compliance with the requirements of subsection (1) or (2) if the Minister enters a copy of the permit, licence, pipeline licence, access authority or instrument in the register.

(4) A permit, licence, pipeline licence, access authority or instrument—

(a) shall be deemed to be registered as soon as a memorial complying with subsection (1) or (2), as the case may be, or a copy of the permit, licence, pipeline licence, access authority or instrument, has been entered in the register;

and

(b) is of no force until it has been so registered.

(5) The Minister shall endorse on the memorial or copy of the permit, licence, pipeline licence, access authority or instrument a memorandum of the date upon which the memorial or copy was entered in the register.

Memorials to
be entered of
permits, etc.,
determined, etc.

76. Where—

(a) a permit ceases to be in force in respect of a block in respect of which a licence is granted;

(b) a permit has been wholly determined or partly determined;

or

(c) a permit, licence, pipeline licence or access authority has expired,
the Minister shall enter in the register a memorial of the fact.

Approval and
registration of
transfers.

77. (1) A transfer of a permit, licence, pipeline licence or access authority is of no force until it has been approved by the Minister and registered as provided by this section.

(2) A registered holder who desires to transfer a permit, licence, pipeline licence or access authority to another person, or to himself and another person jointly, may lodge with the Minister an application for approval of the transfer of the permit, licence, pipeline licence or access authority.

(3) The application shall be accompanied by an instrument of transfer of the permit, licence, pipeline licence or access authority duly executed by the transferor and transferee, together with a copy of that instrument.

(4) On the receipt of the application the Minister shall enter a memorandum in the register of the date on which the application was lodged with him and may make such other notation in the register as he deems appropriate.

(5) The Minister shall not approve the transfer unless it is an absolute transfer of the whole of the transferor's interest in the permit, licence, pipeline licence or access authority.

(6) Subject to subsection (5), the Minister may—

(a) in the case of a transfer of a permit, licence or pipeline licence—by instrument in writing served on the transferor—

(i) inform the transferor that he is prepared to approve the transfer and that the transferee will be required to lodge a security for compliance with the conditions to which the permit, licence or pipeline licence is from time to time subject and with the provisions of this Part and of the regulations;

or

(ii) refuse the application;

and

(b) in the case of the transfer of an access authority—

(i) approve the transfer;

or

(ii) by instrument in writing served on the transferor, refuse the application.

(7) Where—

(a) the Minister has, under subsection (6), informed the transferor that the transferee will be required to lodge a security;

and

(b) the transferee has lodged that security with the Minister,

the Minister shall approve the transfer.

(8) Where, in the case of the transfer of a licence, the Minister is prepared to approve the transfer and is of the opinion that the transferee should not be required to lodge a security as mentioned in subsection (6), that subsection and subsection (7) do not apply to or in relation to the transfer and the Minister may, subject to subsection (5), approve the transfer.

(9) If the Minister approves the transfer he shall forthwith endorse on the instrument of transfer and on the copy a memorandum of approval and, on payment of the fee provided by section 91, enter in the register a memorandum of the transfer and the name of the transferee.

(10) The transfer shall be deemed to be registered as soon as a memorandum of the transfer and the name of the transferee has, under subsection (9), been entered in the register and, upon that memorandum being so entered, the transferee becomes the registered holder of the permit, licence, pipeline licence or access authority to which the instrument of transfer relates.

(11) The copy of the instrument of transfer endorsed with the memorandum of approval shall be retained by the Minister and is subject to inspection in accordance with this Division.

(12) The instrument of transfer endorsed with the memorandum of approval shall be returned to the person who lodged the application.

78. (1) A person upon whom the rights of a registered holder of a permit, licence, pipeline licence or access authority have devolved by operation of law may apply in writing to the Minister to have his name entered in the register as the holder of the permit, licence, pipeline licence or access authority.

Entries in register on devolution of title.

(2) The Minister shall, if he is satisfied that the rights of the holder have devolved upon the applicant by operation of law and on payment of a fee of \$30 enter the name of the applicant in the register as the holder of the permit, licence, pipeline licence or access authority and, upon that entry being so made, the applicant becomes the registered holder of the permit, licence, pipeline licence or access authority.

79. A legal or equitable interest in or affecting an existing or future permit, licence, pipeline licence or access authority is not capable of being created, assigned, affected or dealt with, whether directly or indirectly, except by an instrument in writing.

Interests not to be created, etc., except by instruments in writing.

PART III

DIVISION V

Approval of
instruments
creating, etc.,
interests.

80. (1) This section applies to an instrument by which a legal or equitable interest in or affecting an existing or future permit, licence, pipeline licence or access authority is or may be created, assigned, affected or dealt with, whether directly or indirectly, not being an instrument of transfer to which section 77 applies.

(2) An instrument to which this section applies is of no force until—

(a) the instrument has been approved by the Minister;

and

(b) an entry has been made in the register by the Minister in accordance with subsection (7).

(3) A party to an instrument to which this section applies or a person having an interest in or in relation to a permit, licence, pipeline licence or access authority by reason of such an instrument may lodge with the Minister an application for approval of the instrument.

(4) The application shall be accompanied by the instrument and by a copy of the instrument.

(5) On receipt of the application, the Minister shall enter a memorandum in the register of the date on which the application was lodged with him and may make such other notation in the register as he deems appropriate.

(6) The Minister may approve or refuse to approve the instrument.

(7) If the Minister approves the instrument, he shall forthwith endorse on the original instrument and on the copy a memorandum of approval and, on payment of the fee provided by section 91, make an entry of the approval of the instrument in the register on the memorial relating to, or on the copy of, the permit, licence, pipeline licence or access authority to which the instrument relates.

(8) The copy of the instrument endorsed with the memorandum of approval shall be retained by the Minister and is subject to inspection in accordance with this Division.

(9) The original instrument endorsed with the memorandum of approval shall be returned to the person who lodged the application for approval.

(10) If the Minister refuses the application, he shall make a notation of the refusal in the register.

True
consideration
to be shown.

81. (1) A party to a transfer referred to in section 77 or to an instrument to which section 80 applies shall not, with intent to defraud, execute the transfer or instrument if the transfer or instrument does not fully and truly set forth the true consideration for the transfer or instrument and all other facts and circumstances, if any, affecting the amount of the fee payable in respect of the transfer or instrument under section 91.

Penalty: \$10 000.

(2) Where a person is convicted of an offence against subsection (1), the Minister may make a fresh determination of the amount of the fee payable under section 91 in respect of the memorandum relating to the transfer or instrument.

(3) Subsections (2) and (3) of section 90 apply in relation to a determination under subsection (2) as they apply in relation to a determination under section 90 (1).

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82. Neither the Minister nor a person acting under his direction or authority is concerned with the effect in law of any instrument lodged with him in pursuance of this Division nor does the approval of such an instrument give to it any force, effect or validity that it would not have had if this Division had not been enacted.

Minister not concerned with certain matters.

83. (1) The Minister may require the person lodging an instrument for approval under this Division to furnish to him in writing such information concerning the instrument, or the transaction to which the instrument relates, as the Minister considers necessary or advisable.

Power of Minister to require information as to proposed dealings.

(2) A person who is so required to furnish information shall not furnish information that is false or misleading in a material particular.

Penalty: \$5 000.

84. (1) The Minister may require any person to produce to him or to make available for inspection by him any documents in the possession or under the control of that person and relating to an instrument lodged with the Minister for approval under this Division or to the transaction to which such an instrument relates.

Production and inspection of documents.

(2) A person shall not fail or refuse to comply with a requirement given to him under subsection (1).

Penalty: \$5 000.

85. (1) Subject to subsection (2), the register and all instruments registered, or subject to inspection, under this Division shall at all convenient times be open for inspection by any person upon payment of a fee of \$6.

Inspection of register and documents.

(2) The Minister may refuse to allow a memorial or a copy of a permit, licence, pipeline licence or access authority to be inspected without the written consent of the registered holder.

86. (1) The register shall be received by all courts as evidence of all matters required or authorized by this Division to be entered in the register.

Evidentiary provisions.

(2) The Minister may, on payment of a fee calculated at the rate of \$1.50 per page, supply copies of or extracts from the register or of or from any instrument lodged with him under this Division certified by writing under his hand, and such a copy or extract so certified is admissible in evidence in all courts and proceedings without further proof or production of the original.

(3) The Minister may, on payment of a fee of \$15, by instrument in writing under his hand certify that an entry, matter or thing required or permitted by or under this Division to be made or done or not to be made or done has or has not, as the case may be, been made or done and such a certificate is evidence in all courts and proceedings of the statements contained in the certificate.

87. (1) The Supreme Court may on the application of a person aggrieved by—

Appeals.

- (a) the omission of an entry from the register;
- (b) an entry made in the register without sufficient cause;

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(c) an entry wrongly existing in the register;

or

(d) an error or defect in an entry in the register,

make such order as it thinks fit directing the rectification of the register.

(2) The Supreme Court may, in proceedings under this section, decide any question that it is necessary or expedient to decide in connection with the rectification of the register.

(3) Notice of an application under this section shall be given to the Minister, who may appear and be heard and shall appear if so directed by the Supreme Court.

(4) An office copy of an order made by the Supreme Court may be served on the Minister and the Minister shall, upon receipt of the order, rectify the register accordingly.

Minister
not liable to
certain actions.

88. Subject to section 87 neither the Minister, his delegate, nor a person acting under the direction or authority of the Minister or his delegate is liable to an action, suit or proceeding for or in respect of an act or matter *bona fide* done or omitted to be done in exercise or purported exercise of any power or authority conferred by this Division.

Offences.

89. A person who wilfully—

(a) makes, causes to be made or concurs in making a false entry in the register;

or

(b) produces or tenders in evidence a document falsely purporting to be a copy of or extract from an entry in the register or of or from an instrument lodged with the Minister under this Division,

is guilty of an offence.

Penalty: \$5 000.

Assessment
of fee.

90. (1) The Minister may determine the amount of the fee payable under section 91 in respect of any memorandum.

(2) A person dissatisfied with a determination of the Minister under subsection (1) may appeal to the Supreme Court against the determination.

(3) Upon the hearing of the appeal, the Supreme Court may affirm, reverse or modify the determination of the Minister.

Imposition of
registration
fees.

91. (1) There is payable to the Minister in respect of—

(a) a memorandum of transfer entered in the register under section 77;

or

(b) a memorandum of approval of an instrument entered in the register under section 80,

a fee at the rate of one and one-half per centum of—

(c) the value of the consideration for the transfer, or for the instrument by which the interest was created, assigned, affected or dealt with, respectively;

or

- (d) the value of the permit, licence or pipeline licence transferred, or of the interest created, assigned, affected or dealt with by the instrument, respectively,

whichever is the greater.

(2) Where, but for this subsection, the amount of the fee imposed by subsection (1) in respect of any memorandum would be less than \$300 the amount of the fee imposed in respect of that memorandum is \$300.

(3) For the purpose of calculating the fee payable under subsection (1) in respect of a memorandum of transfer of a permit or a memorandum of approval of an instrument by which an interest in a permit was created, assigned, affected or dealt with, the value, as determined by the Minister, of any approved exploration works to be carried out in pursuance of the agreement for the transfer or in pursuance of the instrument, as the case may be, shall be deducted—

- (a) where the fee is to be calculated in accordance with paragraph (c) of subsection (1)—from the value referred to in that paragraph;
and
(b) where the fee is to be calculated in accordance with paragraph (d) of subsection (1)—from the value referred to in that paragraph.

(4) Where—

- (a) the transfer of a permit or licence or an instrument by which an interest in a permit or licence was created, assigned, affected or dealt with was entered into for the purpose of giving effect to a prior agreement;
and
(b) a party to the transfer or the instrument is the holder of a certificate in respect of the transfer or instrument under paragraph (a) of subsection (6),

no fee is payable under subsection (1) or (2) in respect of the memorandum of that transfer or the memorandum of approval of that instrument, as the case may be, but there is payable in respect of the memorandum of that transfer or the memorandum of approval of that instrument a fee of \$3 000.

(5) Where—

- (a) two or more parties to the transfer of a permit, licence or pipeline licence or an instrument by which an interest in a permit, licence or pipeline licence was created, assigned, affected or dealt with are related corporations within the meaning of the Companies Act, 1962-1981;
and
(b) any of those parties is the holder of a certificate in respect of the transfer or instrument under paragraph (b) of subsection (6),

no fee is payable under subsection (1) or (2) in respect of the memorandum of that transfer or the memorandum of approval of that instrument, as the case may be, but there is payable in respect of the memorandum of that transfer or the memorandum of approval of that instrument a fee of \$3 000.

(6) Where the Minister is satisfied—

- (a) that a prior agreement referred to in subsection (4) was not entered into, or is not proposed to be entered into, substantially for the purpose of avoiding or reducing the registration fees that would,

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but for the grant of a certificate under this paragraph, be payable under subsection (1) or (2) in respect of a memorandum of transfer or a memorandum of approval of an instrument (being a transfer or instrument entered into or to be entered into for the purpose of giving effect to the prior agreement), the Minister may, on an application in writing made to him at any time by a person who is or proposes to be a party to the prior agreement, grant a certificate that the Minister is so satisfied;

or

(b) that a transfer or instrument referred to in subsection (5)—

(i) was or is proposed to be entered into solely for the purpose of the reorganization or the better administration of the related corporations or any of them;

and

(ii) was not entered into, or is not proposed to be entered into, substantially for the purpose of avoiding or reducing the registration fees that would, but for the grant of a certificate under this paragraph, be payable under subsection (1) or (2),

the Minister may, on an application in writing made to him at any time by any of those related corporations, grant a certificate that the Minister is so satisfied.

Exemption from
stamp duty.

92. Duty under the Stamp Duties Act, 1923-1980, shall not be chargeable—

(a) on a permit, licence, pipeline licence or access authority;

(b) on a transfer of a permit, licence, pipeline licence or access authority to which section 77 applies;

or

(c) on any other instrument insofar as it relates to a legal or equitable interest in or affecting a permit, licence, pipeline licence or access authority.

DIVISION VI

DIVISION VI—GENERAL

Notice of
grants of
permits, etc.,
to be
published.

93. The Minister shall cause notice of, and such particulars as he thinks fit of—

(a) the grant, and the grant of the renewal, of a permit, licence or pipeline licence;

(b) the variation of a licence or pipeline licence;

(c) the surrender or cancellation of a permit or licence as to all or some of the blocks in the permit area or licence area;

(d) the determination of a permit as to a block or blocks;

(e) an application for a pipeline licence or for the renewal or variation of a pipeline licence;

(f) the surrender or cancellation of a pipeline licence as to the whole or a part of the pipeline;

and

(g) the expiry of a permit, licence or pipeline licence, under this Part to be published in the *Gazette*.

94. (1) A permit, licence or pipeline licence has effect from and including the day specified for the purpose in the permit, licence or pipeline licence. Date of effect of permits, etc.

(2) The surrender or cancellation of a permit or licence as to all or some of the blocks in the permit area or licence area has effect from and including the day on which notice of the surrender or cancellation is published in the *Gazette*.

(3) The surrender or cancellation of a pipeline licence as to the whole or a part of the pipeline has effect from and including the day on which notice of the surrender or cancellation is published in the *Gazette*.

(4) A variation of a licence or pipeline licence has effect from and including the day on which notice of the variation is published in the *Gazette*.

95. (1) Where a permit, licence or pipeline licence is granted subject to a condition that works or operations specified in the permit, licence or pipeline licence are to be carried out, the permittee, licensee or pipeline licensee, as the case may be, shall commence to carry out those works or operations within a period of six months after the day on which the permit, licence or pipeline licence, as the case may be, has effect. Commencement of works.

(2) The Minister may, for reasons that he thinks sufficient, by instrument in writing served on a permittee, licensee or pipeline licensee—

(a) exempt him from compliance with the requirements of subsection (1); and

(b) direct him to commence to carry out the works or operations specified in the permit, licence or pipeline licence, as the case may be, within such period after the day on which the permit, licence or pipeline licence, as the case may be, has effect as is specified in the instrument.

(3) A person to whom a direction is given under subsection (2) shall comply with the direction.

Penalty: \$10 000.

96. (1) A permittee or licensee shall carry out all petroleum exploration operations and operations for the recovery of petroleum in the permit area or licence area in a proper and workmanlike manner and in accordance with good oil-field practice and shall secure the safety, health and welfare of persons engaged in those operations in or about the permit area or licence area. Work practices.

(2) In particular, and without limiting the generality of subsection (1), but subject to any authorization or requirement given or made by or under this Act or directions under this Act, a permittee or licensee shall—

(a) control the flow and prevent the waste or escape in the permit area or licence area of petroleum or water;

(b) prevent the escape in the permit area or licence area of any mixture of water or drilling fluid with petroleum or any other matter;

(c) prevent damage to petroleum-bearing strata in an area, whether in the adjacent area or not, in respect of which the permit or licence is not in force;

(d) keep separate—

(i) each petroleum pool discovered in the permit area or licence area;

and

(ii) such of the sources of water, if any, discovered in that area as the Minister, by instrument in writing served on that person, directs;

and

(e) prevent water or any other matter entering any petroleum pool through wells in the permit area or licence area except when required by, and in accordance with, good oil-field practice.

(3) A pipeline licensee shall operate the pipeline in a proper and workman-like manner and shall secure the safety, health and welfare of persons engaged in operations in connection with the pipeline.

(4) In particular and without limiting the generality of subsection (3), a pipeline licensee shall prevent the waste or escape of petroleum or water from the pipeline or from any secondary line, pumping station, tank station, valve station or water line.

(5) A person who is the holder of a special prospecting authority or an access authority shall carry out all petroleum exploration operations in the area in respect of which the special prospecting authority or access authority is in force in a proper and workmanlike manner and in accordance with good oil-field practice and shall secure the safety, health and welfare of persons engaged in those operations in or about that area.

(6) Without limiting the generality of any provision of this Act relating to conditions, the conditions subject to which a permit, licence, pipeline licence, special prospecting authority or access authority is granted may include a condition requiring the holder to effect and maintain, to the satisfaction of the Minister, insurance against expenses or liabilities or specified things arising in connection with, or as a result of, the carrying out of work, or the doing of any other thing, in pursuance of the permit, licence or authority, including expenses of complying with directions with respect to the clean-up or other remedying of the effects of the escape of petroleum.

(7) It is a defence if a person charged with failing to comply with a provision of this section, or a defendant in an action arising out of a failure by the defendant to comply with a provision of this section, proves that he took all reasonable steps to comply with that provision.

(8) The penalty for an offence against this section is a fine of \$10 000.

Maintenance
etc.,
of property.

97. (1) In this section—

“operator” means a permittee, licensee, pipeline licensee or holder of a special prospecting authority or access authority:

“the operations area”—

(a) in relation to an operator who is a permittee or licensee—
means the permit area or licence area as the case may be;

(b) in relation to an operator who is a pipeline licensee—means
the part of the adjacent area in which the pipeline is
constructed;

and

(c) in relation to an operator who is the holder of a special prospecting authority or access authority—means the area in respect of which that authority is in force.

(2) An operator shall maintain in good condition and repair all structures, equipment and other property in the operations area and used in connection with the operations in which he is engaged.

(3) An operator shall remove from the operations area all structures, equipment and other property that are not either used or to be used in connection with the operations in which he is engaged.

(4) Subsections (2) and (3) do not apply in relation to any structure, equipment or other property that was not brought into the operations area by or with the authority of the operator.

(5) The penalty for an offence against this section is a fine of \$10 000.

98. Sections 96 and 97 have effect subject to—

- (a) any other provisions of this Act;
- (b) a direction under section 100;
- and
- (c) any other law.

Sections 96 and 97 to have effect subject to this Act, etc.

99. (1) A permittee or licensee shall not make a well any part of which is less than 300 metres from a boundary of the permit area or licence area, as the case may be, except with the consent in writing of the Minister and in accordance with such conditions, if any, as are specified in the instrument of consent.

Drilling near boundaries.

(2) Where a permittee or licensee does not comply with subsection (1), the Minister may, by instrument in writing served on the permittee or licensee, as the case may be, direct him to do one or more of the following, within the period specified in the instrument:

- (a) to plug the well;
- (b) to close off the well;
- and
- (c) to comply with such directions relating to the making or maintenance of the well as are specified in the instrument.

(3) A person to whom a direction is given under subsection (2) shall comply with the direction.

Penalty: \$10 000.

100. (1) The Minister may, by instrument in writing served on a person referred to in subsection (2), give to that person a direction as to any matter with respect to which regulations may be made under section 151.

Directions.

(2) Directions under subsection (1) may be given to the following persons:

- (a) a permittee, licensee, pipeline licensee or the holder of a special prospecting authority or access authority;

- (b) a servant, agent or person acting on behalf of a person referred to in paragraph (a);
- (c) a person performing work or services under a contract with a person referred to in paragraph (a);
- or
- (d) a servant or agent of a person referred to in paragraph (c).

(3) The Minister shall not give a direction of a standing or permanent nature except after consultation with the Minister of State for the time being administering the Commonwealth Act, but the validity of a direction of the Minister shall not be called in question by reason only of a failure to comply with this subsection.

(4) A direction under this section has effect and shall be complied with notwithstanding any previous direction under this section.

(5) A direction under this section has effect and shall be complied with notwithstanding anything in the regulations or in the Off-shore Waters (Application of Laws) Act, 1976-1980, as modified by regulation under section 13 and as applying in the adjacent area.

(6) A direction under this section may be expressed to apply to every person included in a specified class of persons referred to in subsection (2) and the instrument by which a direction so expressed is given shall be deemed to be served on a person included in that class if a copy of the instrument was, at the time of the alleged failure of that person to comply with the direction, exhibited in a prominent position at a place in the adjacent area frequented by that person.

(7) A person to whom a direction in force under subsection (1) is applicable shall comply with the direction.

Penalty: \$10 000.

Compliance
with directions.

101. (1) Where a person does not comply with a direction given to him under this Part or the regulations the Minister may do all or any of the things required by the direction to be done.

(2) Costs and expenses incurred by the Minister under subsection (1) in relation to a direction are a debt due by the person to whom the direction was given to the State and are recoverable in a court of competent jurisdiction.

(3) It is a defence if a person charged with failing to comply with a direction given to him under this Part or under the regulations or a defendant in an action under subsection (2) proves that he took all reasonable steps to comply with the direction.

Exemption.

102. (1) Where—

- (a) a permit, licence or pipeline licence is, under this Part, to be deemed to continue in force until the Minister grants, or refuses to grant, the renewal of the permit, licence or pipeline licence;
- (b) a licence is varied under section 44;
- (c) a licensee enters into an agreement under section 58 or a direction is given to a licensee under that section;
- (d) a permit or licence is partly cancelled, partly determined or surrendered as to one or more but not all of the blocks in respect of which it is in force;

- (e) a pipeline licence is varied under section 70 or 71;
- (f) a direction is given to a pipeline licensee under section 72;
- (g) a pipeline licence is partly cancelled;
- (h) an access authority is granted in respect of a block the subject of a permit or licence, or an access authority as in force in respect of such a block is varied;
- (i) a permittee, licensee, pipeline licensee or the holder of a special prospecting authority or access authority applies, by instrument in writing served on the Minister—
 - (i) for a variation or suspension of;
 - or
 - (ii) for exemption from compliance with,
 any of the conditions to which the permit, licence, pipeline licence, special prospecting authority or access authority is subject;
- or
- (j) the Minister under this Part or the regulations gives a direction or consent to a permittee, licensee, pipeline licensee or the holder of a special prospecting authority or access authority,

the Minister may, at any time, by instrument in writing served on the permittee, licensee, pipeline licensee or the holder of the special prospecting authority or access authority—

- (k) vary or suspend;
- or
- (l) exempt the permittee, licensee, pipeline licensee or the holder of the special prospecting authority or access authority from compliance with,

any of the conditions to which the permit, licence, pipeline licence, special prospecting authority or access authority is subject, upon such conditions, if any, as the Minister determines and specifies in the instrument.

(2) Subsection (1) does not authorize the making of an instrument to the extent that it would affect the term of a permit, licence or pipeline licence.

(3) Notwithstanding subsection (2), where, in pursuance of subsection (1), the Minister suspends, or exempts the permittee from compliance with, any of the conditions to which a permit is subject, the Minister may, if he considers that circumstances make it reasonable to do so, in the instrument of suspension or exemption or by a later instrument in writing served on the permittee, extend the term of the permit by a period not exceeding the period of suspension or exemption.

103. (1) The registered holder of an instrument, being a permit, licence or pipeline licence, may, at any time, by application in writing served on the Minister, apply for consent to surrender the instrument—

- (a) in the case of a permit or licence—as to all or some of the blocks in respect of which it is in force;
- or

Surrender of
permits, etc.

(b) in the case of a pipeline licence—as to the whole or a part of the pipeline in respect of which it is in force.

(2) Subject to subsection (3), the Minister shall not give his consent to a surrender of an instrument under subsection (1) unless the registered holder—

- (a) has paid all fees and amounts payable by him under this Act, or has made arrangements that are satisfactory to the Minister for the payment of those fees and amounts;
- (b) has complied with the conditions to which the instrument is subject and with the provisions of this Part and of the regulations;
- (c) has, to the satisfaction of the Minister, removed or caused to be removed from the area to which the surrender relates all property brought into that area by any person engaged or concerned in the operations authorized by the instrument, or has made arrangements that are satisfactory to the Minister with respect to that property;
- (d) has, to the satisfaction of the Minister, plugged or closed off all wells made in that area by any person engaged or concerned in the operations authorized by the instrument;
- (e) subject to this Part and to the regulations, has made provision, to the satisfaction of the Minister, for the conservation and protection of the natural resources in that area;

and

- (f) has, to the satisfaction of the Minister made good any damage to the sea-bed or subsoil in that area caused by any person engaged or concerned in the operations authorized by the instrument,

but if the registered holder has complied with those requirements the Minister shall not unreasonably refuse to consent to the surrender.

(3) Where the registered holder of an instrument, being a permit, licence or pipeline licence, has not complied with the conditions to which the instrument is subject and with the provisions of this Part and of the regulations, the Minister may give his consent to a surrender of the instrument under subsection (1) if he is satisfied that, although the registered holder has not so complied, special circumstances exist that justify the giving of consent to the surrender.

(4) Where the Minister consents to an application under subsection (1), the applicant may, by instrument in writing served on the Minister, surrender the instrument accordingly.

(5) In this section, “the area to which the surrender relates” means—

- (a) in relation to a surrender of a permit or licence—the area constituted by the blocks as to which the permit or licence is proposed to be surrendered;

and

- (b) in relation to a surrender of a pipeline licence—the part of the adjacent area in which the pipeline, or the part of the pipeline, as to which the pipeline licence is proposed to be surrendered is constructed.

104. (1) Where a permittee, licensee or pipeline licensee—

- (a) has not complied with a condition to which the permit, licence or pipeline licence is subject;

- (b) has not complied with a direction given to him under this Part by the Minister;
- (c) has not complied with a provision of this Part or of the regulations;
- or
- (d) has not paid any amount payable by him under this Act, within a period of three months after the day on which the amount became payable,

the Minister may, on that ground, by instrument in writing served on the permittee, licensee or pipeline licensee, as the case may be—

- (e) in the case of a permit or licence—cancel the permit or licence as to all or some of the blocks in respect of which it is in force;
- or
- (f) in the case of a pipeline licence—cancel the pipeline licence as to the whole or a part of the pipeline in respect of which it is in force.

(2) The Minister shall not, under subsection (1), cancel a permit, licence or pipeline licence as to all or some of the blocks, or as to the whole or a part of the pipeline, in respect of which it is in force on a ground referred to in that subsection unless—

- (a) he has, by instrument in writing served on the permittee, licensee or pipeline licensee, as the case may be, given not less than one month's notice of his intention so to cancel the permit, licence or pipeline licence on that ground;
- (b) he has served a copy of the instrument on such other persons, if any, as he thinks fit;
- (c) he has, in the instrument, specified a date on or before which the permittee, licensee or pipeline licensee or a person on whom a copy of the instrument is served may, by instrument in writing served on the Minister, submit any matters that he wishes the Minister to consider;

and

- (d) he has taken into account—
 - (i) any action taken by the permittee, licensee or pipeline licensee, as the case may be, to remove that ground or to prevent the recurrence of similar grounds;

and

- (ii) any matters so submitted to him on or before the specified date by the permittee, licensee or pipeline licensee or by a person on whom a copy of the firstmentioned instrument has been served.

105. (1) A permit, licence or pipeline licence may be wholly cancelled or partly cancelled on the ground that the registered holder of the permit, licence or pipeline licence has not complied with a provision of this Part or of the regulations notwithstanding that he has been convicted of an offence by reason of his failure to comply with the provision.

Cancellation of permit, etc., not affected by other provisions.

(2) A person who was the registered holder of a permit, licence or pipeline licence that has been wholly cancelled, or is the registered holder of a permit, licence or pipeline licence that has been partly cancelled, on the ground that he has not complied with a provision of this Part or of the regulations may be convicted of an offence by reason of his failure to comply with the provision, notwithstanding that the permit, licence or pipeline licence has been so cancelled.

(3) A permit, licence or pipeline licence may be wholly cancelled or partly cancelled on the ground that the registered holder of the permit, licence or pipeline licence has not paid an amount payable by him under this Act within a period of three months after the day on which the amount became payable, notwithstanding that judgment for the amount has been obtained or that the amount, or any part of the amount, has been paid or recovered.

(4) A person who was the registered holder of a permit, licence or pipeline licence that has been wholly cancelled, or is the registered holder of a permit, licence or pipeline licence that has been partly cancelled, on the ground that he has not paid an amount payable by him under this Act within a period of three months after the day on which the amount became payable continues to be liable to pay that amount, together with any additional amount payable by reason of late payment of that amount, notwithstanding that the permit, licence or pipeline licence has been so cancelled.

Removal of
property, etc.,
by permittee,
etc.

106. (1) Where a permit, licence or pipeline licence has been wholly determined, partly determined, wholly cancelled or partly cancelled, or has expired, the Minister may, by instrument in writing served on the person who was, or is, as the case may be, the permittee, licensee or pipeline licensee, direct that person to do any one or more of the following things:

- (a) to remove or cause to be removed from the relinquished area all property brought into that area by any person engaged or concerned in the operations authorized by the permit, licence or pipeline licence or to make arrangements that are satisfactory to the Minister with respect to that property;
- (b) to plug or close off, to the satisfaction of the Minister, all wells made in that area by any person engaged or concerned in those operations;
- (c) subject to this Part and to the regulations, to make provision, to the satisfaction of the Minister, for the conservation and protection of the natural resources in that area;

and

- (d) to make good, to the satisfaction of the Minister, any damage to the sea-bed or subsoil in that area caused by any person engaged or concerned in those operations.

(2) The Minister may, by instrument in writing served on a permittee, licensee or pipeline licensee, direct him to do any one or more of the following things:

- (a) to remove or cause to be removed from the permit area, licence area or part of the adjacent area in which the pipeline is constructed, as the case may be, all property brought into that area or part by any person engaged or concerned in the operations authorized by the permit, licence or pipeline licence or to make arrangements that are satisfactory to the Minister with respect to that property;

(b) to plug or close off, to the satisfaction of the Minister, all wells made in that area or part by any person engaged or concerned in those operations;

(c) subject to this Part and to the regulations, to make provision, to the satisfaction of the Minister, for the conservation and protection of the natural resources in that area or part;

and

(d) to make good, to the satisfaction of the Minister, any damage to the sea-bed or subsoil in that area or part caused by any person engaged or concerned in those operations.

(3) A person to whom a direction is given under subsection (1) or (2) shall comply with the direction—

(a) in the case of a direction given under subsection (1)—within the period specified in the instrument by which the direction was given;

or

(b) in the case of a direction given under subsection (2)—on or before the date of expiration of the permit, licence or pipeline licence concerned.

Penalty: \$10 000.

107. Where a permit, licence or pipeline licence has been wholly determined, partly determined, wholly cancelled or partly cancelled, or has expired, and a direction under section 106 has not been complied with, or an arrangement under that section has not been carried out, in relation to the relinquished area—

Removal of
property, etc.,
by Minister.

(a) the Minister may do all or any of the things required by the direction or arrangement to be done;

and

(b) if any property brought into that area by any person engaged or concerned in the operations authorized by the permit, licence or pipeline licence has not been removed in accordance with the direction or arrangement, the Minister may, by instrument published in the *Gazette*, direct that the owner or owners of that property shall remove it from that area, or dispose of it to the satisfaction of the Minister, within the period specified in the instrument and shall serve a copy of the instrument on each person whom he believes to be an owner of that property or any part of that property.

108. (1) The Minister and a person who may request, or has requested, that a permit under section 26 or a licence under section 49 be granted to him may enter into an agreement in writing for or in relation to the payment, by instalments, of the amount to be paid in respect of the grant of the permit or licence, together with interest at the rate that is the specified rate from time to time on so much of that amount as from time to time remains unpaid.

Payment by
instalments.

(2) For the purposes of subsection (1), the specified rate is ten per centum per annum or, if a lower rate is prescribed, that lower rate.

(3) The period specified in an agreement under this section as the period within which an amount payable by instalments is to be paid shall not be greater than 21 years.

(4) Where a person enters into an agreement under this section for or in relation to the payment of an amount in respect of the grant of a permit or licence, any instalment or interest that is due under the agreement and has not been paid is payable by the registered holder of the permit or licence, as the case may be.

Penalty for
late payments
of instalments,
etc.

109. (1) Where the liability of a person under section 108 to pay an amount, being an instalment or any interest, is not discharged at or before the time when the amount is payable, there is payable by that person an additional amount calculated at the rate of one-third of one per centum per day upon so much of the firstmentioned amount as from time to time remains unpaid, to be computed from the time when the firstmentioned amount became payable until it is paid.

(2) The Minister may, in a particular case, for reasons that he thinks sufficient, remit the whole or part of an amount payable under this section.

Special
prospecting
authorities.

110. (1) Where—

(a) applications have been invited under section 22 for the grant of a permit in respect of a block or blocks;

or

(b) applications have been invited under section 46 for the grant of a licence in respect of a block or blocks,

a person may make an application to the Minister for the grant of a special prospecting authority in respect of that block or any of those blocks.

(2) An application under this section—

(a) shall be in accordance with an approved form;

(b) shall be made in an approved manner;

and

(c) shall specify the operations that the applicant proposes to carry on and the block or blocks in respect of which the applicant proposes to carry on those operations.

(3) The Minister—

(a) may grant to the applicant a special prospecting authority subject to such conditions as the Minister thinks fit and specifies in the authority;

or

(b) may refuse to grant the application.

(4) A special prospecting authority, while it remains in force, authorizes the holder, subject to this Act and in accordance with the conditions to which the special prospecting authority is subject, to carry on in the blocks specified in the special prospecting authority the petroleum exploration operations so specified.

(5) Nothing in a special prospecting authority authorizes the holder to make a well.

(6) A special prospecting authority has effect from and including the day specified for the purpose in the authority and, unless surrendered or cancelled, remains in force for such period, not exceeding six months, as is so specified.

(7) A special prospecting authority—

(a) may be surrendered by the holder at any time by instrument in writing served on the Minister;

and

(b) may, if the holder has not complied with a condition to which the authority is subject, be cancelled by the Minister by instrument in writing served on the holder.

(8) Where a special prospecting authority has been surrendered or cancelled, or has expired, the Minister may, by instrument in writing served on the person who was the holder of the special prospecting authority, direct that person to do any one or more of the following things:

(a) to remove or cause to be removed from the relinquished area all property brought into that area by any person engaged or concerned in the operations authorized by the special prospecting authority or to make arrangements that are satisfactory to the Minister with respect to that property;

(b) subject to this Part and to the regulations, to make provision, to the satisfaction of the Minister, for the conservation and protection of the natural resources in that area;

and

(c) to make good, to the satisfaction of the Minister, any damage to the sea-bed or subsoil in that area caused by any person engaged or concerned in those operations.

(9) A person to whom a direction is given under subsection (8) shall comply with the direction.

Penalty: \$10 000.

(10) Section 107 applies to and in relation to a special prospecting authority as if—

(a) a reference in that section to a permit were a reference to a special prospecting authority;

and

(b) a reference in that section to a direction or an arrangement under section 106 were a reference to a direction or an arrangement under subsection (8).

111. (1) A permittee or licensee may make an application to the Minister for the grant of an access authority to enable him to carry on in an area, being part of the adjacent area that is not part of the permit area or licence area, petroleum exploration operations or operations related to the recovery of petroleum in or from the permit area or licence area.

Access
authorities.

(2) An application under this section—

(a) shall be in accordance with an approved form;

(b) shall be made in an approved manner;

(c) shall specify the operations that the applicant proposes to carry on and the area in which the applicant proposes to carry on those operations;

and

(d) may set out any other matters that the applicant wishes the Minister to consider.

(3) The Minister may—

(a) if he is satisfied that it is necessary or desirable to do so for the more effective exercise of the rights, or for the proper performance of the duties, of a permittee or licensee who has made an application under this section, grant to him an access authority subject to such conditions as the Minister thinks fit and specifies in the access authority;

and

(b) at any time, by instrument in writing served on the registered holder of an access authority so granted, vary the access authority.

(4) The Minister shall not grant an access authority on an application under this section in respect of a block that is the subject of a permit or licence of which the registered holder is a person other than the applicant, or vary an access authority as in force in respect of a block that is the subject of a permit or licence of which the registered holder is a person other than the registered holder of the access authority, unless—

(a) he has, by instrument in writing served on that person, given not less than one month's notice of his intention to grant or vary, as the case may be, the access authority;

(b) he has served a copy of the instrument—

(i) on such other persons, if any, as he thinks fit;

and

(ii) in a case where he intends to vary an access authority—
on the registered holder of the access authority;

(c) he has, in the instrument—

(i) given particulars of the access authority proposed to be granted, or of the variation proposed to be made, as the case may be;

and

(ii) specified a date on or before which a person on whom the instrument, or a copy of the instrument, is served may, by instrument in writing served on the Minister submit any matters that he wishes the Minister to consider;

and

(d) he has taken into account any matters so submitted to him on or before the specified date by a person on whom the firstmentioned instrument, or a copy of that instrument, has been served.

(5) An access authority, while it remains in force, authorizes the holder, subject to this Act and in accordance with the conditions to which the access authority is subject, to carry on, in the area specified in the access authority, the operations so specified.

(6) Nothing in an access authority authorizes the holder to make a well.

(7) An access authority has effect from and including the day specified for the purpose in the access authority and, unless surrendered or cancelled, remains in force for such period as is so specified but may be extended by the Minister for a further period.

(8) An access authority—

(a) may be surrendered by the holder at any time by instrument in writing served on the Minister;

and

(b) may be cancelled by the Minister at any time by instrument in writing served on the holder and on any person in whose permit area or licence area operations may be carried on in pursuance of the access authority.

(9) Where an access authority has been surrendered or cancelled or has expired, the Minister may, by instrument in writing served on the person who was the holder of the access authority, direct that person to do any one or more of the following things:

(a) to remove or cause to be removed from the relinquished area all property brought into that area by any person engaged or concerned in the operations authorized by the access authority or to make arrangements that are satisfactory to the Minister with respect to that property;

(b) subject to this Part and to the regulations, to make provision, to the satisfaction of the Minister, for the conservation and protection of the natural resources in that area;

and

(c) to make good, to the satisfaction of the Minister, any damage to the sea-bed or subsoil in that area caused by any person engaged or concerned in those operations.

(10) A person to whom a direction is given under subsection (9) shall comply with the direction.

Penalty: \$10 000.

(11) The holder of an access authority shall, if the access authority is in force in respect of an area that consists of, or includes, a block that is the subject of a permit or licence of which he is not the registered holder, furnish to the registered holder of that permit or licence, within twenty-eight days after the end of each month during which the access authority is in force in respect of that block, a full report, in writing, of the operations carried on in that block during that month and of the facts ascertained from those operations.

Penalty: \$5 000.

(12) Section 107 applies to and in relation to an access authority as if—

(a) a reference in that section to a permit were a reference to an access authority;

and

(b) a reference in that section to a direction or an arrangement under section 106 were a reference to a direction or an arrangement under subsection (9).

112. (1) Where a direction under section 107 has not been complied with in relation to any property, the Minister may do all or any of the following things:

- (a) remove, in such manner as he thinks fit, all or any of that property from the relinquished area concerned;
 - (b) dispose of, in such manner as he thinks fit, all or any of that property;
- and
- (c) if he has served a copy of the instrument by which the direction was given on a person whom he believed to be an owner of that property or part of that property, sell, by public auction or otherwise, as he thinks fit, all or any of that property that belongs, or that he believes to belong, to that person.

(2) The Minister may deduct from the proceeds of a sale under subsection (1) of property that belongs, or that he believes to belong, to a particular person—

- (a) all or any part of any costs and expenses incurred by him under that subsection in relation to that property;
 - (b) all or any part of any costs and expenses incurred by him in relation to the doing of any thing required by a direction under section 106, 110 or 111, as the case may be, to be done by that person;
- and
- (c) all or any part of any fees or amounts due and payable under this Act by that person.

(3) Costs and expenses incurred by the Minister under subsection (1)—

- (a) if incurred in relation to the removal, disposal or sale of property, are a debt due by the owner of the property to the State;
- or
- (b) if incurred in relation to the doing of any thing required by a direction under section 106, 110 or 111, as the case may be, to be done by a person who is or was a permittee, licensee, pipeline licensee or holder of a special prospecting authority or access authority, are a debt due by that person to the State,

and, to the extent to which they are not recovered under subsection (2), are recoverable in a court of competent jurisdiction.

(4) Subject to subsection (3), no action lies in respect of the removal, disposal or sale of property under this section.

Securities.

113. (1) A security referred to in this Part—

(a) shall be—

- (i) in the case of a security referred to in Division II in the sum of \$15 000;
- (ii) in the case of a security referred to in Division III in the sum of \$150 000;

and

- (iii) in the case of a security referred to in Division IV in the sum of \$60 000;

(b) shall be given in such manner and form as are approved;
and

(c) may, subject to that approval, be by cash deposit or such other method as the Minister allows or partly by cash deposit and partly by such other method as the Minister allows.

(2) A security given in accordance with a form approved by the Minister although it is not sealed binds the person subscribing it as if it were sealed.

(3) Whenever a security under this Part is put in suit, the production of the security, without further proof, entitles the Minister to judgment against the person appearing to have executed the security, for the amount of his stated liability or for such lesser amount as is claimed, unless that person proves compliance with the conditions of the security or that the security was not executed by him or release or satisfaction.

(4) If it appears to the court that a non-compliance with a condition of a security under this Part has occurred, the security shall not be deemed to have been discharged or invalidated, and the subscriber shall not be deemed to have been released or discharged from liability, by reason of—

(a) any extension of time or other concession;

(b) any consent to, or acquiescence in, a previous non-compliance with a condition;

or

(c) any failure to bring suit against the subscriber upon the occurrence of a previous non-compliance with the condition.

(5) If there are several subscribers to the security, they are bound, unless the security otherwise provides, jointly and severally and for the full amount.

114. (1) Where the Minister or an inspector has reason to believe that a person is capable of giving information or producing documents relating to petroleum exploration operations, operations for the recovery of petroleum or operations connected with the construction or operation of a pipeline in the adjacent area, he may, by instrument in writing served on that person, require that person—

Minister, etc.,
may require
information
to be
furnished, etc.

(a) to furnish to him in writing, within the period and in the manner specified in the instrument, any such information;

or

(b) to attend before him or a person specified in the instrument, at such time and place as is so specified and there to answer questions relating to those operations and to produce such documents relating to those operations as are so specified.

(2) A person is not excused from furnishing information, answering a question or producing a document when required to do so under this section on the ground that the information so furnished, the answer to the question or the production of the document might tend to incriminate him or make him liable to a penalty, but the information so furnished or his answer to the question is not admissible in evidence against him in proceedings other than proceedings for an offence against section 116.

PART III
DIVISION VI

Power to
examine
on oath.

115. (1) The Minister or an inspector may administer an oath to a person required to attend before him in pursuance of section 114 and may examine that person on oath.

(2) Where a person attending before the Minister or an inspector in pursuance of section 114 conscientiously objects to take an oath, he may make an affirmation that he conscientiously objects to take an oath and that he will state the truth, the whole truth and nothing but the truth to all questions asked him.

(3) An affirmation made under subsection (2) is of the same force and effect, and entails the same penalties, as an oath.

Failing to
furnish
information
etc.

116. A person shall not—

(a) refuse or fail to comply with a requirement in an instrument under section 114 to the extent to which he is capable of complying with it;

(b) in purported compliance with such a requirement, furnish information that is to his knowledge false or misleading in a material particular;

or

(c) when attending before the Minister or an inspector in pursuance of such a requirement, make a statement or produce a document that is to his knowledge false or misleading in a material particular.

Penalty: \$10 000.

Release of
information.

117. (1) The Minister may, at any time, make available to another Minister or to a Minister of State of the Commonwealth or of another State—

(a) any information contained in a report, return or other document relating to a block that has been furnished to the Minister;

and

(b) any cores or cuttings from, or samples of, the sea-bed or subsoil in a block, or samples of petroleum recovered in a block, that have been furnished to the Minister.

(2) The Minister or another Minister may, at any time after the relevant day—

(a) make publicly known;

or

(b) on request by a person and, if the Minister or the other Minister so requires, on payment of a fee of \$15 per day, make available to that person,

any information that has been furnished to the Minister or has been made available to the other Minister under subsection (1), being information that relates to the sea-bed or subsoil, or to petroleum, in a block, but not including any matter contained in a report, return or document that, in the opinion of the Minister or the other Minister, is a conclusion drawn in whole or in part from, or an opinion based in whole or in part on, any such information.

(3) The Minister or another Minister may, at any time after the relevant day—

(a) make publicly known any particulars of;

or

(b) on request by a person and, if the Minister or the other Minister so requires, on payment of a fee of \$15 per day, permit that person to inspect,

any cores or cuttings from, or samples of, the sea-bed or subsoil in a block, or samples of petroleum recovered in a block, that have been furnished to the Minister or have been made available to the other Minister under subsection (1).

(4) For the purposes of subsections (2) and (3)—

(a) where—

(i) a permit is in force in respect of the block;

and

(ii) the block is not a block that is, or is included in, a location, the relevant day is the day on which the period of five years that commenced on the day on which the report, return, other document, core, cutting or sample was furnished to the Minister expires;

(b) where—

(i) a licence is in force in respect of the block;

and

(ii) the block is not a block that is, or is included in, a location, the relevant day is the day on which the period of twelve months that commenced on the day on which the report, return, other document, core, cutting or sample was furnished to the Minister expires;

(c) where a permit or licence is not in force in respect of the block but—

(i) a permit or licence has been surrendered or determined as to the block;

(ii) at the time of the surrender or determination, the block was, or was included in, a location;

and

(iii) a notification in respect of the block has been published under section 22 (2) or section 46 (4),

the relevant day is the day on which the period of six months that commenced on the day on which the notification was published expires;

(d) where the report, return, other document, core, cutting or sample was furnished to the Minister during the period during which a permit or licence was in force in respect of the block and—

(i) the block is not a block that is, or is included in, a location and the permit or licence is surrendered or cancelled as to the block;

- (ii) the block is, or is included in, a location and the permit or licence is cancelled as to the block;

or

- (iii) the permit or licence expires but is not renewed in respect of the block,

the relevant day is the day on which the permit or licence is so surrendered or cancelled or expires, as the case may be, whether another permit or licence is subsequently in force in respect of the block or not;

and

(e) where—

- (i) the report, return, other document, core, cutting or sample was furnished to the Minister during a period during which a permit or licence was not in force in respect of the block;

and

- (ii) a permit or licence is not in force in respect of the block, the relevant day is such day as the Minister determines.

(5) Where—

(a) a report, return, other document, core, cutting or sample referred to in subsection (1) was furnished to the Minister—

- (i) during or in respect of a period during which a permit or licence was in force in respect of the block;

or

- (ii) during or in respect of a period during which a special prospecting authority or access authority was in force in respect of the block but during which a permit or licence was not in force in respect of the block;

and

(b) the permittee, licensee or holder of the special prospecting authority or access authority or, if the permit, licence, special prospecting authority or access authority has ceased to be in force, the person who was the holder of the permit, licence, special prospecting authority or access authority—

- (i) has made publicly known any information contained in the report, return or other document or has consented in writing to any of that information being made publicly known;

or

- (ii) has made publicly known any particulars of that core, cutting or sample or has consented in writing to any particulars of that core, cutting or sample being made publicly known or to that core, cutting or sample being made available for inspection,

the Minister, or another Minister to whom that information, core, cutting or sample has been made available under subsection (1) may, at any time after

that information has, or those particulars have, been made publicly known or after that consent has been given—

- (c) make publicly known that information or, on request by another person and, if the Minister or the other Minister so requires, on payment of a fee of \$15 per day, make that information available to that other person;

or

- (d) make publicly known those particulars or, on request by any other person and, if the Minister or the other Minister so requires, on payment of a fee of \$15 per day, permit that other person to inspect that core, cutting or sample,

as the case may be.

(6) Except as provided by the preceding provisions of this section or for the purposes of the administration of this Act, the Minister, or another Minister to whom any information, core, cutting or sample has been made available under subsection (1), shall not—

- (a) make publicly known, or make available to any person (not being a Minister or a Minister of State of the Commonwealth or another State), any information contained in a report, return or other document referred to in any of those provisions;

or

- (b) make publicly known any particulars of, or permit any person (not being a Minister referred to in paragraph (a)) to inspect, any core, cutting or sample so referred to.

(7) In this section, a reference to a core, cutting or sample includes a reference to a portion of a core, cutting or sample.

(8) For the purposes of this section—

- (a) cores and cuttings, and well data, logs, sample descriptions and other documents, relating to the drilling of a well, shall be deemed to have been furnished to the Minister not later than one month after the drilling of the well was, in the opinion of the Minister, substantially completed;

and

- (b) geophysical or geochemical data relating to geophysical or geochemical surveys shall be deemed to have been furnished to the Minister not later than one year after the geophysical or geochemical field work was, in the opinion of the Minister, substantially completed.

(9) In this section a reference to a Minister of State of another State includes a reference to a Minister of State of the Northern Territory.

118. (1) For the purpose of protecting a well or structure, or any equipment, in the adjacent area, the Minister may, by instrument published in the *Gazette*, prohibit—

Safety zones.

- (a) all vessels;
- (b) all vessels other than specified vessels;

or

(c) all vessels other than the vessels included in specified classes of vessels,

from entering or remaining in a specified area (in this section called a "safety zone") surrounding the well, structure or equipment without the consent in writing of the Minister.

(2) A safety zone specified in an instrument under subsection (1) may extend to a distance of 500 metres around the well, structure or equipment specified in the instrument measured from each point of the outer edge of the well, structure or equipment.

(3) Where a vessel enters or remains in a safety zone specified in an instrument under subsection (1) in contravention of the instrument, the owner and the person in command or in charge of the vessel are each guilty of an offence against this section and are punishable, upon conviction, by a penalty of a fine not exceeding \$100 000 or imprisonment for a term not exceeding ten years, or both.

Discovery
and use of
water.

119. Where water is discovered in a permit area or in a licence area, the permittee or licensee, as the case may be, shall, within a period of one month after the date of the discovery, furnish to the Minister in writing particulars of the discovery.

Penalty: \$10 000.

Survey of
wells, etc.

120. (1) The Minister may, at any time, by instrument in writing served on a permittee or licensee, direct the permittee or licensee—

(a) to carry out a survey of the position of the well, structure or equipment specified in the instrument;

and

(b) to furnish to him a report in writing of the survey.

(2) Where the Minister is not satisfied with a report of a survey furnished to him under subsection (1) by a permittee or licensee, he may, by instrument in writing served on the permittee or licensee, direct the permittee or licensee to furnish further information in writing in connection with the survey.

(3) A person to whom a direction is given under subsection (1) or (2) shall comply with the direction.

Penalty: \$10 000.

Records, etc.
to be kept.

121. (1) The Minister may, by instrument in writing served on a person carrying on operations in the adjacent area under a permit, licence, pipeline licence, special prospecting authority, access authority or instrument of consent under section 122, direct that person to do any one or more of the following things:

(a) to keep such accounts, records and other documents in connection with those operations as are specified in the instrument;

(b) to collect and retain such cores, cuttings and samples in connection with those operations as are so specified;

and

(c) to furnish to the Minister, or to such person as is so specified, in the manner so specified, such reports, returns, other documents, cores, cuttings and samples in connection with those operations as are so specified.

(2) A person to whom a direction is given under subsection (1) shall comply with the direction.

Penalty: \$10 000.

122. (1) The Minister may, by instrument in writing, consent to the carrying on in the adjacent area by any person of petroleum exploration operations in the course of a scientific investigation.

Scientific
investigations.

(2) An instrument of consent under subsection (1) may be made subject to such conditions, if any, as are specified in the instrument.

(3) An instrument of consent in force under subsection (1) authorizes the person specified in the instrument, subject to section 123 and in accordance with the conditions, if any, to which the instrument is subject, to carry on, in the adjacent area, petroleum exploration operations so specified in the course of the scientific investigation so specified.

123. A person carrying on operations in the adjacent area under a permit, licence, pipeline licence, special prospecting authority, access authority or instrument of consent under section 59 (2) or (3) or under section 122 shall carry on those operations in a manner that does not interfere with—

Interference
with other
rights.

(a) navigation;

(b) fishing;

(c) the conservation of the resources of the sea and sea-bed;

or

(d) any operations of another person being lawfully carried on by way of exploration for, recovery of or conveyance of a mineral, whether petroleum or not, or by way of construction or operation of a pipeline,

to a greater extent than is necessary for the reasonable exercise of the rights and performance of the duties of that firstmentioned person.

Penalty: \$10 000.

124. (1) The Minister may, by instrument in writing, appoint a person to be an inspector for the purposes of this Act.

Inspectors.

(2) The Minister may furnish to an inspector a certificate stating that he is an inspector for the purposes of this Act.

(3) Where the appointment of a person under this section expires or is revoked, that person shall forthwith surrender the certificate furnished to him under this section to the Minister or, if the Minister, by instrument in writing served on that person, specifies another person to whom the certificate is to be surrendered, to that other person.

Penalty: \$500.

PART III
DIVISION VI
Powers of
inspectors.

125. (1) For the purposes of this Act, an inspector, at all reasonable times and on production of the certificate furnished to him under section 124—

(a) shall have access to any part of the adjacent area and to any structure, ship, aircraft or building in that area that, in his opinion, has been, is being or is to be used in connection with petroleum exploration operations, operations for the recovery of petroleum or operations connected with the construction or operation of a pipeline in that area;

(b) may inspect and test any equipment that, in his opinion, has been, is being or is to be used in that area in connection with any of those operations;

and

(c) may enter any structure, ship, aircraft, building or place in that area or in the State, in which, in his opinion, there are any documents relating to any of those operations and may inspect, take extracts from and make copies of any of those documents.

(2) A person who is the occupier or person in charge of any building, structure or place, or is the person in charge of any ship, aircraft or equipment referred to in subsection (1), shall provide an inspector with all reasonable facilities and assistance for the effective exercise of his powers under this section.

(3) A person shall not, without reasonable excuse, obstruct or hinder an inspector in the exercise of his powers under this section.

Penalty: \$5 000.

Property in
petroleum.

126. Subject to this Act and to any rights of other persons, upon recovery of any petroleum by a permittee or licensee in the permit area or licence area, the petroleum becomes the property of the permittee or licensee.

Suspension of
rights conferred
by permit.

127. (1) Where the Minister is satisfied that it is necessary to do so in the public interest, he shall, by instrument in writing served on the permittee, suspend, either for a specified period or indefinitely, all or any of the rights conferred by the permit.

(2) Where any rights are suspended in accordance with subsection (1), any conditions required to be complied with in the exercise of those rights are also suspended.

(3) The Minister may, by instrument in writing served on the permittee, terminate a suspension of rights under subsection (1).

(4) Where rights conferred by a permit are suspended in accordance with subsection (1), the Minister may, by the instrument of suspension or by a later instrument in writing served on the permittee, extend the term of the permit by a period not exceeding the period of the suspension.

Certain
payments to
be made by
State to
Commonwealth.

128. The Treasurer shall, not later than the last day of each month of the year, pay to the Commonwealth amounts ascertained in accordance with the formula—

$$\frac{4A}{B}$$

where—

A is the amount of royalty payable under this Act, together with the amount, if any, payable under this Act by reason of late payment of that royalty, by a permittee or licensee in respect of petroleum recovered in the adjacent area under the permit or licence and received by the Minister during the preceding month;

and

B is the percentage rate at which royalty is payable under this Act by the permittee or licensee in respect of that petroleum,

and the Consolidated Account is hereby, to the necessary extent, appropriated accordingly.

129. Where a determination has been made by the Minister under section 143 in relation to a well, that determination shall be disregarded in ascertaining the value of B for the purposes of section 128.

Determination to be disregarded in certain cases.

130. (1) Where an offence is committed by a person by reason of his failure to comply, within the period specified in a direction given to him under this Act, with the requirements specified in the direction, the offence, for the purposes of subsection (3), shall be deemed to continue so long as any requirement specified in the direction remains undone, notwithstanding that the period has elapsed.

Continuing offences.

(2) Where an offence is committed by a person by reason of his failure to comply with a requirement made by this Act, the offence, for the purposes of subsection (3), shall be deemed to continue so long as that failure continues, notwithstanding that any period within which the requirement was to be complied with has elapsed.

(3) Where, under subsection (1) or (2), an offence is to be deemed to continue, the person who committed the offence commits an additional offence against this Act on each day during which the offence is to be deemed to continue and is liable, upon conviction for such an additional offence, to a fine not exceeding \$10 000.

131. A person who by act or omission is in any way directly or indirectly knowingly concerned in, or party to, the commission of any offence against this Act shall be deemed to have committed that offence and shall be punishable accordingly.

Persons concerned in commission of offences.

132. (1) In this section a reference to a prescribed offence shall be read as a reference to an offence against this Act the penalty in respect of which may include a term of imprisonment.

Prosecution of offences.

(2) Prescribed offences are indictable offences.

(3) Notwithstanding that prescribed offences are indictable offences, a court of summary jurisdiction may hear and determine proceedings for a prescribed offence if the court is satisfied that it is appropriate to do so and the defendant and the prosecutor consent.

(4) Where, in accordance with subsection (3), a court of summary jurisdiction convicts a person of a prescribed offence, the penalty that the court may impose in respect of the offence is a fine not exceeding \$10 000 or imprisonment for a term not exceeding two years, or both.

(5) An offence against this Act that—

(a) is not a prescribed offence;

or

(b) is a prescribed offence that is heard and determined by a court of summary jurisdiction,

shall, unless the contrary intention appears, be dealt with summarily.

Orders for
forfeiture in
respect of
certain offences.

133. (1) Where a person is convicted by the Supreme Court of an offence against section 18, 38 or 59 the Court may, in addition to imposing a penalty, make one or more of the following orders:

(a) an order for the forfeiture of a specified aircraft or vessel used in the commission of the offence;

(b) an order for the forfeiture of specified equipment used in the commission of the offence;

and

(c) an order—

(i) for the forfeiture of specified petroleum recovered, or conveyed through a pipeline, as the case may be, in the course of the commission of the offence;

(ii) for the payment by that person to the State of an amount equal to the proceeds of the sale of specified petroleum so recovered or conveyed;

or

(iii) for the payment by that person to the State of an amount equal to the value at the well-head, assessed by the Court, of the quantity, so assessed, of petroleum so recovered or conveyed or for the payment of such part of that amount as the Court, having regard to all the circumstances, thinks fit.

(2) Where the Court is satisfied that an order made under subsection (1) (c) (i) cannot, for any reason, be enforced, the Court may, upon the application of the person by whom the proceedings were brought, set aside the order and make either of the orders referred to in subsection (1) (c) (ii) or (iii).

(3) The Court may, before making an order under this section, require notice to be given to, and hear, such persons as the Court thinks fit.

Disposal of
forfeited
goods.

134. Goods in respect of which an order is made under section 132 shall be dealt with as the Attorney-General directs and, pending his direction, may be detained in such custody as the Court directs.

Time for
bringing
proceedings
for offences.

135. Proceedings in respect of an offence against this Act (being an offence arising under this Part) may be brought at any time.

Judicial
notice.

136. (1) All courts shall take judicial notice of the signature of a person who is, or has been, the Minister or a delegate of the Minister and of the fact that that person is, or has been, the Minister or a delegate of the Minister.

(2) In this section, "court" includes all persons authorized by the law of the State or by consent of parties to receive evidence.

137. (1) A document required or permitted by this Act to be served on a person other than the Minister or a corporation shall be served— Service.

- (a) by delivering the document to that person personally;
- (b) by prepaying and posting the document as a letter addressed to that person at his last known place of residence or business or, if he is carrying on business at two or more places, at one of those places;
- (c) by leaving the document at the last known place of residence of that person with some person apparently a resident of that place and apparently not less than sixteen years of age;

or

- (d) by leaving the document at the last known place of business of that person, or if he is carrying on business at two or more places, at one of those places, with some person apparently in the service of that person and apparently not less than sixteen years of age.

(2) A document required or permitted by this Act to be served on the Minister shall be served—

- (a) by prepaying and posting the document as a letter addressed to the Minister at a place of business of the Minister;

or

- (b) by leaving it at a place of business of the Minister with some person apparently employed in connection with the business of the Minister and apparently not less than sixteen years of age.

(3) A document required by this Act to be served upon a person, being a corporation, shall be served—

- (a) by prepaying and posting the document as a letter addressed to the corporation at its last known place of business or, if it is carrying on business at two or more places, at one of those places;

or

- (b) by leaving it at that place, or at one of those places, with some person apparently in the service of the corporation and apparently not less than sixteen years of age.

DIVISION VII—FEES AND ROYALTIES

DIVISION VII

138. There is payable to the Minister by a permittee in respect of each year of the term of the permit— Permit fees.

- (a) a fee of \$300;

or

- (b) a fee calculated at the rate of \$15 for each of the blocks to which the permit relates at the commencement of that year,

whichever is the greater.

139. There is payable to the Minister by a licensee, in respect of each year of the term of the licence, a fee calculated at the rate of \$9 000 for each of the blocks to which the licence relates at the commencement of that year. Licence fees.

PART III

DIVISION VII

Pipeline
licence fees.

140. There is payable to the Minister by a pipeline licensee, in respect of each year of the term of the pipeline licence, a fee of \$40 in respect of each kilometre or portion of a kilometre of the length of the pipeline at the commencement of that year.

Time of
payment
of fees.

141. A fee under section 138, 139 or 140 is payable within one month after—

- (a) in the case of the first year of the term of the permit, licence or pipeline licence—the day on which that term commenced;
- and
- (b) in the case of a year of the term of the permit, licence or pipeline licence other than the first—the anniversary of that day.

Royalty.

142. (1) A permittee or licensee shall, subject to this Division, pay to the Minister royalty at the prescribed rate in respect of all petroleum recovered by the permittee or licensee in the permit area or licence area.

(2) Subject to the succeeding provisions of this section and the provisions of section 143 the prescribed rate in respect of petroleum recovered under a permit or licence is ten per centum of the value at the well-head of the petroleum.

(3) The prescribed rate in respect of petroleum recovered under a secondary licence is the percentage determined by the Minister in pursuance of section 41 (1) in respect of petroleum so recovered.

(4) Where a secondary licence is granted to the holder of a primary licence, the prescribed rate in respect of petroleum recovered under the primary licence is, as from the commencement of the next royalty period after the day from which the secondary licence has effect, the same percentage as is applicable in respect of petroleum recovered under the secondary licence.

(5) Where—

- (a) a licence is granted on an application under section 46;
- and
- (b) the instrument served on the applicant under section 48 contains a statement that the applicant will be required to pay, in respect of petroleum recovered under that licence, royalty at the rate specified in that statement,

the prescribed rate in respect of petroleum recovered under that licence is the percentage specified in that statement.

(6) Where a licence is granted on an application under section 50 (1), the prescribed rate in respect of petroleum recovered under that licence is the same percentage as was applicable in respect of petroleum recovered under the original licence as defined by that subsection.

(7) The prescribed rate in respect of petroleum recovered in the licence area referred to in a licence granted by way of renewal of a licence is the percentage that would be the prescribed rate if the licence so granted were the continuation in force of the previous licence.

(8) A reference in this section or in a permit or licence to royalty at the prescribed rate or royalty at the rate that is for the time being the prescribed rate shall be read as a reference to royalty at the rate that is or was the prescribed rate applicable in accordance with the provisions of this Act as in force from time to time.

143. (1) Where the Minister is satisfied that the rate of recovery of petroleum from a well has become so reduced that, having regard to the rate or rates of royalty applicable under section 142, further recovery of petroleum from that well would be uneconomic, the Minister may, by instrument in writing, determine that the royalty in respect of all or any of the petroleum recovered from that well on or after a date specified in the determination shall be at such rate (being a rate lower than the rate that would be applicable under section 142) as the Minister specifies.

(2) The prescribed rate in respect of petroleum to which a determination under subsection (1) is applicable is the rate specified in the determination.

(3) The Minister may, by instrument in writing, revoke or vary a determination under subsection (1) and the revocation or variation applies to petroleum recovered on or after such date as is specified in the instrument.

144. (1) Royalty under this Act—

Royalty not
 payable in
 certain cases.

(a) is not payable in respect of petroleum that the Minister is satisfied was unavoidably lost before the quantity of that petroleum was ascertained;

(b) is not payable in respect of petroleum that is used by the permittee or licensee, as approved by the Minister, for the purposes of petroleum exploration operations or operations for the recovery of petroleum;

and

(c) is not payable in respect of petroleum that, with the approval of the Minister, is flared or vented in connection with operations for the recovery of petroleum.

(2) Where petroleum that has been recovered by a permittee or licensee is, with the approval of the Minister, returned to a natural reservoir, royalty under this Act is not payable in respect of that petroleum by reason of that recovery but this subsection does not affect the liability of that or any other permittee or licensee to pay royalty in respect of petroleum that is recovered from that natural reservoir.

145. For the purposes of this Act, the well-head, in relation to any petroleum, is such valve station as is agreed between the permittee or licensee and the Minister or, in default of agreement within such period as the Minister allows, is such valve station as is determined by the Minister as being that well-head.

Ascertainment
 of well-head.

146. For the purposes of this Act, the value at the well-head of any petroleum is such amount as is agreed between the permittee or licensee and the Minister or, in default of agreement within such period as the Minister allows, is such amount as is determined by the Minister as being that value.

Ascertainment
 of value.

147. For the purposes of this Act, the quantity of petroleum recovered by a permittee or licensee from a well during a period shall be taken to be—

Ascertainment
 of quantity of
 petroleum
 recovered.

(a) the quantity measured during that period by a measuring device approved by the Minister and installed at the well-head or at such other place as the Minister approves;

or

PART III
DIVISION VII

(b) where no such measuring device is so installed, or the Minister is not satisfied that the quantity of petroleum recovered by the permittee or licensee from that well has been properly or accurately measured by such a measuring device—the quantity determined by the Minister as being the quantity recovered by the permittee or licensee from that well during that period.

Payment of
royalty.

148. Royalty under this Act in respect of petroleum recovered during a royalty period is payable not later than the last day of the next succeeding royalty period.

Penalty for
late payment.

149. (1) Where a fee or an amount of royalty under this Act is not paid under this Division at or before the time when the fee or the amount of royalty is payable there is payable to the Minister by the permittee, licensee or pipeline licensee an additional amount calculated at the rate of one-third of one per centum per day upon the amount of the fee or royalty from time to time remaining unpaid to be computed from the time when the amount became payable until it is paid.

(2) An additional amount in respect of royalty is not payable under subsection (1) in respect of any period before the expiration of seven days after the value of the petroleum was agreed or determined under section 146.

Fees and
penalties debts
due to the State.

150. A fee royalty or other amount payable under this Division is a debt due by the permittee, licensee or pipeline licensee to the State and is recoverable in a court of competent jurisdiction.

PART IV

PART IV

REGULATIONS

151. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters that by this Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations.

(2) In particular, but without limiting the generality of subsection (1), the regulations may make provision for securing, regulating, controlling or restricting all or any of the following matters:

- (a) the exploration for petroleum and the carrying on of operations and the execution of works for that purpose;
 - (b) the recovery of petroleum and the carrying on of operations and the execution of works for that purpose;
 - (c) conserving and preventing the waste of the natural resources, whether petroleum or otherwise, of the adjacent area;
 - (d) the construction and operation of pipelines, water lines, secondary lines, pumping stations, tank stations or valve stations and the carrying on of operations, and the execution of works, for any of those purposes;
 - (e) the construction, erection, maintenance, operation or use of installations or equipment;
 - (f) the control of the flow or discharge, and the prevention of the escape, of petroleum, water or drilling fluid, or a mixture of water or drilling fluid with petroleum or any other matter;
 - (g) the clean-up or other remedying of the effects of the escape of petroleum;
 - (h) the prevention of damage to petroleum-bearing strata in an area, whether in the adjacent area or not, in respect of which a permit or licence is not in force;
 - (i) the keeping separate of—
 - (i) each petroleum pool discovered in a permit area or licence area;
 - and
 - (ii) each source of water discovered in a permit area or licence area;
 - (j) the prevention of water or other matter from entering a petroleum pool through wells;
 - (k) the prevention of the waste or escape of petroleum or water from a pipeline, water line, secondary line, pumping station, tank station or valve station;
 - (l) the maintaining in good condition and repair of all structures, equipment and other property in the adjacent area used or intended to be used for or in connection with the exploration for or the exploitation of petroleum in the adjacent area;
- and

(m) the removal from the adjacent area of structures, equipment and other property brought into the adjacent area for or in connection with exploration for or the exploitation of petroleum that are not used or intended to be used in connection with exploration for, or the exploitation of, petroleum in the adjacent area.

(3) The regulations may prescribe, in relation to the exploration for, and the exploitation of, the natural resources (being petroleum) of the adjacent area, matters for carrying out or giving effect to the Convention.

(4) The regulations may provide, in respect of an offence against the regulations, for the imposition of—

(a) a fine not exceeding \$10 000;

or

(b) a fine not exceeding that amount for each day on which the offence occurs.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor

SCHEDULES

FIRST SCHEDULE

REPEALS AND AMENDMENTS

1. The Petroleum (Submerged Lands) Act, 1967-1974, is repealed.
2. (1) The Off-shore Waters (Application of Laws) Act, 1976-1980, is amended—
 - (a) by inserting in section 2, before the definition of “law of the State” the following definition:

“coastal waters of South Australia” has the same meaning as “coastal waters of the State” has in relation to South Australia under the *Coastal Waters (State Powers) Act 1980* of the Commonwealth;
 - (b) by striking out the definition of “nautical mile” from section 2;
 - (c) by inserting in subsection (1) of section 3, after the passage “Subject to subsection (2) of this section” the passage “and to section 13 of the Petroleum (Submerged Lands) Act, 1982, and to regulations made under that section”;
 - (d) by inserting in subsection (1) of section 4, after the passage “Subject to subsection (2) of this section” the passage “and to section 13 of the Petroleum (Submerged Lands) Act, 1982, and to regulations made under that section”;
- and
- (e) by striking out paragraph (a) of the schedule and substituting the following paragraph:
 - (a) that lie within the outer limits of the coastal waters of South Australia;

SECOND SCHEDULE

CONVENTION ON THE CONTINENTAL SHELF

The States Parties to this Convention have agreed as follows:

ARTICLE 1

For the purpose of these articles, the term “continental shelf” is used as referring (a) to the sea-bed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the sea-bed and subsoil of similar submarine areas adjacent to the coasts of islands.

ARTICLE 2

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.
2. The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.
3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.
4. The natural resources referred to in these articles consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.

ARTICLE 3

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the airspace above those waters.

ARTICLE 4

Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf.

ARTICLE 5

1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication.
2. Subject to the provisions of paragraphs 1 and 6 of this article, the coastal State is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection.
3. The safety zones referred to in paragraph 2 of this article may extend to a distance of 500 metres around the installations and other devices which have been erected, measured from each point of their outer edge. Ships of all nationalities must respect these safety zones.
4. Such installations and devices, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

SECOND SCHEDULE—*continued*

5. Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed.

6. Neither the installations or devices, nor the safety zones around them, may be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

7. The coastal State is obliged to undertake, in the safety zones, all appropriate measures for the protection of the living resources of the sea from harmful agents.

8. The consent of the coastal State shall be obtained in respect of any research concerning the continental shelf and undertaken there. Nevertheless the coastal State shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the continental shelf, subject to the proviso that the coastal State shall have the right, if it so desires, to participate or to be represented in the research, and that in any event the results shall be published.

ARTICLE 6

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land.

ARTICLE 7

The provisions of these articles shall not prejudice the right of the coastal State to exploit the subsoil by means of tunnelling irrespective of the depth of water above the subsoil.

ARTICLE 8

This Convention shall, until 31st October, 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a party to the Convention.

ARTICLE 9

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

ARTICLE 10

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 8. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE 11

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

ARTICLE 12

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1 to 3 inclusive.

2. Any Contracting State making a reservation in accordance with the preceding paragraph may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

ARTICLE 13

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

SECOND SCHEDULE—*continued*

ARTICLE 14

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 8—

- (a) of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 8, 9 and 10;
- (b) of the date on which this Convention will come into force, in accordance with article 11;
- (c) of requests for revision in accordance with article 13;
- (d) of reservations to this Convention, in accordance with article 12.

ARTICLE 15

The original of this Convention, of which the Chinese, English, French, Russian and Spanish Texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 8.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE at Geneva, this twenty-ninth day of April, one thousand nine hundred and fifty-eight.

(Here follow the signatures, on behalf of the parties to the Agreement, including Australia.)

THIRD SCHEDULE

Section 4.

AREA THAT INCLUDES THE ADJACENT AREA

The area is bounded by a line that commences at a point that is the intersection of the coastline at mean low water by the boundary between the States of South Australia and Victoria and runs thence southerly along the meridian through that point to its intersection by the parallel of latitude 38° 10' south, thence south-westerly along the geodesic to a point of latitude 38° 15' south, longitude 140° 57' east, thence south-westerly along the geodesic to a point of latitude 38° 26' south, longitude 140° 53' east, thence south-westerly along the geodesic to a point of latitude 38° 35' 30" south, longitude 140° 44' 37" east, thence south-westerly along the geodesic to a point of latitude 38° 40' 48" south, longitude 140° 40' 44" east, thence south-westerly along the geodesic to a point of latitude 44° south, longitude 136° 29' east, thence westerly along the parallel of latitude 44° south to a point that is the intersection of that parallel by the meridian passing through the intersection of the coastline at mean low water by the boundary between the States of South Australia and Western Australia, being the meridian of longitude 129° east, thence northerly along that meridian to its intersection by the coastline at mean low water, thence along the coastline of South Australia at mean low water to the point of commencement.

FOURTH SCHEDULE

SCHEME FOR TRANSITIONAL ARRANGEMENTS

Interpretation

1. (1) In this scheme—

- “altered arrangements” means the arrangements agreed on between the Commonwealth, the States and the Northern Territory with respect to the exploration for, and the exploitation of, the petroleum resources of certain submerged lands in lieu of the arrangements provided for by the agreement between the Commonwealth and the States dated 16 October, 1967;
- “commencing day” means the day on which the *Petroleum (Submerged Lands) Amendment Act 1980* of the Commonwealth, or that Act as amended, comes into operation;
- “Commonwealth Act” means the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth, as amended from time to time;
- “Commonwealth jurisdiction” means the areas comprised in the adjacent areas under the Commonwealth Act, as amended to give effect to the altered arrangements;
- “new permit” means a permit that is to be deemed, under clause 2 of this scheme, to be in force on and after the commencing day;
- “new pipeline licence” means a pipeline licence that is to be deemed, under clause 4 of this scheme, to be in force on and after the commencing day;
- “pipeline” includes pumping stations, tank stations or valve stations related to a pipeline;
- “State Act”, in relation to a State, means the Act of that State that deals with the exploration for, and the exploitation of, the petroleum resources of submerged land and contains a Schedule substantially corresponding to this Schedule, and includes that Act as amended from time to time;
- “State jurisdiction” in relation to a State, means the area comprised in the adjacent area under the State Act of that State;
- “subsisting permit” means an exploration permit for petroleum subsisting under the Commonwealth Act immediately before the commencing day, being a permit in respect of an area that is partly in the Commonwealth jurisdiction and partly in a State jurisdiction;

FOURTH SCHEDULE—*continued*

“subsisting pipeline licence” means a pipeline licence subsisting under the Commonwealth Act immediately before the commencing day, being a pipeline licence in respect of a pipeline that is, or is to be, partly in the Commonwealth jurisdiction and partly in the State jurisdiction.

(2) References in this scheme to a State shall, unless the contrary intention appears, be read as including references to the Northern Territory.

Subsisting permits to be deemed to be 2 permits

2. (1) On and after the commencing day but subject to the law relating to surrender, cancellation variation or suspension of permits, each subsisting permit shall be deemed to comprise 2 permits, being—

(a) a permit under the Commonwealth Act, in respect of the portion of the permit area that is within the Commonwealth jurisdiction, for the balance of the period of the subsisting permit but otherwise in the same terms as the subsisting permit;

and

(b) a permit under the State Act, in respect of the portion of the permit area that is within the State jurisdiction of a State, for the balance of the period of the subsisting permit but otherwise in the same terms as the subsisting permit.

(2) The carrying out of work or the expenditure of money by the permittee in or in relation to the permit area of either of the new permits (whether before or after the commencing day) is to be taken into account as performance to the extent of that work or expenditure of the conditions of both the new permits.

(3) For the purposes of any condition of a new permit relating to the carrying out of work or the expending of moneys by the permittee—

(a) a reference in that condition to a year of the permit shall be read as a reference to a year that was, or would have been, that year of the subsisting permit;

and

(b) the new permits shall be deemed to have been in force during the whole of the year of the subsisting permit that is current on the commencing day.

(4) A variation or suspension of, or an exemption from compliance with, any of the conditions of a new permit arising out of a subsisting permit shall not have effect unless the same variation, suspension or exemption is effected in respect of the other new permit arising out of the same subsisting permit.

(5) In a matter arising under a State Act in relation to a new permit, being a matter of a kind that, if it arose under the Commonwealth Act, would be a matter for decision by, or could be referred to, a Joint Authority established under the Commonwealth Act, the Designated Authority under the State Act shall not take action except after consultation with the Commonwealth Minister.

Renewal of permits

3. (1) A person who holds 2 new permits arising out of a subsisting permit may apply under the Commonwealth Act for renewal of the new permit under that Act and may apply under the State Act for renewal of the new permit under that Act, or may make either of such applications.

(2) If a person who was the holder of 2 new permits arising out of a subsisting permit has ceased to be the holder of one of those permits, he may apply under the Commonwealth Act or the State Act, whichever is appropriate, for renewal of the other new permit, and the relevant Act shall apply in relation to such an application as if the new permit had been a permit granted under that Act in respect of the blocks that are comprised in the new permit.

(3) Where the holder of 2 new permits arising out of a subsisting permit wishes to apply for renewal of either or both of the new permits, the blocks that were comprised in the subsisting permit that may be included, in whole or in part, in the application or applications shall be selected in accordance with the Commonwealth Act as if the new permits were one permit under the Commonwealth Act and the application or applications were an application under that Act for renewal of that permit.

(4) For the purposes of subclause (3) of this clause, the Designated Authority under the Commonwealth Act may exercise his powers under subsections (5) and (6) of section 31 of the Commonwealth Act.

(5) An application referred to in subclause (3) of this clause under the Commonwealth Act shall relate to the blocks selected in accordance with that subclause, and parts of those blocks, that are within the Commonwealth jurisdiction and an application referred to in that subclause under the State Act shall relate to the blocks so selected, and parts of those blocks, that are within the State jurisdiction.

(6) Subject to the foregoing provisions of this clause, an application under the Commonwealth Act made in accordance with this clause shall be dealt with under the Commonwealth Act and an application under the State Act made in accordance with this clause shall be dealt with under the State Act.

(7) For the purposes of the application, in accordance with this clause, of the provisions of the Commonwealth Act or of a State Act relating to the renewal of permits, a reference in those provisions to compliance with the conditions to which the permit is subject shall be read as including a reference to compliance with the conditions to which the subsisting permit was subject before the commencing day.

FOURTH SCHEDULE—*continued**Subsisting pipeline licences to be deemed to be two licences*

4. (1) On and after the commencing day but subject to the law relating to surrender, cancellation or variation of pipeline licences, each subsisting pipeline licence shall be deemed to comprise 2 pipeline licences, being—

(a) a pipeline licence under the Commonwealth Act, in respect of the portion of the pipeline that is, or is to be, within the Commonwealth jurisdiction, for the balance of the period of the subsisting pipeline licence but otherwise in the same terms as the subsisting pipeline licence, but so that those terms shall have effect only to the extent that they are applicable to or in relation to the portion of the pipeline that is, or is to be, within the Commonwealth jurisdiction;

and

(b) a pipeline licence under the State Act, in respect of the portion of the pipeline that is, or is to be, within the State jurisdiction of a State, for the balance of the period of the subsisting pipeline licence but otherwise in the same terms as the subsisting pipeline licence but so that those terms shall have effect only to the extent that they are applicable to or in relation to the portion of the pipeline that is, or is to be, within that State jurisdiction.

(2) For the purposes of the application, in relation to a new pipeline licence, of the provisions of the Commonwealth Act or of a State Act relating to the renewal of pipeline licences, a reference in those provisions to compliance with the conditions to which the pipeline licence is subject shall be read as including a reference to compliance with the conditions to which the subsisting pipeline licence was subject before the commencing day.

Transfer of permits and pipeline licences

5. A transfer of a new permit arising out of a subsisting permit or of a new pipeline licence arising out of a subsisting pipeline licence shall not be made unless a transfer to the same transferee of the other new permit or new pipeline licence arising out of that subsisting permit or subsisting pipeline licence (if that other permit or licence is still in force) is made at the same time and neither of such transfers has effect before the other transfer has been approved in accordance with the Commonwealth Act, or the relevant State Act, as the case requires.

Preservation of existing interests and rights

6. All legal and equitable interests and rights that existed immediately before the commencing day in or in relation to a subsisting permit or subsisting pipeline licence, to the extent that those interests or rights were applicable in relation to the permit area of a new permit arising out of that subsisting permit, or to the portion of the pipeline to which a new pipeline licence arising out of the subsisting pipeline licence relates, shall be deemed to continue in or in relation to that new permit or new pipeline licence.

Saving of approvals, etc.

7. Every approval, consent or direction given before the commencing day under or in relation to a subsisting permit or subsisting pipeline licence has effect, on and after the commencing day, in relation to each new permit or new pipeline licence arising out of that subsisting permit or subsisting pipeline licence, as if it were a corresponding approval, consent or direction given under or in relation to that new permit or new pipeline licence.

Existing Register

8. The Register kept and maintained by the Designated Authority for the purposes of the Commonwealth Act immediately before the commencing day shall continue to be the Register for the purposes of the Commonwealth Act and, except as provided in clause 9, shall cease on that day to be the Register for the purposes of a State Act.

Registration of, and of instruments relating to, subsisting permits and pipeline licences

9. (1) This clause applies to—

(a) every instrument being a subsisting permit or subsisting pipeline licence;

and

(b) any instrument by which such a permit or licence has been transferred or by which a legal or equitable interest in or affecting such a permit or licence has or may have been created, assigned, affected or dealt with, being an instrument in respect of which an entry or notation has been made before the commencing day in the Register kept for the purposes of the Commonwealth Act.

(2) On the commencing day, the Designated Authority under the Commonwealth Act shall forthwith make such entries in the Register referred to in subclause (1) and on copies of instruments to which this clause applies that are kept by him as he thinks appropriate to indicate that instruments to which this clause applies have effect subject to the provisions of this Scheme.

(3) For the purposes of a State Act but subject to subclause (4), the Commonwealth Register shall be deemed to be the State Register in relation to instruments to which this clause applies to the extent that they have effect under a State Act in accordance with this Scheme, transfers of interests under such instruments, and instruments by which legal or equitable interests in or affecting interests under such instruments are or may be created.

(4) The Designated Authority under a State Act may, if he thinks fit to do so, make entries in the Register kept by him under the State Act, in accordance with the State Act, in respect of a subsisting permit or subsisting pipeline licence that has effect, in accordance with this Scheme, under the law of the State, and if he does so—

(a) he shall make an appropriate entry of the kind referred to in subclause (2);

and

FOURTH SCHEDULE—*continued*

- (b) the Commonwealth Register shall cease to be deemed to be the State Register in relation to that permit or licence to the extent that it has effect under the State Act in accordance with this Scheme, or in relation to instruments of the kind referred to in subclause (3) affecting that permit or licence as so having effect.

Fees

10. In the application in relation to, or to transactions in respect of, a new permit or new pipeline licence of the laws of the Commonwealth and of the States relating to fees—

- (a) a reference to a year of the term of the permit or pipeline licence shall be read as a reference to a year that would have been a year of the term of the subsisting permit or subsisting pipeline licence commencing on or after the commencing day;
- (b) fees in respect of a year of the term of the subsisting permit or subsisting pipeline licence that commenced before the commencing day and not paid before the commencing day shall be payable in accordance with the law that was in force immediately before that day;

and

- (c) a person is not liable to pay by way of such fees in respect of any year or transaction, a greater total amount than would have been payable if the subsisting permit or subsisting pipeline licence had continued in force and the whole of the permit area, or the whole of the pipeline, had been within the Commonwealth jurisdiction.

FIFTH SCHEDULE
TRANSITIONAL PROVISIONS*Cancellation of certain new permits and new pipeline licences*

1. If, in respect of a subsisting permit, being a permit in respect of an area that is wholly or partly within the adjacent area (within the meaning of this Act), a circumstance referred to in paragraph (a), (b), (c) or (d) of subsection (1) of section 105 of the Commonwealth Act existed immediately before the commencement of this Act, section 104 of this Act applies in relation to the new permit arising out of that subsisting permit as if the grounds upon which, under subsection (1) of that section, the new permit may be cancelled, in whole or in part, included the existence, immediately before the commencement of this Act, of that circumstance in relation to that subsisting permit.

Application of s. 106 to certain areas

2. Where, before the commencement of this Act an exploration permit for petroleum under the Commonwealth Act was wholly or partly cancelled or determined under the Commonwealth Act as then in force, or expired by virtue of that Act as then in force, and the relinquished area is wholly or partly within the adjacent area (within the meaning of this Act), the cancellation or determination, or the expiration, of the permit, shall, insofar as it relates to the relinquished area, or the part of the relinquished area that is within the adjacent area (within the meaning of this Act) as the case may be, be deemed for the purposes of section 106 of this Act to have occurred under or by virtue of this Act.

Application of s. 112 (2), (3) and (4) to certain property

3. Where, before the commencement of this Act, the Designated Authority in respect of the adjacent area in respect of South Australia exercised a power conferred upon him by section 113 (1) of the Commonwealth Act as then in force in relation to property which is, or was, within the adjacent area (within the meaning of this Act), the power shall for the purposes of subsections (2), (3) and (4) of section 112 of this Act be deemed to have been exercised by the Minister under and in accordance with section 112 (1) of this Act.

4. In this schedule "subsisting permit" has the same meaning as in the fourth schedule.



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 20 of 1982

An Act to amend the Audit Act, 1921-1981.

[Assented to 18 March 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Audit Act Amendment Act, 1982". Short titles.
 (2) The Audit Act, 1921-1981, is in this Act referred to as "the principal Act".
 (3) The principal Act, as amended by this Act, may be cited as the "Audit Act, 1921-1982".
2. (1) This Act shall come into operation on a day to be fixed by proclamation. Commencement.
 (2) The Governor may, in a proclamation made for the purposes of subsection (1), suspend the operation of any specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.
3. The long title to the principal Act is amended by inserting at the end the passage " , to provide for investigations into the efficiency of certain public authorities and for other purposes". Amendment of long title.
4. Section 3a of the principal Act is amended by inserting after the definition of "accounting officer" the following definition: Amendment of s. 3a— Interpretation.
 "authorized officer" means a person appointed by the Auditor-General to carry out an inspection, investigation, examination or audit:.
5. Section 11 of the principal Act is repealed and the following section is substituted: Repeal of s. 11 and substitution of new section.
 11. The Auditor-General may, by instrument in writing, appoint any person to carry out an inspection, investigation, examination or audit— Appointment of authorized officers.
 (a) that the Auditor-General is authorized by this Act, or any other Act, to conduct;
 or

- (b) that is necessary for, or incidental to, an inspection, investigation, examination or audit that the Auditor-General is authorized by this Act, or any other Act, to conduct.

Amendment of
s. 27—
Auditor-
General
to address
queries, etc.,
to Treasurer.

6. Section 27 of the principal Act is amended by striking out from subsection (2) the passage “or any person appointed by him” and substituting the passage “or by an authorized officer”.

Amendment of
s. 31—
Inspection
and audit of
books and
accounts.

7. Section 31 of the principal Act is amended by striking out from subsection (2) the passage “or a person appointed by him” and substituting the passage “or an authorized officer”.

Insertion of
heading and
new s. 41b.

8. The following heading and section are inserted after section 41a of the principal Act:

Investigations into the Efficiency of Public Authorities

Efficiency
investigations.

41b. (1) The following are organizations to which this section applies—

(a) a department, instrumentality or agency of the Government or the Crown;

or

(b) a body the accounts of which the Auditor-General is authorized or required by law to audit.

(2) The Auditor-General shall, at the direction of the Treasurer, and may, of his own motion, conduct an investigation in relation to an organization to which this section applies for the purpose of forming an opinion as to whether—

(a) the operations of the organization are conducted in an economical and efficient manner;

and

(b) adequate procedures exist enabling the organization itself to assess the economy and efficiency of its operations.

(3) After an investigation has been made under this section the Auditor-General shall prepare a report—

(a) stating the conclusions at which he has arrived in consequence of the investigation and the reasons for those conclusions; and

(b) including such information and recommendations as he thinks fit.

(4) The Auditor-General—

(a) shall submit the report to the organization concerned and shall give it a reasonable opportunity to comment on the report;

- (b) shall consider any comments made by the organization;
and
 - (c) may amend the report as a result of those comments.
- (5) The Auditor-General shall then deliver copies of the report to—
- (a) the Treasurer;
 - (b) the President of the Legislative Council (who shall lay the report before the Legislative Council);
 - (c) the Speaker of the House of Assembly (who shall lay the report before the House of Assembly);
 - (d) the organization concerned;
and
 - (e) where the report relates to a department of the Government—the Public Service Board.
- (6) For the purposes of an investigation under this section the Auditor-General or an authorized officer may—
- (a) at any reasonable time, enter any premises or place at which operations of the organization are carried on;
 - (b) inspect any records or documents relevant to the operations of the organization;
 - (c) require any member or officer of the organization to produce records or documents relevant to its operations;
 - (d) require any member or officer of the organization to answer questions relevant to its operations.
- (7) Subject to subsection (8), a person who—
- (a) fails to comply with a requirement of subsection (6);
 - (b) fails to answer truthfully a question put to him by the Auditor-General or an authorized officer under that subsection;
- or
- (c) hinders or obstructs the Auditor-General or an authorized officer in the exercise of his powers under that subsection,
- is guilty of an offence.

Penalty: One thousand dollars.

(8) A person may decline to answer a question put to him under this section by the Auditor-General or an authorized officer if the answer to the question would tend to incriminate him of an offence.

(9) In this section—

“operations” includes any part or aspect of the operations of an organization.

9. Section 44 of the principal Act is amended—

- (a) by striking out the passage “Any person” and substituting the passage “Subject to subsection (2), any person”;

Amendment of
s. 44—
Person failing
to attend
Auditor-
General
or to give
evidence.

(b) by striking out the passage “two hundred dollars” and substituting the passage “one thousand dollars”;

and

(c) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsection:

(2) A person may decline to answer a question put to him by the Auditor-General if the answer to the question would tend to incriminate him of an offence.

Amendment of
s. 45a—
False
declarations
and
certificates.

10. Section 45a of the principal Act is amended by striking out the passage “two hundred dollars” and substituting the passage “one thousand dollars”.

Amendment of
s. 46—
Offences
generally.

11. Section 46 of the principal Act is amended by striking out the passage “one hundred dollars” and substituting the passage “one thousand dollars”.

Amendment of
s. 47—
Regulations.

12. Section 47 of the principal Act is amended by striking out from subsection (2) the passage “twenty dollars” and substituting the passage “two hundred dollars”.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 21 of 1982

An Act to amend the Collections for Charitable Purposes Act, 1939-1947

[Assented to 18 March 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the “Collections for Charitable Purposes Act Amendment Act, 1982”. Short titles.

(2) The Collections for Charitable Purposes Act, 1939-1947, is in this Act referred to as “the principal Act”.

(3) The principal Act, as amended by this Act, may be cited as the “Collections for Charitable Purposes Act, 1939-1982”.

2. This Act shall come into operation on a day to be fixed by proclamation. Commence-
ment.

3. Section 10 of the principal Act is repealed. Repeal of
s. 10.

4. Section 11 of the principal Act is amended— Amendment of
s. 11—

(a) by striking out from subsection (1) the passage “, who shall refer the application for consideration and report by the advisory committee”;

(b) by striking out from subsection (2) the passage “the advisory committee, in addition to taking into account any other matters thought fit by the committee” and substituting the passage “the Minister, in addition to taking into account any other matters that he thinks fit,”;

and

(c) by striking out from subsection (3) the passage “After considering the report of the advisory committee on any application, the Minister” and substituting the passage “The Minister”.

Application
for licence.

Amendment of
s. 12—
Conditions of
licence, etc.

5. Section 12 of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) The Minister may exercise his power to revoke a licence on any of the following grounds:

(a) that donations (whether of money or goods) received for charitable purposes by the licensee have been mismanaged or misapplied;

(b) that excessive commission or remuneration has been, or is to be, paid to any person in respect of the collection of donations in pursuance of the licence out of the proceeds of the collection, or that the proportion of those proceeds that is, or is to be, applied towards charitable purposes is for any other reason inadequate;

or

(c) that any other circumstances exist that justify, in the opinion of the Minister, revocation of the licence.

Repeal of
s. 13.

6. Section 13 of the principal Act is repealed.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No 22 of 1982

An Act to amend the Adelaide Festival Centre Trust Act, 1971-1976.

[Assented to 18 March 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Adelaide Festival Centre Trust Act Amendment Act, 1982". Short titles.

(2) The Adelaide Festival Centre Trust Act, 1971-1976, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Adelaide Festival Centre Trust Act, 1971-1982".

2. Section 31 of the principal Act is amended—

(a) by striking out the passage "During the period of ten years next following a day to be fixed by proclamation for the purposes of this section" and substituting the passage "Until the thirty-first day of December, 1983";

and

(b) by inserting after the passage "an assessed annual value of fifty thousand dollars" the passage "and an assessed capital value of one million dollars".

Amendment of
s. 31—
Assumed value
of Trust
property.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 23 of 1982**An Act to amend the Real Property Act, 1886-1980.***[Assented to 18 March 1982]*

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Real Property Act Amendment Act, 1982".

(2) The Real Property Act, 1886-1980, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Real Property Act, 1886-1982".

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

Amendment of
s. 2—
Arrangement
of Act.

3. Section 2 of the principal Act is amended by inserting after the item:

PART XIXA—RECTIFICATION OF CERTIFICATES, sections 223 a to 223 l the item:

PART XIXAB—DIVISION AND AMALGAMATION OF ALLOTMENTS, sections 223 1a to 223 1p.

Repeal of
s. 101.

4. Section 101 of the principal Act is repealed.

Amendment of
s. 220—
Powers of
Registrar-
General.

5. Section 220 of the principal Act is amended by striking out from paragraph (4) the passage "He shall, upon such evidence as shall appear to him sufficient in that behalf, correct errors in certificates, or in the Register Book, or in entries made therein respectively, and supply omitted entries" and substituting the following passage:

He may, upon such evidence as he considers sufficient—

(a) correct errors in—

(i) the Register Book;

(ii) a certificate;

- (iii) any entry in the Register Book or a certificate;
- (iv) any plan of division or other plan in the Lands Titles Registration Office;

or

- (b) make any entry or notation in or upon the Register Book, a certificate, plan of division or other plan that has been erroneously omitted:.

6. The following Part is inserted after section 223 1 of the principal Act:

Insertion of
new Part
XIXAB.

PART XIXAB

DIVISION AND AMALGAMATION OF ALLOTMENTS

DIVISION I—PRELIMINARY

223 1a. (1) In this Part, unless the contrary intention appears—

Interpretation.

“allotment” means—

- (a) the whole of the land comprised in a certificate;
- (b) the whole of the land comprised in a registered conveyance of land that has not been brought under the provisions of this Act;
- (c) a separately defined piece of land that is delineated on a public map and separately identified by number or letter;
- (d) a separately defined piece of land delineated on a plan of division (whether described as such, or as a plan of subdivision or re-subdivision)—

- (i) that was, before the first day of January, 1900, deposited in the Lands Titles Registration Office or deposited or enrolled in the General Registry Office;

- (ii) that was, before the commencement of this Part, approved pursuant to statute and deposited, or accepted for filing, in the Lands Titles Registration Office, or deposited or enrolled in the General Registry Office;

or

- (iii) that has been deposited by the Registrar-General in the Lands Titles Registration Office in pursuance of this Part;

- (e) a separately defined piece of land identified by number or letter in a plan prepared by the Registrar-General and accepted for filing in the Lands Titles Registration Office,

but does not include any such land or piece of land that has ceased to be an allotment by virtue of subsection (2):

“amalgamation” means the amalgamation of two or more contiguous allotments into a single allotment:

- “area” means an area in relation to which a council is constituted:
- “the Commission” means the South Australian Planning Commission constituted under the Planning Act, 1982:
- “council” means a municipal or district council constituted under the Local Government Act, 1934-1980:
- “the Crown” includes a Minister of the Crown and any instrumentality or agency of the Crown declared by regulation to be an instrumentality or agency of the Crown to which this definition applies but does not include other instrumentalities or agencies of the Crown:
- “the Development Plan” means the Development Plan compiled under the Planning Act, 1982:
- “division” means the division of land into allotments, or the alteration of the boundaries of allotments, and includes subdivision and re-subdivision but does not include amalgamation or the division of land by strata plan:
- “the Fund” means the Fund kept at the Treasury and known as the “Planning and Development Fund”:
- “the Hills Face Zone” means the Hills Face Zone as defined in the Development Plan:
- “Metropolitan Adelaide” means Metropolitan Adelaide as defined in the Development Plan:
- “part allotment” means a piece of land described in a certificate as a part or portion of an allotment:
- “public map” means a public map as defined in the Crown Lands Act, 1929-1980:
- “thoroughfare” includes a walkway:
- “the Tribunal” means the Planning Appeal Tribunal constituted under the Planning Act, 1982.

(2) Where a statutorily authorized division of land was made before the commencement of this Part, or is made in pursuance of this Part, that division shall be taken to have superseded any former division insofar as it affected the same land (whether or not the former division was itself statutorily authorized) and hence any allotments that may have existed by virtue of any such former division of the land shall, to the extent to which it has been superseded, cease to exist.

(3) For the purposes of subsection (2) a division of land is statutorily authorized if effected in pursuance of this Part, or any previous enactment providing for the division of land.

Unlawful
division
of land.

223 1b. (1) A person shall not grant, sell, transfer, convey, mortgage or encumber an estate or interest (except a right of way or other easement) in land (whether or not the land has been brought under the provisions of this Act) unless that land constitutes the whole of an allotment, or of a number of allotments.

(2) Where land is comprised in a certificate, a person shall not grant, sell, transfer, convey, mortgage or encumber an estate or interest (except a right of way or other easement) in portion of the land comprised in the certificate unless—

- (a) the portion of the land constitutes the whole of an allotment or of a number of allotments;
- and

- (b) the remainder of the land comprised in the certificate constitutes the whole of an allotment or of a number of allotments.

(3) A transaction entered into in contravention of this section is void and no instrument purporting to give effect to such a transaction shall be registered.

(4) This section does not affect the validity of a contract to grant, sell, transfer, convey, mortgage or encumber an estate or interest in land if—

- (a) a division of land under this Part is contemplated by the parties to the contract;
- (b) the contract could, if the land were divided as contemplated by the parties, be carried into effect in conformity with this section;
- and
- (c) the contract is subject to a condition precedent preventing it from being carried into effect before the division takes effect.

(5) Where—

(a) before the commencement of this Part—

(i) land was laid out in a building unit scheme;

and

(ii) buildings were erected in accordance with the scheme;

and

(b) by virtue of leases or agreements with the registered proprietor of the land two or more persons have exclusive rights to occupy separate portions of the land,

this section does not affect the validity of an assignment of or other dealing with the rights of occupation existing under the leases or agreements referred to in paragraph (b).

(6) This section does not affect the validity of—

(a) a transaction lawfully entered into before the commencement of this Part;

or

(b) a transaction of a class excluded by regulation from the provisions of this section.

(7) For the purposes of this section—

“allotment” includes a parcel of land consisting of an allotment together with a contiguous part allotment:

“estate” in land includes an estate of leasehold.

223 1c. This Part does not apply in respect of unalienated Crown lands or land alienated from the Crown otherwise than by grant in fee simple.

Application
of this Part.

DIVISION II—GENERAL PROCEDURES TO BE OBSERVED IN RELATION
TO DIVISION OF LAND

Application for
division.

223 1d. (1) An application for the division of land may be made by the registered proprietor of the land to the Registrar-General.

(2) The application must be in the prescribed form and accompanied by the prescribed fee.

(3) Subject to subsections (4) and (5), the application must be accompanied by—

(a) a plan of division delineating the allotments into which the applicant seeks to divide the land;

(b) the certificate of a licensed surveyor in the prescribed form;

(c) where any person, apart from the registered proprietor, appears from the certificate of title relating to the land to have an interest in the land—a certificate signed by that person certifying that he has consented to the division of the land;

and

(d) (i) a certificate of approval issued in respect of the plan under section 223 1f;

and

(ii) a certificate of approval issued in respect of the plan under section 223 1g,

and the applicant must comply with any requirements of the Registrar-General in relation to the application.

(4) The regulations may provide that in prescribed cases, or cases of a prescribed class, no certificate is required under subsection (3) (b) or (c) unless the Registrar-General specifically requires such a certificate, and, in any other case, the Registrar-General may, if he thinks fit, dispense with any such certificate.

(5) The certificates referred to in subsection (3) (d) are not required—

(a) in respect of the division of land within the City of Adelaide;

or

(b) in respect of a division of land necessary to give effect to a transaction to which the Crown is a party.

(6) Except where the Registrar-General otherwise determines, an application for the division of land shall not be made unless the land has been brought under the provisions of this Act.

(7) Where an application for division of land that has not been brought under the provisions of this Act is permitted by the Registrar-General, references in this Part that are appropriate to, or in relation to, land that has been brought under the provisions of this Act shall, in relation to that application, be read subject to appropriate adaptations and modifications.

(8) Where a person applies to the Registrar-General for the division of land and before the application is determined—

(a) title to the land subject to the application is transferred;

or

- (b) a mortgagee becomes entitled to exercise a power of sale in relation to the land subject to the application,

the successor in title to the land, or the mortgagee, is entitled to proceed with the application and shall, within one month of becoming so entitled, inform the Registrar of that fact and of whether he proposes to proceed with the application.

(9) Where notice is not given to the Registrar-General as required by subsection (8), the Registrar-General may reject the application.

223 1e. (1) Where due application is made to the Registrar-General for the division of land, the Registrar-General may deposit and register the plan of division to which the application relates in the Lands Titles Registration Office.

Deposit and registration of plan of division in Lands Titles Registration Office.

(2) Upon deposit and registration of a plan of division in the Lands Titles Registration Office, all land shown on the plan as a road, street, thoroughfare, reserve or other similar open space shall, by virtue of this Act and without payment of compensation—

- (a) vest in fee simple in the council for the area in which the land is situated for the purposes indicated on the plan;

or

- (b) where the land is not within the area of a council—

- (i) if provision is made by the regulations for the land to vest in a prescribed authority—vest in that authority;

or

- (ii) in any other case—revert to the Crown.

(3) Every road, street or thoroughfare that vests in a council or other authority or reverts to the Crown under this section shall, for all purposes, be regarded as a public road, street or thoroughfare.

(4) Upon deposit and registration of a plan of division in the Lands Titles Registration Office, the Registrar-General shall make such entries on the certificates relating to land affected by the plan as he considers necessary to record—

- (a) the fact that the plan of division has been deposited and registered;

or

- (b) the vesting of land in a council or other authority, or the reversion of land to the Crown, under subsection (2).

DIVISION III—CERTIFICATES OF COUNCIL AND THE COMMISSION

223 1f. (1) A person who desires to divide land may apply—

Certificate of the council.

- (a) where the land is within the area of a council—to the council;

or

- (b) where the land is not within the area of a council—to the Commission,

for a certificate of approval under this section.

(2) An application under this section—

- (a) must be in the prescribed form;
 - (b) must be accompanied by the prescribed fee;
 - (c) must be accompanied by a copy of the plan of division;
- and
- (d) must be accompanied by such other documents as may be prescribed.

(3) Where upon an application under this section, the council or Commission is satisfied—

- (a) that the division of the land in accordance with the plan is not prohibited by or under the Planning Act, and any planning authorization required in respect of that division has been given;
- (b) that the allotments resulting from the division may lawfully be used for the purposes proposed by the applicant;
- (c) that the plan delineates the easements (if any) necessary for the purposes of drainage or electricity supply;
- (d) that the requirements of this Part relating to the provision of open space, or payment in lieu of such provision have been satisfied;
- (e) that the requirements of the regulations relating to—
 - (i) roads and access to land;
 - (ii) road widening or provision for future road widening;
 - (iii) footpaths, water tables and kerbing;
 - (iv) bridges, culverts and drains;
 - (v) electricity supply;
 - (vi) the allocation of street names and other names that may be applicable to the locality,have been satisfied;

and

- (f) that any other requirements of the regulations as to which the council or the Commission is required by the regulations to satisfy itself under this section have been satisfied,

it may issue a certificate of approval in respect of the plan of division.

(4) A certificate of approval may be issued under this section notwithstanding that requirements referred to in subsection (3) have not been satisfied if—

- (a) the requirements are designated by the regulations as requirements to which this subsection applies;
- and
- (b) the applicant has entered into binding arrangements for the satisfaction of the requirements and those arrangements are supported by adequate security.

(5) Arrangements of a kind referred to in subsection (4) (b) must, if the regulations so require, be in a form prescribed by the regulations.

(6) A certificate of approval issued under this section shall, if it has not been lodged with the Registrar-General together with an application for division of the land within twelve months of the date of issue, lapse at the expiration of that period.

223 1g. (1) A person who proposes to divide land may apply to the Commission for a certificate of approval under this section.

Certificate
of the
Commission.

(2) An application under this section—

(a) must be in the prescribed form;

(b) must be accompanied by the prescribed fee;

(c) must be accompanied by a copy of the plan of division;

and

(d) must be accompanied by such other documents as may be prescribed.

(3) Where the Commission is satisfied upon an application under this section—

(a) that the plan of division delineates the easements (if any) necessary for the purpose of providing water supply and sewerage services;

(b) that the requirements of the Minister of Water Resources relating to the provision of water supply and sewerage services have been satisfied;

(c) any amounts that the applicant is required to pay to the Commission in respect of the provision of open space have been paid;

and

(d) that any requirements of the regulations as to which the Commission is required by the regulations to satisfy itself under this section have been satisfied,

it may issue a certificate of approval in respect of the plan of division.

(4) A certificate of approval may be issued under this section notwithstanding that requirements referred to in subsection (3) have not been satisfied if—

(a) the requirements are designated by the regulations as requirements to which this subsection applies;

and

(b) the applicant has entered into binding arrangements for the satisfaction of the requirements and those arrangements are supported by adequate security.

(5) Arrangements of a kind referred to in subsection (4) (b), must, if the regulations so require, be in a form prescribed by the regulations.

(6) A certificate of approval issued under this section shall, if it has not been lodged with the Registrar-General together with an application for division of the land within twelve months of the date of issue, lapse at the expiration of that period.

List of requirements to be furnished by council or Commission.

223 1h. (1) Where a person who desires to divide land makes due application to a council or the Commission for a certificate of approval under this Division, the council or the Commission shall furnish the applicant with a statement of the requirements (if any) that must be satisfied if the certificate of approval is to be issued and of the time within which the requirements are to be satisfied.

(2) If the applicant satisfies the stated requirements within the stipulated time, a certificate of approval shall be issued by the council or the Commission (as the case may require).

Open space requirements.

223 1i. (1) Where a plan of division delineates more than 20 allotments into which land is to be divided, and one or more of the allotments delineated on the plan is less than one hectare in area—

(a) the council for the area in which the land is situated may require that up to 12.5 per centum in area of the land delineated on the plan be vested in the council to be held by it as open space, or may, in its discretion, instead of imposing such a requirement, require the applicant to pay to the council the prescribed contribution in respect of open space;

or

(b) if the land is not within the area of a council—the Commission, may require that up to 12.5 per centum in area of the land delineated in the plan be vested in the Crown to be held by it as open space, or may, in its discretion, instead of imposing such a requirement, require the applicant to pay to the Commission the prescribed contribution in respect of open space.

(2) Where a plan of division provides for the creation of 20 allotments or less, and one or more of the allotments delineated on the plan is less than one hectare in area, the Commission may require the applicant to pay to the Commission for credit to the Fund the prescribed contribution in respect of open space.

(3) Subject to subsection (4), the prescribed contribution in respect of open space is—

(a) where the land to which the plan of division applies is within Metropolitan Adelaide—five hundred dollars for each new allotment delineated on the plan that does not exceed one hectare in area;

and

(b) where the land to which the plan of division applies is outside Metropolitan Adelaide—two hundred dollars for each new allotment delineated on the plan that does not exceed one hectare in area.

(4) The Commission may, on the advice of the Valuer-General, by notice published in the *Gazette*, vary the contributions payable under subsection (3) in proportion to the average variation in the market value of land during the financial year that ended on the thirtieth day of June last preceding the publication of the notice, but not more than one such variation shall be made in any one year.

(5) For the purposes of this section, where a plan of division divides a number of existing allotments into an equal or lesser number of allotments, the allotments into which the land is divided shall not be regarded as being new allotments, and where a plan divides a number of existing allotments into a greater number of allotments, the number by which the greater number of allotments exceeds the existing number of allotments shall be deemed to be the number of new allotments created by the plan and, for the purpose of determining the area of the new allotments, the largest allotment delineated on the plan shall be regarded as the first of the new allotments, the next to largest shall be regarded as the second, and so on.

(6) Any moneys received by a council in consequence of a requirement imposed under subsection (1) (a) shall be paid into a trust fund and applied by the council for the purpose of acquiring or developing land as open space.

223 1j. Where a council or the Commission refuses to grant a certificate under this Division in respect of a plan of division, it shall notify the applicant in writing of the reasons for its decision.

Notice of refusal of certificate to be given.

223 1k. (1) A person aggrieved by the refusal of the Commission or a council to issue a certificate under this Division may within two months from the day on which he receives notice of the refusal, or such longer period as may be allowed by the Tribunal, appeal against that refusal to the Tribunal.

Appeal to the Planning Appeal Tribunal.

(2) Upon an appeal under this section the Tribunal may confirm, vary or reverse the decision subject to the appeal.

DIVISION IV—AMALGAMATION

223 ll. (1) Where a person is the registered proprietor of two or more contiguous allotments, he may apply to the Registrar-General for amalgamation of those allotments into a single allotment.

Amalgamation.

(2) An application under this section—

- (a) must be in the prescribed form;
- (b) must be accompanied by the prescribed fee;
- (c) must be accompanied by any duplicate certificates relating to the allotments to be amalgamated;
- (d) must, if the Registrar-General so requires, be accompanied by a plan of the allotments to be formed by the amalgamation;

and

- (e) must be accompanied by such other documents as may be prescribed.

(3) Upon receipt of an application under this section, the Registrar-General may—

- (a) amalgamate the allotments to which the application relates into a single allotment;

(b) make such entries and notations in or upon the Register Book or plans of division or other plans in the Lands Titles Registration Office as are necessary to evidence the amalgamation;

and

(c) cancel certificates in respect of the amalgamated allotments and issue a new certificate in respect of the allotment formed by the amalgamation.

(4) Upon amalgamation of allotments into a single allotment, the allotments out of which the single allotment was formed cease to be allotments for the purposes of this Act.

DIVISION V—MISCELLANEOUS PROVISIONS

Transitional provision.

223 1m. (1) Notwithstanding the repeal of the Planning and Development Act, 1966-1981, Part VI of that Act, and the regulations relevant to that Part, continue to apply in relation to a plan of division that had been approved under that Act, or in respect of which an application had been made, before the commencement of the Real Property Act Amendment Act, 1982.

(2) Where before the commencement of this Part, a plan of division in respect of which approval was not required under the Planning and Development Act, 1966-1981, was lodged with the Registrar-General, the Registrar-General may deal with the plan as if this Part has not been enacted.

(3) For the purposes of the continued application of Part VI of the Planning and Development Act, 1966-1981, and the regulations relevant to that Part, under this section, references to the Director shall be construed as references to the Chairman of the Commission.

Easements.

223 1n. (1) Where it appears from a plan of division deposited (before or after the commencement of the Real Property Act Amendment Act, 1982) in the Lands Titles Registration Office that any land delineated on the plan is subject or intended to be subject to an easement in favour of the Minister of Water Resources for sewerage purposes or for water supply purposes, the land shall be subject to an easement in favour of the Minister of Water Resources entitling the Minister, his agents, servants and workmen at any time to break the surface of, dig, open up and use the land for the purpose of laying down, fixing, taking up, repairing, re-laying or examining pipes and of using and maintaining those pipes for sewerage or water supply purposes, as the case may be, and to enter the land at any time (if necessary with vehicles and equipment) for any of those purposes.

(2) Where it appears from a plan of division deposited (before or after the commencement of the Real Property Act Amendment Act, 1982) in the Lands Titles Registration Office that any land delineated on the plan is subject or intended to be subject to an easement, in favour of a council or the Crown, for drainage purposes, the land shall be subject to an easement in favour of the council or the Crown entitling the council or the Crown through its agents, servants and workmen at any time

to break the surface of, dig, open up and use the land for the purpose of laying down, fixing, taking up, repairing, re-laying or examining drains or drainage pipes for the purpose of the drainage of water, sewerage or other effluents and of using and maintaining such drains and pipes, and to enter the land at any time (if necessary with vehicles and equipment) for any of those purposes.

(3) Where it appears from a plan of division deposited (before or after the commencement of the Real Property Act Amendment Act, 1982) in the Lands Titles Registration Office that any land delineated on the plan is subject or is intended to be subject to an easement not exceeding four metres in width in favour of The Electricity Trust of South Australia for electricity supply purposes, the land shall be subject to an easement in favour of The Electricity Trust of South Australia, entitling The Electricity Trust of South Australia, its agents, servants and workmen at any time—

(a) to enter upon and to pass either with or without motor vehicles or other vehicles along or over the land;

(b) to construct and lay—

(i) under the surface of the land ducts, pipes, conductors, cables, wires and other works;

and

(ii) on the surface of the land incidental or ancillary works for the transmission of electricity (including, without limiting the generality of the foregoing, manholes and cable markers);

(c) without limiting the generality of any other right, to erect on any portion of the land designated "T/F" in the plan to a height not exceeding four metres or such other height as may be shown in the plan from the surface of the land, equipment for transforming electricity and incidental or ancillary works (including, without limiting the generality of the foregoing, such walls or other structures as The Electricity Trust of South Australia considers necessary);

(d) from time to time to break the surface of, dig, open up and use the land for any of the purposes referred to in this subsection;

(e) to inspect, repair, alter, remove and replace any works referred to in this subsection;

and

(f) to transmit electricity by means of any such works.

(4) No right to compensation arises—

(a) by virtue of the fact that land becomes subject to an easement under this section;

or

(b) by virtue of the exercise of rights conferred by an easement under this section.

(5) If by virtue of this section, any land is subject to an easement, the Registrar-General shall make such entries in the Register Book as are necessary to evidence the easement.

(6) The Registrar-General may, upon the application of the registered proprietor made with the consent of the proprietor of the easement, or upon the application of the proprietor of the easement made with the consent of the registered proprietor, vary or extinguish an easement under this section and make such consequential entries in the Register Book as he thinks fit.

Division of land within the Hills Face Zone.

223 1o. (1) Subject to subsection (2), no application shall be made under this Part for the division of land within the Hills Face Zone.

(2) An application for the division of land within the Hills Face Zone may be made if—

(a) the number of allotments resulting from the division is equal to, or less than, the number of allotments into which the land subject to the plan of division is already divided;

or

(b) the application is authorized under subsection (3).

(3) If the Governor is satisfied that a proposed division of land within the Hills Face Zone is consistent with the principles and objects expressed in the Development Plan and with the public interest, he may, by proclamation made on the advice of the Commission, authorize an application under this Part for that proposed division.

Regulations.

223 1p. The Governor may make such regulations as are contemplated by this Part, or as are necessary or expedient for the purposes of this Part.

Amendment of s. 223md. Certificate in relation to strata plan.

7. Section 223 md of the principal Act is amended by striking out subsection (6) and substituting the following subsection:—

(6) The Commission shall not grant an application under subsection (2) unless the applicant has paid to it for the credit of the Planning and Development Fund a contribution calculated on the basis set forth in sections 223 li (3) and (4) as if the strata plan were a plan of division and the units delineated on the plan were new allotments.

Consequential amendments.

8. The principal Act is amended as shown in the schedule to this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor

THE SCHEDULE

The following amendments, which are consequential upon the provisions of the Planning Act, 1982, are made to the principal Act:

Provision Affected	How Amended
Section 223m (1)	(a) By inserting after the definition of "building" the following definition: "the Commission" means the South Australian Planning Commission constituted under the Planning Act, 1982.
Section 223mc (2)	(b) By striking out the definition of "the Director". By striking out paragraph (d) and substituting the following paragraph: (d) the certificate of the Commission applying to the strata plan and referred to in section 223md (2);
Section 223mc (4)	By striking out paragraph (f) and substituting the following paragraph: (f) the certificate of the Commission applying to the strata plan and referred to in section 223md (2);
Section 223md (2)	By striking out the passage "the Director may issue to the applicant or applicants a certificate signed by him" and substituting the passage "the Commission may issue to the applicant or applicants a certificate".
Section 223md (3) (c)	By striking out the passage "any authorized development plan within the meaning of the Planning and Development Act, 1966-1967" and substituting the passage "any provision of the Planning Act, 1982, or of the Development Plan compiled under that Act".
Section 223md (4)	By striking out subsection (4) and substituting the following subsection: (4) The Commission may refuse an application referred to in subsection (2) if the strata plan, or the building unit scheme to which it relates, would contravene or be inconsistent with the Planning Act, 1982, or the Development Plan compiled under that Act.
Section 223md (4a)	(a) By striking out the passage "the Director" wherever it occurs and substituting, in each case, the passage "the Commission". (b) By striking out from paragraph (a) the passage "provision of the Planning and Development Act or the regulations or the authorized development plan referred to in that subsection" and substituting the passage "the relevant provision of the Planning Act, 1982, or the Development Plan compiled under that Act". (c) By striking out subparagraphs (i) and (ii) of paragraph (a) and substituting the following subparagraph: (i) did not contravene, or is not inconsistent with any provision of the Planning Act, 1982, or the Development Plan compiled under that Act;
Section 223md (5)	By striking out the passage "the Director" wherever it occurs and substituting, in each case, the passage "the Commission".
Section 223me (1)	By striking out the passage "the Director" wherever it occurs and substituting, in each case, the passage "the Commission".
Section 223me (2) and (3)	By striking out subsections (2) and (3) and substituting the following subsections: (2) The applicant or applicants may appeal to the Planning Appeal Tribunal constituted under the Planning Act, 1982, against any decision of the Commission or a council refusing an application referred to in section 223md or granting any such application subject to compliance with any conditions. (3) Upon an appeal under subsection (2), the Planning Appeal Tribunal may confirm, vary or reverse the decision subject to appeal and may make any consequential or ancillary order or direction that it considers necessary or expedient in the circumstances of the case.
Section 223nh (2)	By striking out the passage "the Planning and Development Act, 1966-1967," and substituting the passage "the Planning Act, 1982".
Section 223nh (3)	By striking out the passage "the Director" and substituting the passage "the Commission".
Section 223nh (5) (a)	(a) By striking out the passage "the Director" and substituting the passage "the Commission". (b) By striking out the passage "any authorized development plan within the meaning of the Planning and Development Act, 1966-1967," and substituting the passage "any provision of the Planning Act, 1982, or of the Development Plan compiled under that Act".

THE SCHEDULE—*continued*

Provision Affected	How Amended
Section 223nr (2)	<p>(a) By striking out from paragraph (c) the passage “the Director” and substituting the passage “the Commission”.</p> <p>(b) By striking out paragraph (f).</p>



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 24 of 1982

An Act to amend the Electoral Act, 1929-1981.

[Assented to 25 March 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Electoral Act Amendment Act, 1982". Short titles.

(2) The Electoral Act, 1929-1981, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Electoral Act, 1929-1982".

2. This Act shall come into operation on a day to be fixed by proclamation. Commence-
ment.

3. Section 26 of the principal Act is amended by striking out subsection (4). Amendment of
s. 26—
Public
inspection of
rolls.

4. Section 46 of the principal Act is amended by striking out from subsection (3) the passage "three months" and substituting the passage "one month". Amendment of
s. 46—
Notice of
objection.

5. Section 69 of the principal Act is amended—

(a) by inserting after paragraph (b) of subsection (2) the passage "but if two or more nominated candidates for election to the Legislative Council die before or on polling day, the election shall be deemed to have failed";

and

(b) by striking out from subsection (3) the passage "subsection (2)" and substituting the passage "subsection (2) (b)".

Amendment of
s. 69—
Death of
nominated
candidate
before or
on polling
day.

Amendment of
s. 86—
Preliminary
scrutiny of
postal
ballot-papers.

6. Section 86 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) The powers, discretions and duties conferred or imposed on a returning officer by this section may be exercised or discharged on his behalf by a deputy returning officer.

Amendment of
s. 96—
Printing of
ballot-papers.

7. Section 96 of the principal Act is amended by striking out from subparagraph (iv) of paragraph (d) the passage “shall determine the order of such groups from left to right, the name of the member comprising the group contained in the first envelope selected and opened shall be placed on the immediate right of the last group of two or more persons in the order determined by reference to those subparagraphs” and substituting the passage “shall determine the order in which the names of the persons comprising those groups are included in the ballot-paper, the name contained in the first envelope selected and opened being placed to the right of the groups of two or more candidates, the name contained in the next envelope selected and opened being placed directly under that name, and so on,”.

Amendment of
s. 118a—
Duty to vote.

8. Section 118a of the principal Act is amended by inserting after subsection (12) the following subsection:

(13) The Electoral Commissioner may cause to be served personally or by post on a person who is alleged to have committed an offence against subsection (11) a notice to the effect that he may expiate the offence by payment to the Electoral Commissioner of an amount specified in the notice, being an amount fixed by regulation, within a time fixed in the notice and if the offence is so expiated no proceedings shall be commenced in a court with respect to the alleged offence.

Amendment of
s. 151—
Illegal
practices.

9. Section 151 of the principal Act is amended by striking out paragraph (d).

Insertion of
new s. 155d.

10. The following section is inserted after section 155c of the principal Act:

Electoral
material
must contain
name of person
by whom it was
authorized
and printed.

155d. (1) Subject to subsection (2), a person shall not publish electoral material or cause electoral material to be published unless it contains—

(a) the name and address of the person authorizing publication of the electoral material;

and

(b) where it is in printed form—the name and address of the printer.

Penalty: Five hundred dollars.

(2) Where electoral material is published in a newspaper that has been published at periodic intervals of one month or less over a period of at least six months immediately preceding the publication of the electoral material, the name and address of the printer need not be contained in the electoral material.

(3) In this section—

“electoral material” means an advertisement or notice containing matter intended or calculated to affect the result of an election or referendum under a law of the State.

11. Section 182 of the principal Act is amended by striking out from subsection (3) the passage “the Court is satisfied that the result of the election was likely to be affected thereby, and” and substituting the passage “the illegal practice is proved to have affected the result of the election and the Court is satisfied”.

Amendment of
s. 182—
Avoidance of
election for
illegal practice.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 25 of 1982

An Act to amend the Land and Business Agents Act, 1973-1979.

[Assented to 25 March 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles

1. (1) This Act may be cited as the "Land and Business Agents Act Amendment Act, 1982".

(2) The Land and Business Agents Act, 1973-1979, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Land and Business Agents Act, 1973-1982".

Commencement.

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation made for the purposes of subsection (1) suspend the operation of any specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

Amendment of s. 6—
Interpretation.

3. Section 6 of the principal Act is amended by inserting in the definition of "salesman" in subsection (1) after the passage "whether or not the agent is the owner of the land or business" the passage "but does not include a person who so acts only in relation to a leasehold other than a leasehold in respect of land to be used for the purposes of a business".

Amendment of s. 7—
Constitution of Board.

4. Section 7 of the principal Act is amended by striking out subsections (2) and (3) and substituting the following subsection:

(2) The Board shall consist of five persons appointed by the Governor, of whom—

(a) one, who shall be the chairman of the Board, shall be a legal practitioner;

(b) two shall be persons appointed upon the nomination of the Real Estate Institute of South Australia Incorporated; and

(c) two shall be persons appointed upon the recommendation of the Minister, being persons whose knowledge and experience are such that, in the opinion of the Minister, they are suitable persons to represent the interests of members of the public involved in real estate transactions.

5. Section 8 of the principal Act is amended—

Amendment of
s. 8—
Terms and
conditions of
office.

(a) by striking out subsection (2) and substituting the following subsection:

(2) The Governor may appoint a person to be a deputy of the chairman or any other member of the Board (being a person who could have been appointed in the place of that member), and such a person may, in the absence of that member, act in the place of that member, and, in the case of the deputy of the chairman, shall have all the powers, authorities, duties and obligations of the chairman.;

and

(b) by inserting after paragraph (c) of subsection (4) the following paragraph:

(ca) he absents himself from three consecutive meetings of the Board without the leave of the Minister.;

6. Section 9 of the principal Act is amended—

Amendment of
s. 9—
Quorum.

(a) by striking out subsection (1) and substituting the following subsections:

(1) Three members of the Board shall constitute a quorum of the Board, and no business shall be transacted at a meeting of the Board unless a quorum is present.

(1a) The quorum must include the chairman or a deputy of the chairman, a member appointed under section 7 (2) (b), or a deputy of that member and a member appointed under section 7 (2) (c) or a deputy of that member.;

and

(b) by striking out subsection (4).

7. Section 16 of the principal Act is amended by striking out subsection (4) and substituting the following subsections:

Amendment of
s. 16—
Entitlement of
corporation to
licence.

(4) If—

(a) a corporation is, in the opinion of the Board, carrying on business as a stock and station agent, or is listed upon a Stock Exchange in Australia or is the subsidiary of a corporation so listed and the person who is, or will be, in control of the business conducted, or to be conducted, in pursuance of the licence, is licensed or registered as a manager under this Act;

(b) the Board is satisfied that the business conducted or to be conducted in pursuance of a licence forms an inconsiderable part of the whole of the business of a corporation and no director or other prescribed officer of the corporation who is not licensed or registered as a manager under this Act will actively participate in the business conducted in pursuance of the licence;

(c) a corporation is a proprietary company with not more than two directors, one of whom is licensed or registered as a manager under this Act, and the Board is satisfied that neither the other director nor any other prescribed officer of the corporation who is not so licensed or registered will actively participate (otherwise than in a clerical or secretarial capacity) in the business conducted in pursuance of the licence;

(d) a corporation held a licence at the commencement of this Act and the directors were then, and are, husband and wife, one of whom is licensed or registered as a manager under this Act;

or

(e) a corporation is entitled, in pursuance of the regulations, to be exempted from the provisions of subsection (2),

then, subject to subsection (7), the Board shall, upon application by the corporation, grant an exemption from the provisions of subsection (2).

(5) An exemption under subsection (4) may be unconditional or subject to such conditions as the Board thinks fit.

(6) The Board may revoke an exemption under subsection (4) for breach of a condition or other proper cause.

(7) Where an exemption under subsection (4) is revoked and the corporation re-applies to the Board for an exemption the Board may (but is not obliged to) grant an exemption upon that application.

Repeal of
ss. 17 and 18
and substitution
of new
sections.

8. Sections 17 and 18 of the principal Act are repealed and the following sections are substituted:

Grant of
licences.

17. A person who duly applies for the grant of a licence and who is entitled to hold a licence shall, upon payment of the prescribed fee, be granted a licence by the Board.

Annual licence
fees and
returns.

18. (1) Every licensed agent must not earlier than the first day of January and not later than the last day of February in each year—

(a) pay to the Board the prescribed annual licence fee;

and

(b) lodge with the Board an annual return containing the prescribed information.

(2) If a licensed agent fails to pay the annual licence fee or lodge the annual return in accordance with subsection (1), the Board shall, by notice in writing to the agent, require the agent to pay the fee or lodge the return, or both, within a period (being not less than fourteen days) specified in the notice.

(3) If a licensed agent fails to comply with a notice under subsection (2), the licence of the agent shall be suspended from the expiration of the period specified in the notice until both the fee has been paid and the return lodged.

(4) Where a licence is suspended by virtue of subsection (3), the secretary to the Board shall cause notice of the suspension (being notice in the prescribed form) to be published in a newspaper circulating throughout the State.

(5) Where a licensed agent has not paid the annual licence fee or lodged the annual return before the thirtieth day of June in the year in which he was required by subsection (1) to do so, the licence of the agent shall thereupon cease to have any effect.

9. Section 27 of the principal Act is repealed and the following section is substituted:

Repeal of
s. 27 and
substitution
of new section.

27. (1) Every registered salesman must not earlier than the first day of January and not later than the last day of February in each year—

Annual
registration
fees and
returns.

(a) pay to the Board the prescribed annual registration fee;

and

(b) lodge with the Board an annual return containing the prescribed information.

(2) If a registered salesman fails to pay the annual registration fee or lodge the annual return in accordance with subsection (1), the Board shall, by notice in writing to the salesman, require the salesman to pay the fee or lodge the return, or both, within a period (being not less than fourteen days) specified in the notice.

(3) If a registered salesman fails to comply with a notice under subsection (2), the registration of the salesman shall be suspended from the expiration of the period specified in the notice until both the fee has been paid and the return lodged.

(4) Where a registration is suspended by virtue of subsection (3), the secretary to the Board shall cause notice of the suspension (being notice in the prescribed form) to be published in a newspaper circulating throughout the State.

(5) Where a salesman has not paid the annual registration fee or lodged the annual return before the thirtieth day of June in the year in which he was required by subsection (1) to do so, the registration of the salesman shall thereupon cease to have any effect.

10. Sections 33 and 34 of the principal Act are repealed and the following sections are substituted:

Repeal of
ss. 33 and 34
and substitution
of new
sections.

33. A person who duly applies for registration under this Part and who is entitled to be registered under this Part shall, upon payment of the prescribed fee, be granted the registration by the Board.

Grant of
registration.

34. (1) Every registered manager must not earlier than the first day of January and not later than the last day of February in each year—

Annual
registration
fees and
returns.

(a) pay to the Board the prescribed annual registration fee;

and

(b) lodge with the Board an annual return containing the prescribed information.

(2) If a registered manager fails to pay the annual registration fee or lodge the annual return in accordance with subsection (1), the Board shall, by notice in writing to the manager, require the manager to pay the fee or lodge the return, or both, within a period (being not less than fourteen days) specified in the notice.

(3) If a registered manager fails to comply with a notice under subsection (2), the registration of the manager shall be suspended from the expiration of the period specified in the notice until both the fee has been paid and the return lodged.

(4) Where a registration is suspended by virtue of subsection (3), the secretary to the Board shall cause notice of the suspension (being notice in the prescribed form) to be published in a newspaper circulating throughout the State.

(5) Where a manager has not paid the annual registration fee or lodged the annual return before the thirtieth day of June in the year in which he was required by subsection (1) to do so, the registration of the manager shall thereupon cease to have any effect.

Amendment of
s. 41—
Advertisement.

11. Section 41 of the principal Act is amended by inserting after subsection (1) the following subsection:

(1a) An advertisement conforms with subsection (1) (c) if the agent by whom, or on whose behalf, the advertisement is published is described in the advertisement by one of the following descriptions:

- (a) "licensed agent";
- (b) "licensed land and business agent";
- (c) "licensed land agent";
- (d) "licensed business agent";
- (e) "licensed real estate agent";
- (f) "licensed real estate and business agent";

or

- (g) any other description approved by the Board,

but not otherwise.

Amendment of
s. 45—
Agent's
authority to
act and
commission.

12. Section 45 of the principal Act is amended—

(a) by striking out subsection (3) and substituting the following subsections:

(3) An agent shall not demand, receive or retain any commission in respect of the acquisition or disposal, or proposed acquisition or disposal, of any land or business if the contract by which the transaction is to be effected is rescinded or avoided under any provision of this Act.

(3a) Subsection (3) does not apply where—

- (a) the contract is rescinded under section 88;
- (b) the parties to the contract subsequently enter into another contract for the acquisition or disposal of the land or business;

and

(c) commission would, apart from this section, have been payable to the agent in respect of that subsequent contract.;

and

(b) by striking out from subsection (4) the passage "or other remuneration".

13. Section 46 of the principal Act is amended—

Amendment of
s. 46—
Interest to
be disclosed.

(a) by striking out from subsection (2) the word "A" and substituting the passage "Subject to subsection (2a), a";

and

(b) by inserting after subsection (2) the following subsection:

(2a) The Board may, if it thinks fit, upon application by any person (not being a registered manager or a registered salesman) in the employment of an agent, exempt the person from the application of subsection (2) in relation to the purchase of any specified land or business.

14. Section 50 of the principal Act is amended—

Amendment of
s. 50—
Terms and
conditions
of office.

(a) by striking out subsection (2) and substituting the following subsection:

(2) The Governor may appoint a person to be a deputy of a member of the Board (being a person who could have been appointed in the place of that member), and such a person may, in the absence of that member, act as a member of the Board.;

and

(b) by inserting after paragraph (c) of subsection (4) the following paragraph:

(ca) he absents himself from three consecutive meetings of the Board without the leave of the Minister.;

15. Sections 58 and 59 of the principal Act are repealed and the following sections are substituted:

Repeal of
ss. 58 and 59
and substitution
of new
sections.

58. A person who duly applies for the grant of a licence and who is entitled to hold a licence shall, upon payment of the prescribed fee, be granted a licence by the Board.

Grant of
licences.

59. (1) Every licensed land broker must not earlier than the first day of January and not later than the last day of February in each year—

Annual
licence fees
and returns.

(a) pay to the Board the prescribed annual licence fee;

and

(b) lodge with the Board an annual return containing the prescribed information.

(2) If a licensed land broker fails to pay the annual licence fee or lodge the annual return in accordance with subsection (1), the Board shall, by notice in writing to the land broker, require the land broker to pay the fee or lodge the return, or both, within a period (being not less than fourteen days) specified by the Board.

(3) If a licensed land broker fails to comply with a notice under subsection (2), the licence of the land broker shall be suspended from the expiration of the period specified in the notice until both the fee has been paid and the return lodged.

(4) Where a licence is suspended by virtue of subsection (3), the secretary to the Board shall cause notice of the suspension (being notice in the prescribed form) to be published in a newspaper circulating throughout the State.

(5) Where a land broker has not paid the annual licence fee or lodged the annual return before the thirtieth day of June in the year in which he was required by subsection (1) to do so, the licence of the land broker shall thereupon cease to have any effect.

Amendment of
s. 63—
Trust accounts.

16. Section 63 of the principal Act is amended by inserting after subsection (5) the following subsection:

(5a) The provisions of this section do not prevent an agent from withdrawing moneys from a trust account and paying them into court in any action to which the person or persons who are lawfully entitled to the moneys are parties.

Amendment of
s. 66—
Interest to be
paid to Board.

17. Section 66 of the principal Act is amended by striking out from subsection (1) the passage "that have accrued to" and substituting the passage "paid or credited in respect of a trust account (not being a separate trust account maintained by the agent, on the instructions of his principal, for the benefit of that principal) or in respect of".

Amendment of
s. 77—
Interpretation.

18. Section 77 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) For the purposes of this Part—

(a) a reference to a person licensed or registered under this Act includes a reference to a person formerly licensed or registered under this Act;

(b) a reference to a licensed land broker, licensed agent, registered manager or registered salesman includes a reference to a former licensed land broker, former licensed agent, former registered manager or former registered salesman, as the case may be;

(c) a reference to a registered manager who has been nominated as such includes a reference to a former registered manager who had been nominated as such;

and

(d) a reference to an agent includes a reference to a former agent.

19. Section 78 of the principal Act is amended—

Amendment of
s. 78—
Inquiries.

- (a) by striking out from paragraph (b) of subsection (2) the passage “one hundred dollars” and substituting the passage “one thousand dollars”;
- (b) by inserting after paragraph (b) of subsection (2) the following paragraphs:
 - (ba) suspend any licence or registration that the person holds under this Act for a period specified by the Board, or until the fulfilment of a condition imposed by the Board, or until the further order of the Board;
 - (bb) cancel any licence or registration that the person holds under this Act;;

and

- (c) by striking out from paragraph (c) of subsection (2) the passage “cancel the licence or registration and, in addition, disqualify the person who held the licence or registration” and substituting the passage “disqualify the person”.

20. Section 88 of the principal Act is amended—

Amendment of
s. 88—
Cooling-off
period.

- (a) by striking out from subsection (1) the passage “before the expiration of two clear business days from the prescribed day (but before the date of settlement)” and substituting the passage “before the prescribed time”;
- (b) by striking out subsections (1b) and (3) and substituting the following subsections:
 - (1b) Where a contract is rescinded under subsection (1), the vendor shall be entitled to retain moneys paid by the purchaser—
 - (a) in consideration of an option to purchase the land subject to the sale;
 - or
 - (b) by way of deposit in respect of the sale if the amount paid does not exceed fifty dollars or such greater amount as may be prescribed.
 - (2) Any vendor, person acting on behalf of a vendor or stakeholder who before the prescribed time demands or requires the payment of moneys in respect of the sale that the vendor would not be entitled to retain pursuant to subsection (1b) if the contract of sale were rescinded under subsection (1) shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.
 - (3) In any proceedings for an offence against subsection (2), where it is proved that the defendant received moneys of the kind referred to in that subsection, it shall be deemed to be proved, in the absence of proof to the contrary, that the defendant demanded or required the payment of those moneys.;

(c) by striking out paragraph (a) of subsection (4) and substituting the following paragraphs:

(a) where the contract is made by the exercise by the purchaser of an option to purchase the land subject to the sale, if the option is exercised not less than seven days after the grant of the option and not less than two clear business days after section 90 statements are served personally or by registered or certified mail on the purchaser;

(ab) where the purchaser is a body corporate;;

(d) by striking out from subsection (5) the definition of "the prescribed day" and substituting the following definition:

"the prescribed time" means—

(a) where section 90 statements are served personally or by registered or certified mail upon the prospective purchaser before the making of the contract, the expiry of two clear business days after the day on which the contract is made;

(b) where section 90 statements are served personally or by registered or certified mail upon the purchaser after the making of the contract and before the time before which the statements are required to be served under section 90, the expiry of two clear business days after the day on which the statements are served;

or

(c) where section 90 statements are not served upon the purchaser in compliance with section 90, the time at which settlement is to take place;;

and

(e) by striking out from subsection (5) the definition of "section 90 statements" and substituting the following definition:

"section 90 statements" means—

(a) the statement or statements required to be served by or on behalf of the vendor or prospective vendor under section 90;

and

(b) where an agent acts for the vendor or purchaser or prospective vendor or purchaser, the statement or statements required to be served by or on behalf of the agent under section 90:.

Amendment of
s. 89—
Abolition of
instalment
contracts.

21. Section 89 of the principal Act is amended by striking out from subsection (3) the word "two" and substituting the word "three".

Amendment of
s. 90—
Information to
be supplied to
purchaser
before date of
settlement.

22. Section 90 of the principal Act is amended—

(a) by striking out from subsection (1) the passage "or business" wherever it occurs;

- (b) by inserting in subsection (1) after the passage “statement signed by or on behalf of the vendor” the passage “setting forth in the prescribed form the rights of a purchaser under section 88 and”;
- (c) by striking out from subsection (1) the word “and” occurring between paragraphs (b) and (c);
- (d) by inserting in subsection (1) after paragraph (c) the following word and paragraph:
- and
- (d) in the case of a sale or proposed sale of a unit within the meaning of section 223m of the Real Property Act, 1886-1980, the prescribed information.;
- (e) by inserting after subsection (2) the following subsection:
- (2aa) Where a statement is served under subsection (1) before the time at which the document that is to constitute the contract is delivered to the prospective purchaser for execution and any variation or further variation in the particulars set out in the statement has come to the knowledge of the prospective vendor before that time, the prospective vendor must, at or before that time, serve or cause to be served personally or by registered or certified mail upon the prospective purchaser a further statement signed by the prospective vendor or some person acting on his behalf giving particulars of the variation or further variation.;
- (f) by striking out from subsection (2a) the passage “or a business”;
- (g) by striking out from subsection (2a) the passage “or business”;
- (h) by striking out from subsection (3) the passage “of any land or business” and substituting the passage “or prospective vendor or purchaser of any land”;
- (i) by striking out from subsection (3) the passage “or business” secondly occurring;
- (j) by striking out from subsection (4) the passage “of any land or business” and substituting the passage “or prospective vendor or purchaser of any land”;
- (k) by inserting in subsection (4) after the passage “setting forth” the passage “in the prescribed form the rights of a purchaser under section 88 and”;
- (l) by striking out from subsection (4) the passage “or business” secondly occurring;
- (m) by inserting after subsection (4a) the following subsection:
- (4b) Where a statement is served under subsection (4) before the time at which the document that is to constitute the contract is delivered to the prospective purchaser for execution and any variation or further variation in the particulars set out in the statement has come to the knowledge of the agent before that time, the agent shall, at or before that time, serve or cause to be served personally or by registered or certified mail upon the prospective purchaser a further statement signed by the agent or some person acting on his behalf giving particulars of that variation or further variation.;

- (n) by striking out from paragraph (a) of subsection (5) the passage “or (4)” and substituting the passage “, (4) or (4b)”;
 - (o) by striking out from subsection (9) the passage “or business” twice occurring;
 - (p) by striking out from subsection (9) the passage “but does not include any interest in, or affecting, land that exists by virtue of an instrument registrable under the Real Property Act, 1886-1972”;
 - (q) by striking out from subsection (9b) the passage “or business”;
 - (r) by striking out subsection (9c);
- and
- (s) by striking out subsection (11) and substituting the following sub-sections:

(11) Any council or other statutory authority that has imposed or placed, or has the benefit of, any charge or encumbrance over land shall, upon application by any person who is required under this section to provide particulars of such charge or encumbrance and upon payment of the prescribed fee, provide that person with such information as is reasonably required by that person in order to comply with that requirement.

(12) Except as expressly provided in this Act, no person shall incur any civil or criminal liability nor shall any contract be void or liable to be avoided by reason of any omission, mis-statement or variation in any particulars or information given under this section or any failure to comply with the provisions of this section.

(13) Subject to subsection (12), the provisions of this section are in addition to, and do not derogate from, the provisions of any other Act or law.

Amendment of
s. 91—
Sale of small
businesses.

23. Section 91 of the principal Act is amended—

- (a) by striking out from subsection (6) the passage “thirty thousand dollars” and substituting the passage “seventy thousand dollars”;
- and
- (b) by inserting after subsection (6) the following subsection:

(7) In determining for the purposes of subsection (6) the amount of the total consideration for the sale or prospective sale of a business, the value of any land sold or to be sold as part of the business shall be disregarded.

Insertion of
new s. 98a.

24. The following section is inserted after section 98 of the principal Act:

98a. A person shall not conduct an auction for the sale of any land or business on a Sunday.

Penalty: Five hundred dollars.

Prohibition
of auction
sales on
Sundays.

25. Section 107 of the principal Act is amended by inserting after paragraph (d) the following paragraph:

Amendment of
s. 107—
Regulations.

(da) provide for the refund of any fees in circumstances prescribed or at the discretion of the Board;

26. The provisions of the principal Act mentioned in the first column of the schedule to this Act are amended as shown in the second column of that schedule.

General
amendment of
principal Act.

THE SCHEDULE

First Column Provision Affected	Second Column How Amended
Section 13 (1)	By striking out "Five hundred dollars" and substituting "One thousand dollars".
Section 21	By striking out "Two hundred dollars" and substituting "Five hundred dollars".
Section 22 (1)	By striking out "Two hundred dollars" and substituting "Five hundred dollars".
Section 22 (2)	By striking out "Two hundred dollars" and substituting "Five hundred dollars".
Section 23 (1)	By striking out "One hundred dollars" and substituting "Two hundred dollars".
Section 23 (2)	By striking out "One hundred dollars" and substituting "Two hundred dollars".
Section 23 (3)	By striking out "One hundred dollars" and substituting "Two hundred dollars".
Section 29 (3)	By striking out "One hundred dollars" and substituting "Two hundred dollars".
Section 30 (1)	By striking out "One hundred dollars" and substituting "Two hundred dollars".
Section 30 (2)	By striking out "Two hundred dollars" and substituting "Five hundred dollars".
Section 30 (5)	By striking out "Two hundred dollars" and substituting "Five hundred dollars".
Section 30 (6)	By striking out "Two hundred dollars" and substituting "Five hundred dollars".
Section 30 (7)	By striking out "One hundred dollars" and substituting "Two hundred dollars".
Section 35 (3)	By striking out "One hundred dollars" and substituting "Two hundred dollars".
Section 36	By striking out "One hundred dollars" and substituting "Two hundred dollars".
Section 37 (1)	By striking out "One hundred dollars" and substituting "Two hundred dollars".
Section 38 (1)	By striking out "One hundred dollars" and substituting "Two hundred dollars".
Section 38 (2)	By striking out "one hundred dollars" and substituting "two hundred dollars".
Section 39 (1)	By striking out "One hundred dollars" and substituting "Two hundred dollars".
Section 39 (2)	By striking out "One hundred dollars" and substituting "Two hundred dollars".
Section 40 (2)	By striking out "two hundred dollars" and substituting "five hundred dollars".
Section 41 (1)	By striking out "One hundred dollars" and substituting "Two hundred dollars".
Section 41 (2)	By striking out "One hundred dollars" and substituting "Two hundred dollars".
Section 41 (3)	By striking out "One hundred dollars" and substituting "Two hundred dollars".
Section 42 (2)	By striking out "two hundred dollars" and substituting "five hundred dollars".
Section 43 (1)	By striking out "one thousand dollars" and substituting "two thousand dollars".
Section 44	By striking out "Two hundred dollars" and substituting "Five hundred dollars".
Section 45 (1)	By striking out "Two hundred dollars" and substituting "Five hundred dollars".
Section 45 (2)	By striking out "Two hundred dollars" and substituting "Five hundred dollars".
Section 46 (3)	By striking out "five hundred dollars" and substituting "one thousand dollars".
Section 47	By striking out "Five hundred dollars" and substituting "One thousand dollars".
Section 55 (1)	By striking out "Five hundred dollars" and substituting "One thousand dollars".
Section 61 (1)	By striking out "Two hundred dollars" and substituting "Five hundred dollars".
Section 61 (7)	By striking out "Two hundred dollars" and substituting "Five hundred dollars".
Section 61 (8)	By striking out "Two hundred dollars" and substituting "Five hundred dollars".
Section 61 (9)	By striking out "Two hundred dollars" and substituting "Five hundred dollars".
Section 63 (8)	By striking out "one thousand dollars" and substituting "two thousand dollars".
Section 63a (6)	By striking out "five hundred dollars" and substituting "one thousand dollars".

THE SCHEDULE—*continued*

First Column Provision Affected	Second Column How Amended
Section 71 (2)	By striking out "Two hundred dollars" and substituting "Five hundred dollars".
Section 80 (2)	By striking out "two hundred dollars" and substituting "five hundred dollars".
Section 85 (2)	By striking out "two hundred dollars" and substituting "five hundred dollars".
Section 86 (3)	By striking out "one thousand dollars" and substituting "two thousand dollars".
Section 90 (5) (a)	By striking out "two hundred dollars" and substituting "five hundred dollars".
Section 90 (5) (b)	By striking out "two hundred dollars" and substituting "five hundred dollars".
Section 90 (9b)	By striking out "Two hundred dollars" and substituting "Five hundred dollars".
Section 98 (1)	By striking out "one thousand dollars" and substituting "two thousand dollars".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 26 of 1982

An Act to amend the Justices Act, 1921-1981.

[Assented to 25 March 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Justices Act Amendment Act, 1982".
- (2) The Justices Act, 1921-1981, is in this Act referred to as "the principal Act".
- (3) The principal Act, as amended by this Act, may be cited as the "Justices Act, 1921-1982".

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

Amendment of
s. 4—
Interpretation.

3. Section 4 of the principal Act is amended—
 - (a) by striking out from subsection (1) the definition of "clerk" and substituting the following definition:

"clerk" means—

 - (a) a person holding office as the clerk of a court of summary jurisdiction;
 - (b) a deputy of the clerk of a court of summary jurisdiction;

or

 - (c) a person appointed to act in the office of the clerk of a court of summary jurisdiction;

and

- (b) by inserting after the definition of "minor indictable offence" in subsection (1) the following definition:

"personal service" of a summons or notice means service under section 27 (1); and the adverb "personally" when used in relation to the verb "to serve" has a corresponding meaning:.

4. Section 5 of the principal Act is amended by inserting after subsection (5) the following subsection:

Amendment of
s. 5—
Constitution
of courts of
summary
jurisdiction.

(6) Where a court of summary jurisdiction constituted of two or more justices, or of a single justice, convicts a person of an offence and a penalty of imprisonment is required by law, or is in the opinion of the court warranted by the offence, the court shall remand the convicted person in custody or on bail to appear for sentence by a court of summary jurisdiction constituted of a special magistrate.

5. Section 27 of the principal Act is amended—

Amendment of
s. 27—
Service.

(a) by striking out the proviso;

(b) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsections:

(2) Subject to any other provision of this Act, where this Act authorizes service of a notice on a party to proceedings by post, service of the notice may be effected by sending the notice by ordinary prepaid post (either alone or with other documents relating to the same proceedings) in an envelope addressed to the party at—

(a) the address appearing on the relevant complaint or summons as the address of that party;

or

(b) where the person by whom the notice is to be given has notice of some more recent address of the party—that address,

and the notice shall be deemed to have been served at the time when it would, in the ordinary course of post, have reached the address to which it was posted.

(3) Where a summons or notice is served otherwise than by being delivered personally to the person on whom it is to be served, a court or justice may require the summons or notice to be re-served if there is reasonable cause to believe that the summons or notice has not come to the notice of the person to be served.

6. Section 27c of the principal Act is amended—

Amendment of
s. 27c—
Hearing
where
defendant
fails to
appear.

(a) by striking out paragraphs (f) and (g) of subsection (3) and substituting the following paragraphs:

(f) the defendant is personally served, not less than fourteen days before the time to which the hearing has been adjourned, with a notice informing him of—

(i) the conviction;

(ii) the time and place to which the hearing has been adjourned;

and

(iii) the provisions of section 76a;

and

(g) the defendant does not, within fourteen days after the date of service of the notice upon him, apply in accordance with section 76a, for an order setting aside the conviction;

(b) by striking out from subsection (4) the passage “, and of the rights of the defendant under section 27d of this Act” and substituting the passage “and of the provisions of section 76a”;

and

(c) by striking out from subsection (6) the passage “and the rights of the defendant under section 27d of this Act” and substituting the passage “and the provisions of section 76a”.

Repeal of
s. 27d.

7. Section 27d of the principal Act is repealed.

Amendment of
s. 42—
Clerks of
court.

8. Section 42 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

(1) The Governor may appoint a suitable person to be clerk of a court of summary jurisdiction.;

and

(b) by inserting after subsection (3) the following subsection:

(4) A special magistrate may appoint any suitable person to act, on a temporary basis, in the office of the clerk of a court of summary jurisdiction if the office is vacant, or the clerk is or will for any reason be unavailable to carry out the duties of his office.

Amendment of
s. 57a—
Procedure to
enable plea
of guilty to
be entered
in writing.

9. Section 57a of the principal Act is amended by inserting after subsection (7) the following subsection:

(7a) Where—

(a) the defendant named in a complaint and summons bearing the endorsements mentioned in subsection (1) gives written notice to the clerk of the court specified in the summons of his intention to plead not guilty to the charge;

and

(b) the clerk, by notice served personally or by post on the defendant, notifies him of a time and place at which the court will proceed with the hearing of the charge, the summons shall have effect as if the time and place notified by the clerk were substituted for the time and place fixed in the summons for the hearing of the complaint.

Amendment of
s. 62d—
Proof of
previous
convictions.

10. Section 62d of the principal Act is amended by inserting after subsection (2) the following subsections:

(3) A notice under this section may be served personally or by post.

(4) If the prosecution tenders a copy of a notice under this section as evidence of convictions, it is not precluded from tendering other evidence of the same or other convictions.

11. Section 72 of the principal Act is amended by inserting in subsection (1) after the word “, depositions,” the passage “, written reasons for judgment,”.

Amendment of s. 72—
Copies of various documents relating to proceedings.

12. The following heading and section are inserted after section 76 of the principal Act:

Insertion of new s. 76a and heading.

Application to have conviction or order of a court of summary jurisdiction set aside.

76a. (1) Subject to this section, a person against whom a conviction or order is made by a court of summary jurisdiction may apply to the same or some other court of summary jurisdiction for an order setting aside the conviction or order.

Power to set aside conviction or order of court of summary jurisdiction.

(2) An application under this section must be made within fourteen days of the day on which the applicant receives notice of the conviction or order to which the application relates.

(3) Where a court of summary jurisdiction is satisfied, upon an application under this section, that—

(a) the applicant did not receive notice of the proceedings in which the conviction or order was made, or not in sufficient time to enable him to attend the hearing;

or

(b) the applicant failed to attend the hearing for reasons that render it desirable, in the interests of justice, that the conviction or order should be set aside and the proceedings re-heard,

the court may set aside the conviction or order to which the application relates.

(4) Where a court of summary jurisdiction sets aside a conviction or order under this section it may, without further formality—

(a) proceed to re-hear the proceedings in which the conviction or order was made;

or

(b) refer the proceedings for re-hearing by some other court of summary jurisdiction.

13. Section 86 of the principal Act is repealed and the following section is substituted:

Repeal of s. 86 and substitution of new section.

86. (1) Where a justice is satisfied either by examination of records of a court of summary jurisdiction or by evidence produced before him, that default has been made in the payment of a fine or sum of money adjudged to be paid by a conviction or order, he may issue a warrant of distress or commitment.

Justice may issue warrant of distress or commitment.

(2) A warrant may be issued by a justice under subsection (1) notwithstanding that he is the clerk of the court of summary jurisdiction by which the conviction or order was made.

Amendment of
s. 163—
Appeals.

14. Section 163 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “(including a conviction of a minor indictable offence, or an order dismissing a complaint of a simple offence)” and substituting the passage “(including an order dismissing a charge of a simple offence or a minor indictable offence)”;

and

(b) by striking out subsection (1a).

Repeal of
s. 165 and
substitution
of new section

15. Section 165 of the principal Act is repealed and the following section is substituted:

Dispensation
with
requirements
of this Act
relating to
institution
of appeal.

165. (1) The Supreme Court may dispense with compliance with any provision of this Act relating to the institution of an appeal.

(2) A dispensation may be granted under subsection (1) unconditionally or upon such conditions as the Supreme Court thinks fit.

Repeal of
s. 171 and
substitution
of new section.

16. Section 171 of the principal Act is repealed and the following section is substituted:

Manner in
which appeal
is to be
instituted.

171. (1) An appeal is instituted by filing a notice of appeal in the Supreme Court.

(2) The notice of appeal must—

(a) identify the conviction, order or adjudication against which the appeal is made;

and

(b) set out in detail the grounds of appeal.

(3) Before the expiration of seven days from the day on which the notice of appeal is filed in the Supreme Court, copies of the notice must be served upon—

(a) the respondent;

and

(b) the clerk of the court of summary jurisdiction by which the conviction, order or adjudication subject to the appeal was made.

(4) Upon receipt by the clerk of a court of summary jurisdiction of a notice of appeal, the clerk shall transmit to the Registrar of the Supreme Court—

(a) a copy of the transcript of the evidence taken in proceedings to which the appeal relates;

(b) a certified copy of the conviction, order or adjudication to which the appeal relates;

and

(c) any other documents or exhibits relevant to the proceedings.

17. Sections 174 and 175 of the principal Act are repealed.

Repeal of
ss. 174 and
175.

18. Section 187a of the principal Act is amended—

Amendment of
s. 187a—
Proof of
convictions
or orders.

(a) by striking out the second sentence of subsection (1);

and

(b) by inserting after subsection (1) the following subsection:

(1a) The copy must be certified by—

(a) the person, or one of the persons, constituting the court by which the conviction or order was made;

(b) the clerk of that court, or, if that court no longer exists, the clerk of a court of summary jurisdiction to which the records of that court have been transferred;

or

(c) the Registrar.

19. The following heading and section are inserted after section 200a of the principal Act:

Insertion of
new section
200b and
heading.

Reciprocal Enforcement of Fines, etc., against Bodies Corporate.

200b. (1) In this section—

Reciprocal
Enforcement
of Fines, etc.
against Bodies
Corporate.

“fine” includes a pecuniary penalty, pecuniary forfeiture, pecuniary compensation and fees, charges and costs payable under a conviction or order of a court in the exercise of summary jurisdiction:

“reciprocating court” means a court of a reciprocating State or Territory declared by proclamation under this section to be a reciprocating court:

“reciprocating State or Territory” means another State or a Territory of the Commonwealth declared by proclamation under this section to be a reciprocating State or Territory.

(2) The Governor may by proclamation declare another State or a Territory of the Commonwealth (being a State or Territory having laws providing for enforcement in that State or Territory of a fine payable under a conviction or order of a court of summary jurisdiction in this State against a body corporate) to be a reciprocating State or Territory.

(3) The Governor may by proclamation declare a court having summary jurisdiction in a reciprocating State or Territory to be a reciprocating court.

(4) The Governor may, by subsequent proclamation, vary or revoke a proclamation under this section.

(5) Where, under a conviction or order of a reciprocating court made in the exercise of its summary jurisdiction, a fine is payable by a body corporate having or appearing to have property in this State and the clerk of a court of summary jurisdiction at or near to a place where the body corporate has or appears to have property receives a request in

writing from the clerk or other corresponding officer of that reciprocating court for the enforcement of the conviction or order accompanied by—

(a) a certified copy of the conviction or order;

and

(b) a certificate under the hand of the clerk or corresponding officer making the request certifying the amount of the fine outstanding under the conviction or order,

he shall register the conviction or order by filing in the court a certified copy of the conviction or order and shall note the date of registration on the copy.

(6) Upon the registration of a conviction or order under subsection (5)—

(a) the conviction or order shall for the purposes of this section be deemed to be a conviction or order of the court in which it is registered requiring payment by the body corporate of the amount of the fine stated in the certificate referred to in subsection (5) as outstanding;

(b) the clerk shall for the purposes of this section issue a warrant of distress for the purpose of recovering the amount of the fine required to be paid by levying against the goods and chattels of the body corporate;

and

(c) the warrant so issued shall be deemed to be a warrant of distress issued by a justice under this Act and the provisions of this Act shall, with all necessary adaptations, apply and extend accordingly with respect to the enforcement of that warrant.

(7) Where the clerk receives, after the request for the enforcement of the conviction or order, a notification from the clerk or other corresponding officer of the reciprocating court of payment by or on behalf of the body corporate of an amount in satisfaction in whole or in part of the amount of the fine outstanding, he shall—

(a) note the particulars of the payment on the certified copy of the conviction or order filed in the court;

and

(b) arrange for the return of the warrant issued under subsection (6) if it is unexecuted, and—

(i) withdraw it if the amount of the fine has been paid in full;

or

(ii) if part of the amount of the fine remains outstanding, amend the amount stated in the warrant to show the amount still outstanding, and the warrant shall then be enforced in respect of the altered amount.

(8) A sum of money paid to or received by a clerk of court of summary jurisdiction in satisfaction in whole or in part of a fine payable under a conviction or order enforced under subsection (6) shall be

remitted forthwith to the clerk or other corresponding officer of the reciprocating court by which the conviction or order was made.

(9) A sum of money paid to or received by a clerk of a court of summary jurisdiction from a reciprocating court in satisfaction in whole or in part of a fine payable under a conviction or order of the court of summary jurisdiction enforced by the reciprocating court shall be applied by the clerk of the court of summary jurisdiction as if the sum had been paid to the clerk by the body corporate by which the fine was payable in satisfaction in whole or in part of the fine.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 27 of 1982

An Act to continue the Corporate Affairs Commission; to establish the Companies Auditors and Liquidators Disciplinary Board; and for other purposes.

[Assented to 25 March 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PART I

PRELIMINARY

- | | |
|------------------------|---|
| Short title. | 1. This Act may be cited as the "Companies (Administration) Act, 1982". |
| Commence-
ment. | 2. This Act shall come into operation on the day on which the Companies (Application of Laws) Act, 1982, comes into operation. |
| Arrangement
of Act. | 3. This Act is arranged as follows:

PART I—PRELIMINARY

PART II—THE CORPORATE AFFAIRS COMMISSION
DIVISION I—THE CORPORATE AFFAIRS COMMISSION
DIVISION II—THE COMMISSIONER, DEPUTY COMMISSIONER AND ASSISTANT COMMISSIONER

PART III—THE COMPANIES AUDITORS AND LIQUIDATORS DISCIPLINARY BOARD. |
| Interpretation. | 4. In this Act, unless the contrary intention appears—

"the Board" means the Companies Auditors and Liquidators Disciplinary Board;

"the Commission" means the Corporate Affairs Commission continued under this Act;

"member" means a member of the Board and includes the deputy of a member. |

5. (1) The Companies Act, 1962-1981, is amended by repealing sections 8 and 9 and Part XIII.

(2) The Companies Act, 1962-1981, as amended by this section, may be cited as the "Companies Act, 1962-1982".

PART I
Repeal of
certain
provisions
of Companies
Act,
1962-1981.

—————

PART II

THE CORPORATE AFFAIRS COMMISSION

DIVISION I—THE CORPORATE AFFAIRS COMMISSION

6. (1) The Commission, entitled the "Corporate Affairs Commission", established by Part XIII of the Companies Act, 1962-1981, shall continue in existence.

(2) The Commission—

(a) shall be a body corporate with perpetual succession and a common seal;

(b) shall be capable of suing and being sued;

(c) shall be capable of acquiring, holding, dealing with, and disposing of any interest in real or personal property;

(d) shall be capable of acquiring or incurring any other rights or liabilities;

(e) shall hold its property for and on behalf of the Crown;

and

(f) shall have the powers, authorities, functions and duties conferred, assigned or imposed upon it by or under this or any other Act, or any law of the Commonwealth, a Territory of the Commonwealth or another State.

(3) The Commission shall be constituted of—

(a) the Commissioner;

or

(b) the Deputy Commissioner.

(4) An apparently genuine document purporting to bear the common seal of the Commission shall be presumed in any legal proceedings, in the absence of proof to the contrary, to have been duly executed by the Commission.

7. (1) Except where otherwise provided by this or any other Act, the Commission may, by instrument in writing, delegate all or any of its powers, authorities, functions or duties (except this power of delegation) under this or any other Act to any person and those powers, authorities, functions or duties may be exercised or performed by that person accordingly.

PART II

DIVISION I

Corporate
Affairs
Commission.

Delegation.

PART II
DIVISION I

(2) The Commission may by instrument in writing revoke or vary any delegation given under subsection (1).

(3) The exercise or performance of any power, authority, function or duty by a delegate pursuant to subsection (1) shall not affect the exercise or performance of that power, authority, function or duty by the Commission.

Accounts.

8. (1) The Commission shall keep proper accounts of all moneys received or disbursed by the Commission.

(2) The Auditor-General may at any time, and shall at least once in each calendar year, audit the accounts of the Commission.

(3) The Auditor-General shall have in relation to the accounts and officers of the Commission the powers that are vested in the Auditor-General by the Audit Act, 1921-1981, in relation to public accounts and accounting officers.

DIVISION II DIVISION II—THE COMMISSIONER, DEPUTY COMMISSIONER AND ASSISTANT COMMISSIONER

Appointment of the Commissioner.

9. (1) There shall be a Commissioner for Corporate Affairs.

(2) The Commissioner shall be appointed, and shall hold office, subject to, and in accordance with, the Public Service Act, 1967-1981.

Deputy Commissioner for Corporate Affairs.

10. (1) There shall be a Deputy Commissioner for Corporate Affairs.

(2) The Deputy Commissioner shall be appointed, and shall hold office, subject to, and in accordance with, the Public Service Act, 1967-1981.

Assistant Commissioner for Corporate Affairs.

11. (1) There shall be an Assistant Commissioner for Corporate Affairs.

(2) The Assistant Commissioner shall be appointed, and shall hold office, subject to, and in accordance with, the Public Service Act, 1967-1981.

Officers of the Commission.

12. (1) There shall be such officers of the Commission as are necessary to enable it to perform its functions and duties and to exercise its powers and authorities.

(2) All such officers shall be appointed, and shall hold office, under the Public Service Act, 1967-1981.

(3) For the purposes of the exercise or discharge by the Commission of its powers, authorities, duties and functions, the Commission may, with the approval of the Minister and of the body or person concerned and on such terms and conditions as may be approved by the Public Service Board, make use of the services of any of the officers, employees or servants of any body or person.

(4) The Commission may, with the approval of the Public Service Board and on such terms and conditions as may be approved by the Board, appoint persons to be officers of the Commission for the purpose of conducting or assisting in the conduct of investigations or inspections under the *Companies (South Australia) Code* or under the *Securities Industry (South Australia) Code*.

(5) A person may be appointed to be an officer of the Commission pursuant to subsection (4) for a term not exceeding three years, and upon the expiration of that term, shall be eligible for reappointment.

(6) An officer referred to in subsection (3) is not (in his capacity as such) an officer within the meaning of the Public Service Act, 1967-1981, but, if the terms and conditions on which he is appointed so provide, any specified provisions of that Act or the regulations under that Act, whether with or without specified modifications, apply to and in respect of him as if he were an employee within the meaning of that Act.

PART III

PART III

THE COMPANIES AUDITORS AND LIQUIDATORS DISCIPLINARY BOARD

13. For the purposes of the *Companies (South Australia) Code* there shall be a Companies Auditors and Liquidators Disciplinary Board, which shall perform the functions and may exercise the powers conferred on it under Division 2 of Part II of that Code.

Companies
Auditors
and
Liquidators
Disciplinary
Board.

14. (1) The Board shall consist of three persons appointed by the Governor of whom—

Membership
of the Board.

(a) one shall be a duly qualified legal practitioner of not less than five years' standing who shall be the chairman of the Board;

(b) one shall be selected from a panel of three names nominated by the State Council of the Institute of Chartered Accountants in Australia;

and

(c) one shall be selected from a panel of three names nominated by the Council of the State Division of the Australian Society of Accountants.

(2) If a Council fails to submit a panel of names in accordance with paragraphs (b) or (c) of subsection (1) within a reasonable time after being requested to do so by the Minister, the Governor may appoint a person of his choice.

(3) The Governor may appoint a person to be the deputy of a member of the Board and that person may, in the absence of the member of whom he has been appointed a deputy, act as a member of the Board.

(4) A person appointed to be the deputy of the Chairman of the Board shall be a duly qualified legal practitioner of not less than five years' standing and shall act as Chairman of the Board in the absence of the Chairman.

(5) No act or proceeding of the Board shall be invalid by reason only of a vacancy in the office of a member, or a defect in the appointment of a member.

(6) A person who immediately before the commencement of this Act, was a member of the Companies Auditors Board constituted under the Companies Act, 1962-1981, shall, from the commencement of this Act, be a member of the Companies Auditors and Liquidators Disciplinary Board and shall be deemed to have been appointed to hold office for the period expiring on the date on which the period for which he was appointed under the Companies Act, 1962-1981, would have expired.

(7) A person who, immediately before the commencement of this Act, was the deputy of a member of the Companies Auditors Board constituted under the Companies Act, 1962-1981, shall be deemed to be the deputy of that member of the Companies Auditors and Liquidators Disciplinary Board under this Act.

Exercise
of powers
of Board.

15. Any two members of the Board shall have and may exercise all or any of the powers or authorities of the Board.

Term of
office.

16. A member shall hold office for such time not exceeding three years as is fixed by the terms of his appointment and shall be eligible for re-appointment but a member shall cease to hold office—

- (a) if, without leave of the Board, he is absent from three consecutive meetings of the Board;
- (b) if he becomes an insolvent under administration within the meaning of the *Companies (South Australia) Code*;
- (c) if he is convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for three months or more;
- (d) if he becomes incapable by reason of mental infirmity of managing his affairs;

or

- (e) if he resigns or dies.

Remuneration.

17. Each member of the Board shall be entitled to such remuneration, allowances and expenses as are prescribed.

Companies
Auditors
Board to
continue in
existence.

18. (1) Notwithstanding the repeal of sections 8 and 9 of the Companies Act, 1962-1981, by this Act, the Companies Auditors Board established by the Companies Act, 1962-1981, continues in existence for such period as is necessary for the Companies Auditors Board to complete any inquiry under section 9 (9) of the Companies Act, 1962-1981, that had been commenced by the Companies Auditors Board but had not been completed before the repeal of sections 8 and 9 of the Companies Act, 1962-1981, and the Companies Auditors Board has, for the purposes of completing such an inquiry, all the powers that it would have had if those sections had not been repealed.

(2) Where, pursuant to subsection (1), the Companies Auditors Board completes an inquiry, the Companies Auditors Board shall not exercise any of the powers mentioned in section 9 (12) of the Companies Act, 1962-1981, but shall furnish to the National Companies and Securities Commission a report on the inquiry.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 28 of 1982

An Act to make provision for the formation of companies in South Australia, the regulation of companies formed in South Australia, the registration in South Australia of certain other bodies and certain other matters, and for other purposes.

[Assented to 25 March 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PART I

PRELIMINARY

1. This Act may be cited as the Companies (Application of Laws) Act, 1982.” Short title.

2. This Act shall come into operation on a day to be fixed by proclamation. Commence-
ment.

3. This Act is arranged as follows: Arrangement
of Act.

PART I—PRELIMINARY

PART II—APPLICATION OF LAWS

PART III—TRANSITIONAL PROVISIONS

4. (1) In this Act, unless the contrary intention appears— Interpretation.

“Agreement” means the agreement made on the twenty-second day of December, 1978, between the Commonwealth and the States in relation to a proposed scheme for the co-operative regulation of companies and the securities industry or, if that agreement is or has been amended or affected by another agreement, that agreement as so amended or affected:

“Commission” or “National Commission” means the National Companies and Securities Commission established by the *National Companies and Securities Commission Act 1979* of the Commonwealth:

“Ministerial Council” means the Ministerial Council for Companies and Securities established by the Agreement:

“State Commission” means the Corporate Affairs Commission continued in existence by the Companies (Administration) Act 1982:

“the applied provisions” means the provisions applying by reason of sections 6 and 7:

“the Commonwealth Act” means the *Companies Act* 1981 of the Commonwealth:

(2) In this Act, a reference to a Commonwealth Act shall be construed as including a reference to that Act as amended and in force for the time being and to an Act passed in substitution for that Act.

Interpretation
of *Companies*
(*South*
Australia)
Code.

5. The Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981, applies to the *Companies (South Australia) Code*.

PART II

PART II

APPLICATION OF LAWS

6. Subject to this Act, the provisions of the Commonwealth Act (other than sections 1, 2, 3 and 4) apply— Application of Commonwealth Act.

(a) as if amended as set out in schedule 1;

and

(b) subject to and in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981,

as laws of South Australia.

7. Subject to this Act, the provisions of regulations in force for the time being under the Commonwealth Act (other than provisions providing for the citation or commencement of the regulations) apply— Application of company regulations.

(a) as if amended as set out in schedule 2;

and

(b) subject to and in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981,

as regulations made under the provisions applying by reason of section 6.

8. (1) There shall be paid to the State Commission, for and on behalf of the State, for or in respect of— Fees payable.

(a) the lodgment of documents with the National Commission under the applied provisions;

(b) the registration of documents under the applied provisions or the inspection or search of registers kept by, or documents in the custody of, the National Commission under the applied provisions;

(c) the production by the National Commission, pursuant to a subpoena, of any register kept by, or documents in the custody of, the National Commission under the applied provisions;

(d) the issuing of documents or copies of documents, the granting of licences, consents or approvals or the doing of other acts or things by the Ministerial Council or the National Commission under the applied provisions;

(e) the making of inquiries of, or applications to, the Ministerial Council or the National Commission in relation to matters arising under the applied provisions;

and

(f) the submission to the National Commission of documents for examination by the National Commission,

such fees (if any) as are prescribed by regulations in force for the time being under the *Companies (Fees) Act* 1981 of the Commonwealth and specified

in the schedule to those regulations as if amended as set out in schedule 3 and as if, unless the contrary intention appears, the expressions used had the same respective meanings as in the applied provisions.

(2) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for or in respect of the lodgment of a document with the National Commission and the document is submitted for lodgment without payment of the fee, the document shall be deemed not to have been lodged until the fee has been paid.

(3) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for or in respect of any matter involving the doing of any act or thing by the Ministerial Council or the National Commission, the Ministerial Council or the National Commission shall not do that act or thing until the fee has been paid.

(4) This section has effect notwithstanding anything contained in the applied provisions.

(5) Nothing in this section prevents the State Commission for and on behalf of the State from—

(a) waiving or reducing, in a particular case or classes of cases, fees that would otherwise be payable pursuant to this section;

or

(b) refunding, in whole or in part, in a particular case or classes of cases, fees paid pursuant to this section.

(6) In this section, unless the contrary intention appears, expressions used have the same respective meanings as in the applied provisions.

Amendment of regulations pursuant to Agreement.

9. (1) Where, under the Agreement, the Ministerial Council approves a proposed amendment of regulations in force for the time being under the Commonwealth Act or the *Companies (Fees) Act* 1981 of the Commonwealth and, upon the expiration of six months after the date on which the Ministerial Council so approved, the amendment has not been made or has been made and is subject to disallowance or has ceased to be in force by disallowance or for any other reason, the Governor may make regulations in accordance with the proposed amendment approved by the Ministerial Council amending the provisions of regulations applying by reason of section 7 or the regulations referred to in section 8, as the case may be.

(2) Regulations made by the Governor under subsection (1) may amend schedule 2 or 3, as the case may be, and that schedule as so amended shall be schedule 2 or 3, as the case may be, to this Act.

(3) In this Act—

(a) a reference to provisions of regulations applying by reason of section 7 includes a reference to provisions as so applying as amended in accordance with this section;

and

(b) a reference to fees prescribed by regulations under the *Companies (Fees) Act* 1981 of the Commonwealth includes a reference to those regulations as amended in accordance with this section.

10. (1) The Minister may from time to time authorize the publication by the Government Printer of the provisions of the Commonwealth Act (other than sections 1, 2, 3 and 4), amended as set out in schedule 1 and in operation, or to come into operation, in South Australia.

Publication
of Companies
(South
Australia)
Code.

(2) A document published under subsection (1)—

- (a) shall include the headings and sections set out in schedule 4;
- (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come into operation in South Australia;
- (c) shall include a statement of the date on which the Minister authorized the publication;

and

(d) may be cited as the *Companies (South Australia) Code*.

(3) A document that is, or purports to be, a copy of the *Companies (South Australia) Code* that has been, or purports to have been, published in accordance with this section is *prima facie* evidence of the provisions of the Commonwealth Act applying by reason of section 6 as in operation, or to come into operation in South Australia as notified in the document in accordance with paragraph (b) of subsection (2).

11. (1) The Minister may from time to time authorize the publication by the Government Printer of the provisions of regulations under the Commonwealth Act (other than provisions providing for the citation or commencement of the regulations) amended as set out in schedule 2 and in operation, or to come into operation in South Australia.

Publication
of Companies
(South
Australia)
Regulations.

(2) A document published under subsection (1)—

- (a) shall include the headings and provisions set out in schedule 5;
- (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come into operation in South Australia;
- (c) shall include a statement of the date on which the Minister authorized the publication;

and

(d) may be cited as the *Companies (South Australia) Regulations*.

(3) A document that is or purports to be a copy of the *Companies (South Australia) Regulations* that has been, or purports to have been, published in accordance with this section is *prima facie* evidence of the provisions applying by reason of section 7 as in operation, or to come into operation, in South Australia as notified in the document in accordance with paragraph (b) of subsection (2).

12. (1) The Minister may from time to time authorize the publication by the Government Printer of the schedule to regulations prescribing fees under the *Companies (Fees) Act 1981* of the Commonwealth amended as set out in schedule 3 and in operation, or to come into operation, in South Australia.

Publication
of Companies
(Fees) (South
Australia)
Regulations.

(2) A document published under subsection (1)—

- (a) shall include the headings and provisions set out in schedule 6;

(b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come, into operation in South Australia;

(c) shall include a statement of the date on which the Minister authorized the publication;

and

(d) may be cited as the *Companies (Fees) (South Australia) Regulations*.

(3) A document that is, or purports to be, a copy of the *Companies (Fees) (South Australia) Regulations* that has been, or purports to have been, published in accordance with this section is *prima facie* evidence of the provisions of the schedule to regulations referred to in section 8 as in operation, or to come into operation, in South Australia as notified in the document in accordance with paragraph (b) of subsection (2).

Publication of provisions of amended code or regulations.

13. (1) The Minister may from time to time authorize the publication by the Government Printer of a document setting out—

(a) provisions that by reason of—

(i) the enactment of an Act of the Commonwealth amending the Commonwealth Act;

and

(ii) the operation of section 6 (including the operation, if applicable, of schedule 1),

apply, or will apply, as laws of South Australia;

(b) provisions that by reason of—

(i) regulations under the Commonwealth Act;

(ii) the operation of section 7 (including the operation, if applicable, of schedule 2),

apply, or will apply, as regulations made under the provisions applying by reason of section 6;

or

(c) fees that by reason of—

(i) regulations under the *Companies (Fees) Act 1981* of the Commonwealth;

and

(ii) the operation of section 8 (including the operation, if applicable, of schedule 3),

are, or will be, payable under that section.

(2) A document published under subsection (1) shall include a notification of the date, or dates, on which the provisions or fees set out in the document came, or come, into operation in South Australia.

(3) A document that has been or purports to have been published in accordance with this section is *prima facie* evidence of provisions or fees referred to in subsection (1) set out in the document.

14. (1) Unless the contrary intention appears, in this or any other Act or in a regulation or other instrument made under this or any other Act or in any other document made by or under the authority of, or for the purposes of, a law of South Australia—

- (a) a reference to the *Companies (South Australia) Code* is a reference to the provisions of the Commonwealth Act applying by reason of section 6;
- (b) a reference to a provision of that Code is a reference to the corresponding provision of the Commonwealth Act as so applying;
- (c) a reference to the *Companies (South Australia) Regulations* is a reference to the provisions of regulations in force under the Commonwealth Act applying by reason of section 7;
- (d) a reference to a provision of those regulations is a reference to the corresponding provision of the regulations in force under the Commonwealth Act as so applying;
- (e) a reference to the *Companies (Fees) (South Australia) Regulations* is a reference to the schedule to regulations prescribing fees in force under the *Companies (Fees) Act 1981* of the Commonwealth as referred to in section 8;

and

- (f) a reference to a provision of that schedule is a reference to the corresponding provision of the schedule to regulations prescribing fees in force under that Act as referred to in section 8.

(2) In subsection (1), “provision” includes Part, Division, section, subsection, paragraph, subparagraph, schedule, form, regulation, clause, subclause or other division.

15. Where, under the Agreement, the Ministerial Council—

(a) approves—

- (i) a proposed amendment of the Commonwealth Act;
- (ii) regulations proposed to be made under the Commonwealth Act (whether or not amending other regulations);
- (iii) a proposed amendment of the *Companies (Fees) Act 1981* of the Commonwealth;

or

- (iv) regulations proposed to be made under that Act (whether or not amending other regulations);

and

(b) approves proposed regulations to be made under this Act in connection with the operation of the proposed amendment or regulations referred to in paragraph (a),

the Governor may make regulations amending schedule 1, 2 or 3 or section 8, as the case may be, in accordance with that approval and that schedule or section as so amended shall be schedule 1, 2 or 3 or section 8, as the case may be, of this Act.

Amendment of
certain
provisions in
accordance
with approval
of Ministerial
Council.

PART II

Exemptions
from
Division 6
of Part IV
of the
Companies
(South
Australia)
Code.

16. (1) Where the Ministerial Council approves the exemption of a company from complying with all or any of the provisions of Division 6 of Part IV of the *Companies (South Australia) Code* in relation to any prescribed interest, or class of prescribed interests, specified by the Ministerial Council, the Governor may make regulations exempting that company, subject to such terms and conditions as are specified in the regulations, from so complying.

(2) Where the Ministerial Council approves—

(a) a body corporate incorporated in the State, not being a company within the meaning of the *Companies (South Australia) Code*;

or

(b) an unincorporated society, association or other body, formed or established in the State, that has been admitted to the official list of a stock exchange that is a prescribed stock exchange for the purposes of that Code and has not been removed from that official list,

as a prescribed corporation for the purposes of Division 8 of Part IV of that Code, the Governor may make regulations prescribing that body corporate, unincorporated society, association or other body as a prescribed Corporation for the purposes of that Division.

(3) Where the Ministerial Council approves the declaration of a right or interest, or a right or interest included in a class or kind of rights or interests as an exempt right or interest, or a class or kind of exempt rights or interests, for the purposes of Division 6 of Part IV of the *Companies (South Australia) Code*, the Governor may make regulations declaring that right or interest, or a right or interest included in that class or kind of rights or interests, to be, subject to such terms and conditions as are specified in the regulations, an exempt right or interest, or a class or kind of exempt rights or interests, for the purposes of that Division.

(4) Where, immediately before the commencement of this Act, a right or interest was, under regulations under the Companies Act, 1962-1981, an exempt right or interest for the purposes of section 76 (1) (g) or of Division V of Part IV of that Act, that right or interest shall be deemed to have been declared by regulations under this section to be an exempt right or interest for the purposes of Division 6 of Part IV of the *Companies (South Australia) Code*.

(5) A right or interest to which subsection (4) applies ceases to be an exempt right or interest for the purposes of Division 6 of Part IV of the *Companies (South Australia) Code* if the Governor makes regulations declaring that it so ceases.

(6) Regulations under this section shall be read and construed as one with the Companies (South Australia) Regulations.

PART III

PART III

TRANSITIONAL PROVISIONS

17. Expressions used in this Part that are defined by section 5 of the *Companies (South Australia) Code* or in the *Companies and Securities (Interpretation and Miscellaneous Provisions) (South Australia) Code* have in this Part, unless the contrary intention appears, the respective meanings given to those expressions by that section or in that Code. Interpretation.

18. The provisions applying by reason of section 6 operate to the exclusion of the provisions of the Companies Act, 1962-1981, the Marketable Securities Act, 1971, and the Securities Industry Act, 1979-1980, in relation to acts, matters and things in relation to which the first-mentioned provisions apply. Exclusion of Companies Act, 1962-1981, &c.

19 (1) The provisions of section 18 do not, unless the contrary intention appears— Saving Provision.

- (a) revive anything not in force or existing at the time at which the exclusion of the provisions of the Companies Act, 1962-1981, the Marketable Securities Act, 1971, and the Securities Industry Act, 1979-1980, takes effect;
 - (b) affect the previous operation of any of those Acts or anything duly done or suffered under any of those Acts;
 - (c) affect any right, privilege, obligation or liability acquired or incurred under any of those Acts;
 - (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any of those Acts;
- or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if section 18 had not been enacted.

(2) For the purposes of the operation of subsection (1)—

- (a) the provisions of section 7 (4) to (13) of the Companies Act, 1962-1981, and of any regulations prescribing fees for the purposes of section 7 (12) of that Act;

and

- (b) any other provisions of that Act or regulations under that Act that are necessary for the effectual operation of the provisions mentioned in paragraph (a),

continue in force as if this Act had not been enacted, but it is not a contravention of section 7 (7) of the Companies Act, 1962-1981, as so continuing in force to divulge or communicate information to the National Commission or to a person authorized by the National Commission to receive that information.

20. Unless the contrary intention appears in this Act or in the *Companies (South Australia) Code* all persons, things and circumstances appointed or created by or under the Companies Act, 1962-1981, or existing or continuing General provisions.

under that Act immediately before the commencement of this Act shall, under and subject to this Act and to the *Companies (South Australia) Code*, continue to have the same status, operation and effect as they respectively would have had if this Act had not been enacted.

Particular provisions.

21. Without affecting the generality of section 20, unless the contrary intention appears in this Act, or in the *Companies (South Australia) Code*, neither this Act nor the *Companies (South Australia) Code* disturbs the continuity of status, operation or effect of any order, rule, regulation, scale of fees, appointment, conveyance, mortgage, charge, deed, agreement, resolution, direction, approval, application, requisition, instrument, document, memorandum, articles, incorporation, nomination, affidavit, call, forfeiture, minute, assignment, register, registration, transfer, list, licence, certificate, security, notice, compromise, arrangement, right, priority, liability, duty, obligation, proceeding, matter or thing made, done, effected, given, issued, passed, taken, validated, entered into, executed, lodged, filed, accrued, incurred, existing, pending or acquired by or under the Companies Act, 1962-1981, before the commencement of this Act.

Proceedings by or against State Commission to be proceedings by or against National Commission.

22. (1) Where, before the commencement of this Act, a proceeding under the Companies Act, 1962-1981, had been commenced by or against the State Commission, the proceeding may be continued by or against the National Commission.

(2) Where, but for the enactment of this Act, a proceeding under the Companies Act, 1962-1981, could have been commenced by or against the State Commission, the proceeding may be commenced by or against the National Commission.

Property vested in State Commission vests in National Commission.

23. Where, immediately before the commencement of this Act, property was vested in the State Commission by reason of the operation of section 310 of the Companies Act, 1962-1981, the property vests by force of this section in the National Commission and sections 462, 463 and 464 of the *Companies (South Australia) Code* apply in relation to the property in like manner as they would apply if the property had vested in the National Commission pursuant to section 461 of that Code.

Registers, funds and accounts.

24. Any register, fund or account kept immediately before the commencement of this Act under any provision of the Companies Act, 1962-1981, shall be deemed to be part of a register, fund or account kept under the corresponding provision of the *Companies (South Australia) Code*.

Acts of Minister under Companies Act, 1962-1981, deemed to be acts of Ministerial Council or National Commission, &c.

25. (1) In this section—

“the Act” means the Companies Act, 1962-1981:

“the Code” means the *Companies (South Australia) Code*:

“the *Gazette*” means the Commonwealth of Australia *Gazette*.

(2) Where the Minister had given consent under section 22 (1) of the Act to the registration of a company or an intended company by a specified name and the company had not been registered by that name before the commencement of this Act, the consent shall be deemed to have been a consent to the reservation or registration of that name in respect of that company or intended company given by the Ministerial Council under section 38 (2) of the Code.

(3) A licence issued to a company under section 24 of the Act or the corresponding provision of a previous enactment and in force immediately before the commencement of this Act continues in force as if—

(a) the licence were a licence issued by the Commission under section 66 of the Code;

and

(b) where the company was exempt from complying with provisions of the Act—the licence exempted the company from complying with the corresponding provisions of the Code,

and a reference in the Code to a licence under section 66 of the Code shall be construed as including a reference to a licence to which this subsection applies.

(4) A declaration under section 38 (7) (b) or (c) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission under section 97 (7) (b) or (c), as the case may be, of the Code.

(5) A notice under section 38 (8) of the Act and in force immediately before the commencement of this Act shall be deemed to be a notice by the Commission published under section 97 (9) of the Code.

(6) Where, under section 44 (3) of the Act, an allotment of shares or debentures had been exempted from the operation of section 44 of the Act, and that exemption was in force immediately before the commencement of this Act, that allotment of shares or debentures shall be deemed to have been exempted by the Commission, under section 105 (3) of the Code, from the operation of section 105 of the Code.

(7) A declaration under section 69a (2) (b) or (c) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Ministerial Council by order published in the *Gazette* under section 134 (2) (b) or (c), as the case may be, of the Code.

(8) An approval under section 74 (1) (e) of the Act and in force immediately before the commencement of this Act shall be deemed to be an approval given by the Commission under section 152 (1) (h) of the Code.

(9) An order under section 74d (2) of the Act and in force immediately before the commencement of this Act shall be deemed to be an order made by the Commission under section 156 (2) of the Code.

(10) Where, under section 74d (2) of the Act, the trustee for the holders of debentures had been directed to apply to the Court for an order under section 74d (4) of the Act and at the commencement of this Act the trustee had not complied with that direction, the trustee shall be deemed to have been directed by the Commission under section 156 (2) of the Code to apply to the Court for an order under section 156 (4) of the Code.

(11) A declaration under section 74f (4) (d) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission under section 158 (10) of the Code.

(12) A notice under section 74f (4) (e) of the Act and in force immediately before the commencement of this Act shall be deemed to be a notice published by the Commission under section 158 (11) (a) of the Code.

(13) A declaration under section 80 (1a) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission under section 168 (2) of the Code.

(14) Where, before the commencement of section 71 of the Companies Act Amendment Act, 1979, a notice was published under section 88 of the Act purporting to exempt a company, subject to such terms and conditions as were specified in the notice from complying with the provisions of section 80 (1) of the Act in respect of a deed specified in the notice, the notice—

(a) shall, notwithstanding any provision of the Act or the Code, have effect and be deemed always to have had effect according to its tenor;

and

(b) may, notwithstanding any provision of the Code, be varied or revoked by the Commission by notice published in the *Gazette*.

(15) A direction under section 84 (3) of the Act and in force immediately before the commencement of this Act shall be deemed to be a direction given by the Commission under section 172 (5) of the Code.

(16) A declaration under section 84 (4) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration given by the Commission under section 172 (6) of the Code.

(17) Where a company had been exempted by notice under section 88 of the Act from complying in relation to an interest, or class of interests, specified in the notice, with all or any of the provisions of Division V of Part IV of the Act and that exemption was in force immediately before the commencement of this Act, that company is, subject to such terms and conditions (if any) as were specified in that notice, deemed to have been exempted from complying in relation to that interest, or class of interests with the provisions of Division 6 of Part IV of the Code that correspond with the provisions specified in that notice and, for the purposes of section 176 of the Code, the notice shall be deemed to have been a notice published in the *Gazette* under section 176 (1).

(18) An order under section 160 (2) of the Act and in force immediately before the commencement of this Act shall be deemed to be an order made by the Commission published under section 265 (2) of the Code requiring the company to comply with the provisions of Division 5 of Part V of the Code and of the regulations made for the purposes of that Division that correspond with the provisions of the Act specified in the order.

(19) An order under section 162c (1) of the Act and in force immediately before the commencement of this Act shall be deemed to be an order made by the Commission under section 273 (1) of the Code relieving the directors of the company named in the order from compliance with the requirements of the Code that correspond with the requirements of the Act specified in the order and shall be deemed—

(a) where the order required the directors to comply with other requirements relating to the form and content of accounts, group accounts or reports—to have been made on condition that the directors comply with those requirements;

and

(b) where the order was limited to a specified period—to be limited to the same period.

(20) An order under section 162c (2) of the Act in respect of a specified class of companies and in force immediately before the commencement of this Act shall be deemed to be an order made by the Commission under section 273 (5) of the Code relieving the directors of companies included in the specified

class of companies from compliance with the requirements of the Code that correspond with the requirements of the Act specified in the order and shall be deemed—

(a) where the order required the directors of companies included in the specified class of companies to comply with other requirements relating to the form and content of accounts, group accounts or reports—to have been made on condition that the directors comply with those requirements;

and

(b) where the order was limited to a specified period—to be limited to the same period.

(21) A proclamation by the Governor or a declaration made by the Minister by order published in the *Government Gazette* under section 334 (2) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission by order published in the *Gazette* under section 490 (3) of the Code.

(22) A proclamation by the Governor or an order by the Minister published in the *Government Gazette* under section 339 (b) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission by order published in the *Gazette* under section 495 (2) of the Code.

(23) A declaration under section 348 (5) (b) or (c) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission by order published in the *Gazette* under section 516 (7) (b) or (c) as the case may be, of the Code.

(24) Where the Minister had given consent under section 353 (1) of the Act to the registration of a foreign company by a specified name and the foreign company had not been registered by that name before the commencement of this Act, the consent shall be deemed to be a consent given by the Ministerial Council under section 38 (2) of the Code.

(25) Where the Minister had given consent under section 353 (2) of the Act to the registration of a change in the name of a foreign company to a specified new name and the change of name had not been registered before the commencement of this Act, the consent shall be deemed to be a consent to the reservation or registration of that name in respect of that foreign company given by the Ministerial Council under section 38 (2) of the Code.

(26) Where, under section 374 (2) of the Act, a corporation had been exempted from the provisions of section 374 (1) of the Act, and that exemption was in force immediately before the commencement of this Act, that corporation shall be deemed to have been exempted by the Commission by instrument in writing published in the *Gazette* under section 552 (2) of the Code from the provisions of section 552 (1) of the Code.

26. (1) A name under which a company was registered under the Companies Act, 1962-1981, immediately before the commencement of this Act shall, for the purposes of Division 2 of Part III of the *Companies (South Australia) Code* be deemed to be registered under that Division in respect of that company unless and until the registration of the name is cancelled, or ceases to be in force, under that Division. ^{Names.}

(2) A reference in subsection (1) to a company shall be construed as including a reference to a corporation that, immediately before the commencement of this Act, was registered under the Companies Act, 1962-1981, as a foreign company whether that corporation is, for the purposes of the *Companies (South Australia) Code*, a recognized company or a foreign company.

(3) Where, within the period of two months immediately preceding the date of commencement of this Act—

(a) a name was reserved under section 22 (8) of the Companies Act, 1962-1981;

or

(b) the period for which a name was reserved under that Act was extended by the State Commission under section 22 (9) of that Act,

the name shall, for the purposes of the *Companies (South Australia) Code* be deemed to be reserved under Division 2 of Part III of that Code until the date on which the reservation of that name under the Companies Act, 1962-1981, would have ceased.

Continued application of Table A and Table B in certain circumstances.

27. (1) Nothing in this Act or in the *Companies (South Australia) Code* affects—

(a) Table A, or any part of Table A, of the fourth schedule to the Companies Act, 1962-1981, (either as originally enacted or as amended from time to time) or the corresponding Table, or any part of the corresponding Table, in any corresponding previous law of the State (either as originally enacted or as so amended) so far as it applies to a company existing immediately before the commencement of this Act;

or

(b) Table B, or any part of Table B, of the fourth schedule to the Companies Act, 1962-1981 (either as originally enacted or as amended from time to time) or the corresponding Table, or any part of the corresponding Table, in any corresponding previous law of the State (either as originally enacted or as so amended) so far as it applies to a company existing immediately before the commencement of this Act.

(2) This section does not prevent the articles of a company adopting, in accordance with section 75 (1) of the *Companies (South Australia) Code*, all or any of the regulations contained in Table A or Table B of schedule 3 to that Code.

Existing prospectuses and section 82 statements.

28. (1) Where a prospectus was registered under the Companies Act, 1962-1981, within the period of six months before the commencement of this Act, the prospectus shall, for the purposes of the *Companies (South Australia) Code*, until the expiration of the period of six months after the date on which it was registered, be deemed to be a prospectus registered under that Code.

(2) Where a statement under section 82 of the Companies Act, 1962-1981, was registered under that Act within the period of six months before the commencement of this Act, the statement shall, for the purposes of the *Companies (South Australia) Code*, until the expiration of the period of six months after the date on which it was registered, be deemed to be a statement that has been registered under Division 1 of Part IV of the *Companies (South Australia) Code* as required by section 170 (1) of that Code.

29. Section 169 of the *Companies (South Australia) Code* does not apply to or in relation to an issue to the public of an interest, an offer to the public for purchase of an interest, or an invitation to the public to purchase an interest, that—

(a) is an interest in a partnership agreement;

and

(b) was subscribed for or first purchased before 5th October, 1972.

Interests in
partnership
agreements.

30. (1) In this section “company” includes a foreign company that is registered as a foreign company under the *Companies (South Australia) Code*.

Registration of
charges.

(2) Where, before the commencement of this Act, a company created a relevant charge, or acquired a property subject to a relevant charge—

(a) if the charge was, immediately before the commencement of this Act, registered under Division VII of Part IV of the *Companies Act, 1962-1981*—

(i) the charge shall be deemed to be duly registered under Division 9 of Part IV of the *Companies (South Australia) Code* from and including the commencement of this Act;

and

(ii) the Commission shall cause to be entered in the Register of Company Charges kept under section 203 (1) of the *Companies (South Australia) Code* in relation to the charge, the time and date determined in accordance with subsection (6) of this section and the particulars mentioned in section 203 (2) of that Code;

or

(b) if the charge was, immediately before the commencement of this Act, registered under the provisions of a law of another State or of a Territory that corresponded with Division VII of Part IV of the *Companies Act, 1962-1981*, but was not registered under Division VII of Part IV of that Act—

(i) the charge shall be deemed to be duly registered under Division 9 of Part IV of the *Companies (South Australia) Code* from and including the commencement of this Act;

and

(ii) the Commission shall cause to be entered in the Register of Company Charges kept under section 203 (1) of the *Companies (South Australia) Code*, in relation to the charge, the time and date determined in accordance with subsection (6) of this section and such of the particulars mentioned in section 203 (2) of that Code as it is able to ascertain.

(3) Where all the documents relating to a relevant charge on property of a company that were required by Division VII of Part IV of the *Companies Act, 1962-1981*, or the provisions of a law of another State or of a Territory that corresponded with that Division to be lodged for registration under that Division or those provisions, as the case may be, were duly lodged not later

than 30 days before the date of commencement of this Act but the charge had not been registered under that Division or those provisions before that date and registration had not been refused—

- (a) the charge shall be deemed to be duly registered under Division 9 of Part IV of the *Companies (South Australia) Code* from and including the commencement of this Act;

and

- (b) the Commission shall cause to be entered in the Register of Company Charges kept under section 203 (1) of the *Companies (South Australia) Code*, in relation to the charge, the time and date determined in accordance with subsection (6) of this section and the particulars mentioned in section 203 (2) of that Code.

(4) A charge is a relevant charge for the purposes of subsection (2) or (3) where—

- (a) in the case of a charge created by the company—if the charge had been created after the commencement of this Act, the charge would have been required to be registered under Division 9 of Part IV of the *Companies (South Australia) Code*;

or

- (b) in the case of a charge on property acquired by the company—if the company had acquired the property after the commencement of this Act, the charge would have been required to be registered under Division 9 of Part IV of the *Companies (South Australia) Code*.

(5) Where two or more charges on the same property of a company are deemed by subsection (2) or (3) to be duly registered under Division 9 of Part IV of the *Companies (South Australia) Code* from and including the commencement of this Act, those charges have, as between themselves, the respective priorities that they would have had if this Act had not been enacted.

(6) The time and date to be entered in the Register of Company Charges in relation to a charge pursuant to subsection (2) or (3) is 9.00 a.m. on the date of commencement of this Act.

(7) Nothing in section 205 of the *Companies (South Australia) Code* operates to render a charge to which subsection (2) or (3) applies void as a security on property of the company as against a liquidator or official manager of the company.

(8) Where—

- (a) before the commencement of this Act a company created a charge or acquired property subject to a charge, being in either case a charge that was required to be registered under Division VII of Part IV of the *Companies Act, 1962-1981*;

(b) at the commencement of this Act—

- (i) the charge had not been registered under Division VII of Part IV of the *Companies Act, 1962-1981*;

- (ii) the charge had not become void under section 100 (1) of the *Companies Act, 1962-1981*;

and

- (iii) the property was still subject to the charge;

(c) if the charge had been created or the property had been acquired, after the commencement of this Act, the charge would have been required to be registered under Division 9 of Part IV of the *Companies (South Australia) Code*;

and

(d) subsection (3) does not apply in relation to the charge,

Division 9 of Part IV of, and schedule 5 to, the *Companies (South Australia) Code* apply as if the company had created the charge, or had acquired the property, as the case may be, at the commencement of this Act, but, where two or more charges on the same property of a company, being charges to which this subsection applies, are registered under Division 9 of Part IV of the *Companies (South Australia) Code* then, notwithstanding schedule 5 to that Code, those charges have, as between themselves, the respective priorities that they would have had if they had not been registered under that Division.

(9) Notwithstanding the enactment of this Act, the provisions of Division VII of Part IV of the Companies Act, 1962-1981, as in force immediately before the commencement of this Act continue in force as if this Act had not been enacted in relation to—

(a) any charge created by a company before the commencement of this Act;

or

(b) any charge to which property acquired by a company before the commencement of this Act was subject when the property was so acquired,

where—

(c) the charge was required to be registered under Division VII of Part IV of the Companies Act, 1962-1981;

and

(d) if the charge had been created by the company, or the property subject to the charge had been acquired by the company, after the commencement of this Act, the charge would not have been required to be registered under Division 9 of Part IV of the *Companies (South Australia) Code*.

(10) Where a charge referred to in paragraph (a) of subsection (8) had, before the commencement of this Act, become void under section 100 (1) of the Companies Act, 1962-1981 and the court, being satisfied that it is just and equitable to do so, makes an order that subsection (8) is to apply in relation to that charge—

(a) subsection (8) has effect as if the charge had not become void;

and

(b) section 100 (1) of the Companies Act, 1962-1981, shall be deemed not to have rendered the charge void in any respect.

31. Where it appears from a return lodged with the Registrar of Companies or the State Commission pursuant to a previous law of the State with which the *Companies (South Australia) Code* corresponds that a person was at a particular time a manager of a company, the National Commission may give a certificate under section 238 (10) of that Code that the person was at that time a principal executive officer of the company.

Certificate that person is an executive officer of a company.

PART III

Application of
Companies
(South
Australia)
Code to
financial years
ending before
commencement
of this Act.

32. (1) The provisions of Division 2 of Part VI of the *Companies (South Australia) Code* (other than sections 267, 268, 273 and 275) apply in relation to a company, being a company incorporated under the Companies Act, 1962-1981, or a corresponding previous enactment, and to the directors of such a company, in relation to a financial year or financial years of the company that ended before the commencement of this Act and so apply as if—

- (a) a requirement in any of those provisions (other than section 274) that an act or thing be done not less than fourteen days before an annual general meeting of a company or, if no annual general meeting is held within the period within which it is required by section 240 to be held, not less than fourteen days before the end of that period were a requirement that that act or thing be done within the period of five months (or, in the case of an exempt proprietary company, the period of six months) after the commencement of this Act;
- (b) a reference in those provisions to the last financial year of a company were a reference to each financial year of the company that ended before the commencement of this Act;
- (c) the reference in section 274 (1) to each annual general meeting of the company were a reference to the annual general meeting at which accounts or group accounts are required by subsection (2) of this section to be laid before the company;
- (d) a reference in those provisions to accounts or group accounts required by section 275 to be laid before a company at its annual general meeting were a reference to accounts or group accounts, as the case may be, required by subsection (2) of this section to be laid before a company at an annual general meeting;

and

- (e) a reference in section 276 (1) to the preceding provisions of Division 2 included a reference to the provisions of subsection (2) of this section.

(2) The directors of a company to which subsection (1) applies shall cause to be laid before the first annual general meeting of the company held after the expiration of the period of five months or six months, as the case requires, referred to in paragraph (a) of subsection (1), in respect of each financial year of the company that ended before the commencement of this Act—

- (a) a copy of the profit and loss account made out in accordance with section 269 (1) of the *Companies (South Australia) Code*;
- (b) a copy of the balance sheet made out in accordance with section 269 (2) of that Code;
- (c) in the case of a company that, at the end of the relevant financial year, was not a holding company—a copy of the directors' report made out in accordance with section 270 (1) of that Code;
- (d) in the case of a company that, at the end of the relevant financial year, was a holding company—a copy of the group accounts made out in accordance with section 269 (3) of that Code and a copy of the directors' report made out in accordance with section 270 (2) of that Code in respect of the profit or loss and the state

of affairs of the group of companies of the holding company as at the end of that financial year;

- (e) a copy of any auditor's report required by section 269 (5) of that Code to be attached to the accounts or group accounts of the company;

and

- (f) a copy of the statement by the directors required by section 269 (9) or (10) of that Code to be attached to the accounts or group accounts of the company.

(3) A reference in subsection (2) to a provision of the *Companies (South Australia) Code* shall be read as a reference to that provision of that Code as it applies by virtue of subsection (1).

(4) For the purposes of this section, an order under section 162c (1) or (2) of the Companies Act, 1962-1981, in relation to the directors of a company or the directors of companies included in a specified class of companies that is, by section 25 (19) or (20) of this Act, deemed to be an order made by the Commission under section 273 (1) or (5), as the case may be, of the *Companies (South Australia) Code* has the same effect unless and until the order is revoked under section 273 (8) of that Code in relation to accounts, group accounts and reports required, by the provisions of Division 2 of Part VI of that Code as applied by subsection (1) of this section, to be made out by those directors as the order has, by virtue of section 25 (19) or (20), as the case may be, of this Act, in relation to accounts, group accounts and reports required to be made out in accordance with the provisions of that Division.

(5) In this section, "financial year", in relation to a company in relation to which this section applies, has the same meaning as it has in relation to such a company under the *Companies (South Australia) Code* by virtue of paragraph (a) of the definition of "financial year" in section 5 (1) of that Code.

33. Where, before the commencement of this Act, an annual general meeting of a company was held and at the commencement of this Act the company had not complied with section 158 or 159 of the Companies Act, 1962-1981, in relation to that annual general meeting, that section continues to apply in relation to that company in relation to that annual general meeting as if this Act had not been enacted.

Annual general meeting held before commencement of this Act.

34. (1) Part VII of the *Companies (South Australia) Code* applies to and in relation to an investigation to which Part VIA of the Companies Act, 1962-1981, applied immediately before the commencement of this Act and so applies as if—

Special investigations.

- (a) where an inspector was appointed to carry out the investigation pursuant to an application under section 169 (1) of the Companies Act, 1962-1981—the inspector was appointed, and the investigation is being carried out, pursuant to a direction given pursuant to section 290 (4) of that Code;

and

- (b) where an inspector was appointed under section 170 (1) of the Companies Act, 1962-1981, to carry out the investigation—the inspector was appointed, and the investigation is being carried out, pursuant to a direction given in the exercise of a power under section 291 (1) of that Code otherwise than in

response to a request made by the Commission under section 291 (4) of that Code.

(2) Where, before the commencement of this Act, an act, matter or thing had been done or had arisen in the course of an investigation to which Part VIA of the Companies Act, 1962-1981, applied immediately before that commencement, that act, matter or thing shall have the same status, operation and effect in relation to the investigation after that commencement as if that act, matter or thing had been done or had arisen after that commencement.

(3) In particular and without affecting the generality of subsection (2), an order, application, examination, deposition, writ, summons, proceeding, record, note or report made, effected, issued or given in relation to an investigation to which Part VIA of the Companies Act, 1962-1981, applied immediately before the commencement of this Act shall have the same status, operation and effect in relation to the investigation after that commencement as if the order, application, examination, deposition, writ, summons, proceeding, record, note or report had been made, effected, issued or given after that commencement.

Lodging of accounts by person administering compromise or arrangement.

35. Where—

(a) section 330 of the *Companies (South Australia) Code* applies, by virtue of section 315 (11) of that Code, in relation to a person or persons appointed to administer a compromise or arrangement;

and

(b) that person or those persons was or were so appointed before the commencement of this Act,

references in section 330 of that Code to the date of appointment of that person or of those persons shall be deemed to be references to the date of commencement of this Act.

Winding up.

36. (1) The provisions of the *Companies (South Australia) Code* with respect to winding up other than the provisions of subdivision F of Division 4 of Part XII do not apply to any company the winding up of which was commenced before the commencement of this Act and any such company shall be wound up in the same manner and with the same incidents as if this Act had not been enacted and, for the purposes of the winding up, the provisions of the Companies Act, 1962-1981, shall apply.

(2) In this section, “company” includes an unregistered company within the meaning of Division V of Part X of the Companies Act, 1962-1981.

Registered auditors and liquidators.

37. (1) For the purposes of the *Companies (South Australia) Code*, a person who was, immediately before the date of commencement of this Act, registered as an auditor or as a liquidator or appointed as an official liquidator under the Companies Act, 1962-1981, shall, subject to section 27 of that Code, be deemed to be registered under Division 2 of Part II of that Code as an auditor, as a liquidator or as an official liquidator, as the case may be, for the period of six months commencing on the date of commencement of this Act.

(2) Where—

(a) a person who is deemed by reason of subsection (1) to be registered under Division 2 of Part II of the *Companies (South Australia) Code* as an auditor or as a liquidator for the period of six months commencing on the date of commencement of this Act has

applied to be registered under that Division as an auditor or as a liquidator, as the case may be, within that period of six months;

and

- (b) at the expiration of that period, the person has not been notified of the results of his application,

the person shall, subject to section 27 of that Code, be deemed to be registered as an auditor or liquidator, as the case may be, for a further period commencing at the expiration of the period referred to in paragraph (a) and ending—

- (c) in the case of an application for registration as an auditor—on the day on which the application is granted or refused;

and

- (d) in the case of an application for registration as a liquidator—on the day on which the person is notified of the results of his application.

(3) Where the registration as a liquidator of a person to whom subsection (2) applies comes into force under Division 2 of Part II of the *Companies (South Australia) Code*, that person shall be deemed to have been registered as a liquidator under that Division for the period commencing at the expiration of the day referred to in paragraph (d) of subsection (2) and ending at the expiration of the day before the day on which that registration comes into force.

(4) A person who is deemed to be registered as an auditor, as a liquidator or as an official liquidator under the provision of a law of a participating State or participating Territory that corresponds with subsection (1) shall be deemed to be registered as an auditor, as a liquidator or as an official liquidator, as the case may be, under the *Companies (South Australia) Code*.

38. Where—

- (a) the institution of a particular proceeding under the Companies Act, 1962-1981, was subject to the consent of the Minister;

and

- (b) the proceeding was not instituted before the commencement of this Act but may be instituted after the commencement of this Act by reason of the operation of section 19 (1) of this Act,

the enactment of this Act does not affect the power of the Minister to consent to the institution of the proceeding.

Power of Minister to consent to institution of proceeding.

39. (1) Where a corporation that is a recognized company for the purposes of the *Companies (South Australia) Code* was, immediately before the commencement of this Act, registered as a foreign company under the Companies Act, 1962-1981, the registered office of that corporation in the State the situation of which was specified—

Recognized companies.

- (a) in a case to which paragraph (b) does not apply—in a notice lodged under section 346 (1) of that Act;

or

- (b) if a notice or notices have been lodged under section 347 (1) of that Act in relation to the situation of the registered office of the corporation—in that notice or in the later or latest of those notices,

shall be deemed to be the principal office within the State of the corporation for the purposes of section 507 of the *Companies (South Australia) Code*.

(2) Where—

(a) before the commencement of this Act, an act, matter or thing had been done or commenced under the Companies Act, 1962-1981, in relation to a corporation that was a foreign company for the purposes of that Act;

(b) the corporation is a recognized company for the purposes of the *Companies (South Australia) Code*;

and

(c) that act, matter or thing could have been done or commenced under the *Companies (South Australia) Code* after the commencement of this Act in relation to a recognized company,

that act, matter or thing shall be deemed to have been done or commenced, as the case may be, and, in the case of an act, matter or thing that has been commenced, may be continued or completed under the *Companies (South Australia) Code*, in relation to that corporation as a recognized company.

Recognized
companies
under
corresponding
laws.

40. (1) Section 501 of the *Companies (South Australia) Code* applies in relation to a company that, immediately before the commencement of this Act, had a place of business or carried on business in a State or Territory that is a participating State or participating Territory as if the company had established a place of business or commenced to carry on business, as the case may be, in that State or Territory at the commencement of this Act.

(2) Where a company had, before the commencement of this Act, lodged under the provisions of a law of a State or Territory that is a participating State or participating Territory that corresponds with section 346 (1a) or 347 (1a) of the Companies Act, 1962-1981, a notice or notices that specified the days and hours during which the registered office of the company in that State or Territory was open and accessible to the public, the company shall, for the purposes of section 502 (2) of the *Companies (South Australia) Code*, be deemed to have lodged a notice under section 501 (2) of that Code in relation to that State or Territory.

(3) Where, immediately before the commencement of this Act, a company maintained a branch register in a State or Territory that is a participating State or participating Territory in accordance with the provision of the law of that State or Territory that corresponded with section 354 of the Companies Act, 1962-1981, that register shall be deemed to be a branch register of the company kept under section 262 of the *Companies (South Australia) Code* and section 262 of that Code applies in relation to that register as if it had been established, and as if the office where it is kept had been opened, on the date of commencement of this Act.

Foreign
companies.

41. (1) A corporation formed outside the State, other than a corporation that is a recognised company for the purposes of the *Companies (South Australia) Code*, that was, immediately before the commencement of this Act, registered as a foreign company under the Companies Act, 1962-1981, shall be deemed to be registered, as from the commencement of this Act, as a foreign company for the purposes of the *Companies (South Australia) Code*.

(2) A corporation formed outside Australia and the external Territories that was, immediately before the commencement of this Act, registered as a foreign company under the Companies Act, 1962-1981, may within one month

after the date of commencement of this Act, or within such further period as the Commission allows, lodge with the Commission a notice in the prescribed form—

(a) stating whether the corporation wishes to continue to be registered as a foreign company under the *Companies (South Australia) Code*; and

(b) if the corporation states that it does not wish to continue to be registered as a foreign company under that Code—specifying one State or Territory (being a State or Territory under the law of which the corporation was registered as a foreign company immediately before the commencement of this Act and which is a participating State or a participating Territory) as the State or Territory under the law of which the corporation wishes to be registered as a foreign company.

(3) A corporation is not entitled pursuant to paragraph (b) of subsection (2)—

(a) to specify a State in a notice if the corporation has specified a different State or a Territory in a notice under a corresponding provision of the law of a participating State or participating Territory;

or

(b) to specify a Territory in a notice if the corporation has specified a State or another Territory in a notice under a corresponding provision of the law of a participating State or participating Territory.

(4) Where a corporation to which subsection (2) applies lodges with the Commission a notice under that subsection specifying pursuant to paragraph (b) of subsection (2) a State or Territory as the State or Territory under the law of which the corporation wishes to be registered as a foreign company—

(a) the corporation shall, as from the date on which the notice is so lodged, cease to be registered as a foreign company for the purposes of the *Companies (South Australia) Code*; and

(b) the registered office of the corporation in the State the situation of which was specified—

(i) in a case to which subparagraph (ii) does not apply—in a notice lodged under subsection 346 (1) of the *Companies Act, 1962-1981*;

or

(ii) if a notice or notices has or have been lodged under section 347 (1) of that Act in relation to the situation of the registered office of the corporation—in that notice or in the later or latest of those notices,

shall be deemed to be the principal office within the State of the corporation for the purposes of section 507 of the *Companies (South Australia) Code*.

(5) In this section, “external Territory” means a Territory of the Commonwealth, other than the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory, for the government of which as a Territory provision is made by an Act of the Commonwealth.

PART III

Commission may destroy or dispose of documents.

42. (1) Notwithstanding section 31 (10) of the *Companies (South Australia) Code*, where a corporation that is a recognized company for the purposes of that Code was, immediately before the commencement of this Act, registered as a foreign company under the Companies Act, 1962-1981, the Commission may, if in the opinion of the Commission it is no longer necessary or desirable to retain them, destroy or dispose of any documents lodged by or in relation to that corporation under the Companies Act, 1962-1981, or under any corresponding previous law.

(2) Notwithstanding section 31 (10) of the *Companies (South Australia) Code*, where a corporation that was, immediately before the commencement of this Act, registered as a foreign company under the Companies Act, 1962-1981, becomes a recognized foreign company for the purposes of that Code, the Commission may, if in the opinion of the Commission it is no longer necessary or desirable to retain them, destroy or dispose of any documents lodged by or in relation to that corporation under the Companies Act, 1962-1981, or under any corresponding previous law.

Marketable Securities Act, 1971.

43. (1) A sufficient instrument of transfer under the Marketable Securities Act, 1971, in relation to a transfer of marketable securities or a transfer of rights to marketable securities, that was duly completed before the commencement of this Act has the same effect, and may be used and dealt with, as if this Act had not been enacted.

(2) An agreement, application, acceptance, warranty or indemnity deemed by the Marketable Securities Act, 1971, to have been made or given by a person continues to operate and has the same force and effect as if this Act had not been enacted.

Court may resolve difficulties.

44. (1) Where any difficulty arises in the application to a particular matter of this Part, or in the application to a particular matter of any of the provisions of the *Companies (South Australia) Code*, the Companies Act, 1962-1981, or the Marketable Securities Act, 1971, by reason of the operation of this Part, the Court may, on the application of an interested person, make such order as it thinks proper to resolve the difficulty.

(2) An order made under subsection (1) has effect notwithstanding anything contained in this Act or in the *Companies (South Australia) Code*, the Companies Act, 1962-1981, or the Marketable Securities Act, 1971.

(3) In subsection (1), "Court" means the Supreme Court or a judge of the Supreme Court.

Regulations.

45. (1) The Governor may make regulations, not inconsistent with this Part, prescribing all matters required or permitted by this Part to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Part.

(2) Regulations prescribing matters for the purposes of this Part may prescribe those matters by reference to regulations for the time being in force under the *Companies (Transitional Provisions) Act* 1981 of the Commonwealth.

(3) The power of the Governor to make regulations shall be exercised only in accordance with advice that is consistent with resolutions of the Ministerial Council.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor

SCHEDULE 1

Section 6.

The provisions of the Commonwealth Act apply as if—

1. Unless inconsistent with another provision of this Schedule—
 - (a) for the words “law of a State or of another Territory” and “law of a State or another Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “law in force in another State or in a Territory”;
 - (b) for the words “of a State or of another Territory” and “of a State or another Territory” in the Commonwealth Act (wherever occurring otherwise than immediately after the word “law”) there were substituted the words “of another State or of a Territory”;
 - (c) for the words “commencement of this Act” in the Commonwealth Act (wherever occurring) there were substituted the expression “commencement of the Companies (Application of Laws) Act 1982”;
 - (d) for the expression “*Companies (Acquisition of Shares) Act 1980*” in the Commonwealth Act (wherever occurring) there were substituted the expression “*Companies (Acquisition of Shares) (South Australia) Code*”;
 - (e) for the expression “*Companies Ordinance 1962*” in the Commonwealth Act (wherever occurring) there were substituted the expression “Companies Act 1962-1981”;
 - (f) for the expression “*Securities Industry Act 1980*” in the Commonwealth Act (wherever occurring) there were substituted the expression “*Securities Industry (South Australia) Code*”;
 - (g) for the words “the Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “the State”;
 - (h) for the words “this Act” in the Commonwealth Act (wherever occurring except where occurring in conjunction with the words “commencement of”) there were substituted the words “this Code”.
2. In section 5 (1) of the Commonwealth Act—
 - (a) after the definition of “banker’s books” there were inserted the following definition:

“*Banking Act 1959*” means the *Banking Act 1959* of the Commonwealth as amended and in force for the time being; ;
 - (b) after the definition of “banking corporation” there were inserted the following definition:

“*Bankruptcy Act 1966*” means the *Bankruptcy Act 1966* of the Commonwealth as amended and in force for the time being; ;
 - (c) for the definition of “*Companies Ordinance 1962*” there were substituted the following definitions:

“Commission” or “National Commission” means the National Companies and Securities Commission;

“Commonwealth Minister” means the Minister of State for the Commonwealth for the time being administering the *Companies Act 1981* of the Commonwealth as amended and in force for the time being;

“*Companies (South Australia) Code*” or “Code” means the provisions applying by reason of section 6 of the Companies (Application of Laws) Act 1982; ;
 - (d) in the definition of “corporation”, for paragraphs (c) and (d) there were substituted the following word and paragraph:

or

(c) a body corporate (not being a company) incorporated by or under a law of South Australia other than this Code or a corresponding previous enactment; ;
 - (e) after the definition of “insolvent under administration” there were inserted the following definition:

“*Insurance Act 1973*” means the *Insurance Act 1973* of the Commonwealth as amended and in force for the time being; ;
 - (f) after the definition of “leave of absence” there were inserted the following definition:

“*Life Insurance Act 1945*” means the *Life Insurance Act 1945* of the Commonwealth as amended and in force for the time being; ;
 - (g) in the definition of “lodged”—
 - (i) the word “or” at the end of paragraph (a) were repealed;
 - and
 - (ii) after paragraph (b) there were inserted the following word and paragraph:

or

(c) in relation to the State Commission—lodged or filed with the State Commission under any corresponding previous law of the State; ;
 - (h) after the definition of “mining purposes” there were inserted the following definitions:

“Minister” means the Minister of State for South Australia for the time being administering the Companies (Application of Laws) Act 1982;

“*National Companies and Securities Commission Act 1979*” means the *National Companies and Securities Commission Act 1979* of the Commonwealth as amended and in force for the time being; ;
 - (i) for the definition of “Registrar of Companies” there were substituted the following definition:

“Registrar of Companies” means a person who held office as Registrar of Companies, Deputy Registrar or Assistant Registrar under the Companies Act 1962-1974 or a corresponding previous enactment; ;

- (j) after the definition of "Registrar of Companies" there were inserted the following definition:
 "regulations" means the provisions applying as regulations made under this Code by reason of section 7 of the Companies (Application of Laws) Act 1982; ;
- (k) for the definition of "rules" there were substituted the following definition:
 "rules" means rules of the Supreme Court of South Australia; ;
- (l) after the definition of "special resolution" there were inserted the following definition:
 "State Commission" means the Corporate Affairs Commission continued in existence by the *Companies (Administration) Act, 1982*;
3. After section 5 (9) of the Commonwealth Act, there were inserted the following subsection:
 (10) In this Code—
 (a) a reference to a previous law, or provision of a previous law, or previous enactment, of South Australia or of the State corresponding to, or to a provision of, this Code includes a reference to, or to a provision of, the Companies Act 1962-1981; and
 (b) a reference to a previous law, or provision of a previous law, or previous enactment, of another State or of a Territory corresponding to, or to a provision of, this Code includes a reference to, or to a provision of, the law of that State or Territory corresponding to the Companies Act 1962-1981.
4. For paragraphs (a) and (b) of section 12 (1) of the Commonwealth Act there were substituted the following paragraphs:
 (a) for the purpose of the performance of a function or the exercise of a power by the Commission under a Code that is a relevant Code for the purposes of the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981 or under a law of a participating State or of a participating Territory that corresponds with such a relevant code; or
 (b) where the requirement relates to a matter that constitutes or may constitute—
 (i) a contravention of, or failure to comply with, a provision of a relevant Code or corresponding law referred to in paragraph (a);
 (ii) a contravention of, or failure to comply with, a provision of the Companies Act 1962-1981 as in force at any time or of a previous law of a participating State or participating Territory that corresponded with that Act; or
 (iii) an offence relating to a company that involves fraud or dishonesty or concerns the management of affairs of the company.
5. In section 13 (1) of the Commonwealth Act, for the words "Australian Federal Police" there were substituted the words "Police Force of South Australia".
6. In section 18 (7) (a) of the Commonwealth Act, after the words "Companies Auditors and Liquidators Disciplinary Board" there were inserted the expression "constituted under the Companies (Administration) Act 1982".
7. In section 19 of the Commonwealth Act, after the words "Auditor-General" there were inserted the words "of South Australia".
8. In section 20 (8) (a) and (9) (a) of the Commonwealth Act, after the words "Companies Auditors and Liquidators Disciplinary Board" there were inserted the expression "constituted under the Companies (Administration) Act 1982".
9. For subsection (4) of section 22 of the Commonwealth Act there were substituted the following subsection:
 (4) In this section, "local authority" means the State Commission.
10. In section 27 (21), (22) and (23) of the Commonwealth Act, for the words "debt due to the Commonwealth", wherever appearing, there were substituted, in each case, the words "debt due to the Crown".
11. At the end of section 27 (28) of the Commonwealth Act there were inserted the expression "constituted under the Companies (Administration) Act 1982".
12. In section 31 of the Commonwealth Act—
 (a) for the words "the Registrar of Companies" in subsections (2) and (5) there were substituted the words "the State Commission or the Registrar of Companies";
 and
 (b) after subsection (6) there were inserted the following subsection:
 (6a) Where the National Commission is required by law to produce to a court or other authority a document lodged with the National Commission or lodged with the Registrar of Companies or with the State Commission, the National Commission may produce to the court or authority—
 (a) a copy of the document;
 or
 (b) where a reproduction or transparency of the document has been incorporated with a register kept by the National Commission—a copy of the reproduction or transparency,
 certified under the seal of the National Commission to be a true copy, and production of the certified copy shall be deemed to constitute compliance with the requirement.

13. In section 32 (1) of the Commonwealth Act, for the words "the Registrar of Companies" there were substituted the words "the State Commission or the Registrar of Companies".

14. In section 33 of the Commonwealth Act—

(a) in paragraph (a) of subsection (3), for the words "under this Act or is formed pursuant to another Act there were substituted the words "under this Code or is formed pursuant to an Act";

and

(b) in subsection (4), for the words "under this Act and is not formed pursuant to another Act" there were substituted the words "under this Code and is not formed pursuant to an Act".

15. In section 46 (9) of the Commonwealth Act, for the words "in a State or another Territory" there were substituted the words "in another State or in a Territory".

16. In section 52 (8) of the Commonwealth Act, for the words "in a State or another Territory" there were substituted the words "in another State or in a Territory".

17. In section 55 (8) of the Commonwealth Act, for the words "in a State or another Territory" there were substituted the words "in another State or in a Territory".

18. In section 59 of the Commonwealth Act, for the words "in a State or another Territory" there were substituted the words "in another State or in a Territory".

19. In section 65 (4) of the Commonwealth Act, for the words "that Ordinance" there were substituted the words "that Act".

20. After section 73 of the Commonwealth Act there were inserted the following section:

73a. (1) A company may, by special resolution, substitute a memorandum and articles for its deed of settlement and may, by the same resolution, alter one or more of the objects of the company.

(2) Section 73 shall apply to a special resolution referred to in subsection (1) as though it were a resolution for the alteration of the memorandum of the company with respect to its objects and powers and the deed of settlement of the company were the memorandum of the company.

(3) In addition to the other requirements of section 73 the company shall lodge with the Commission a copy of the memorandum and articles substituted for the deed of settlement.

(4) Upon registration by the Commission of the memorandum and articles they shall become the memorandum and articles of the company and shall apply to the company as if it were a company registered and incorporated under Part III of this Code and the deed of settlement shall cease to apply to or in relation to the company.

21. In section 77 (1) and (2) of the Commonwealth Act, for the expression "1 October 1954" there were substituted the expression "1 March 1935".

22. In section 85 (6) (b) of the Commonwealth Act, for the words "Corporate Affairs Commission for the Territory" there were substituted the words "State Commission".

23. In section 90 (6) of the Commonwealth Act—

(a) for the expression "the *Companies (Transitional Provisions) Act 1981*" there were substituted the expression "Part III of the *Companies (Application of Laws) Act 1982*";

and

(b) for the words "as if this Act" there were substituted the words "as if that Act".

24. In section 99 (5) of the Commonwealth Act, for the words "or any other Act" there were substituted the words "Code or any Act".

25. In section 122 (1) (a) of the Commonwealth Act, for the words "this or any other Act" there were substituted the words "this Code or of any Act".

26. In section 123 (15) of the Commonwealth Act, for the expression "*Companies (Acquisition of Shares) Act 1980* or a corresponding law of a participating State or participating Territory, or of regulations made under that Act or under such a corresponding law," there were substituted the words "*Companies (Acquisition of Shares) (South Australia) Code* or a corresponding law in force in a participating State or participating Territory, or of regulations applying under that Code or applying or made under such a corresponding law,".

27. After section 123 (15) of the Commonwealth Act there were inserted the following subsection:

(16) Where land under the operation of the Real Property Act, 1886-1980, is comprised in a plan of strata subdivision registered under Part XIXB of that Act and at the time of registration of the plan the proprietor of that land was a company, the transfer by the company of any unit on the plan of strata subdivision in exchange for or in satisfaction of a right of a kind referred to in subsection (13) shall not of itself constitute, and shall be deemed never to have constituted, a reduction of the share capital of the company.

28. In section 129 (6) (a) of the Commonwealth Act, for the expression "Act 1980" there were substituted the words "*(South Australia) Code*".

29. In section 129 (17) of the Commonwealth Act, for the words "if this Act" there were substituted the words "if that Act".

30. In section 152 (7) of the Commonwealth Act, for the expression "1 September 1966" there were substituted the expression "1 January 1965".

Substitution
by company of
memorandum
and articles
for deed of
settlement.

31. In section 154 (5) of the Commonwealth Act, for the expression "1 September 1966" there were substituted the expression "1 January 1965".

32. In paragraph (b) of the definition of company in section 164 (1) of the Commonwealth Act for the words "the Australian Capital Territory" there were substituted the words "South Australia".

33. In section 172 (5) (a) of the Commonwealth Act for the words "Corporate Affairs Commission for the Territory" there were substituted the words "State Commission".

34. In the interpretation of "prescribed corporation" in section 189 (1) of the Commonwealth Act, for the words "that is under the regulations a prescribed corporation" there were substituted the expression "that is, by reason of section 16 (2) of the Companies (Application of Laws) Act 1982, a prescribed corporation.

35. In section 199 (5) of the Commonwealth Act, for the words "an office of the Commission" there were substituted the words "the office of the State Commission".

36. In section 204 of the Commonwealth Act, subsection (5) were repealed.

37. In section 209 (1) of the Commonwealth Act, for the words "Registrar of Companies" there were substituted the words "Registrar of Companies or the State Commission".

38. For section 211 of the Commonwealth Act there were substituted the following section:

Registration
under other
Acts.

211. (1) Notwithstanding anything in any Act, a charge, notice of which requires lodgment with the Commission under this Division or under the corresponding provisions of the law of a participating State or participating Territory need not be registered under and is not subject to postponement or avoidance by reason of the Bills of Sale Act, 1886-1972, the Liens on Fruit Act, 1923-1975, or the Stock Mortgages and Wool Liens Act, 1924-1975, and upon registration under this Division or under the corresponding provisions of the law of a participating State or participating Territory the charge shall be as valid and effectual as if it had been duly registered under those Acts.

(2) Subsection (1) does not apply where one or more of the persons giving the charge is not a company, a recognized company or a recognized foreign company.

39. In section 213 of the Commonwealth Act for the words "the Australian Capital Territory" there were substituted the words "South Australia".

40. In section 233 (7) of the Commonwealth Act—

(a) for the expression "1 October 1954" (wherever occurring) there were substituted the expression "1 July 1963";

and

(b) in paragraph (b) of the interpretation of "exempt benefit" for the words "if this Act had not been enacted" there were substituted the expression "if the Companies (Application of Laws) Act 1982 had not been enacted".

41. In section 238 (10) of the Commonwealth Act, for the words "Registrar of Companies" there were substituted the words "Registrar of Companies or the State Commission".

42. In section 265 (1) (b) of the Commonwealth Act, for the words "Corporate Affairs Commission for the Territory" there were substituted the words "State Commission".

43. In section 277 (2) (e) of the Commonwealth Act, for the expression "*Business Names Ordinance 1963*" there were substituted the expression "Business Names Act 1963".

44. In section 285 (3) (b) of the Commonwealth Act, for the words "in a State or in another Territory" there were substituted the words "in another State or in a Territory".

45. In section 289 of the Commonwealth Act—

(a) for paragraph (a) of the definition of "relevant authority" in subsection (1) there were substituted the following paragraphs:

(a) in the case of a direction given by the Commonwealth Minister other than a direction that has been approved by the Ministerial Council under subsection 291 (6)—the Commonwealth Minister;

(aa) in the case of a direction given by the Minister other than a direction that has been approved by the Ministerial Council under subsection 291 (6)—the Minister; or;

and

(b) for subsection (7) there were substituted the following subsection:

(7) An investigation under this Part is not a legal proceeding for the purposes of Part V of the Evidence Act, 1929-1979.

46. In section 291 of the Commonwealth Act—

(a) in subsection (2) for the words "the Minister" (where twice occurring) there were substituted the words "the Commonwealth Minister";

(b) in subsection (4) for the words "the Minister" there were substituted the words "the Minister or the Commonwealth Minister";

and

- (c) in subsection (6) for the expression "or under subsection (1) or (2) of this section" there were substituted the expression "or under subsection (1) of this section or by the Commonwealth Minister under subsection (2) of this section".
47. Subsection (4) of section 295 of the Commonwealth Act were repealed.
48. In section 306 of the Commonwealth Act—
- (a) the word "and" at the end of section 306 (6) (a) were repealed;
- (b) in section 306 (6) (b) for the word "Commonwealth" there were substituted the following expression and paragraph:
- State;
- and
- (c) the Commonwealth Minister may cause to be printed and published the whole or any part of a report under this Part that relates to an investigation the expenses of which are, under the Agreement, to be borne by the Commonwealth.;
- (c) in section 306 (7) for the words "Ministerial Council or the Minister" (where four times occurring) there were substituted the words "Ministerial Council, the Minister or the Commonwealth Minister".
- and
- (d) after subsection (13) there were inserted the following subsection:
- (14) Nothing in this section operates to diminish the protection afforded to witnesses by the Evidence Act 1929-1979.
49. For section 314 of the Commonwealth Act there were substituted the following section:
314. This Part binds the Crown in right of South Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
50. In section 315 of the Commonwealth Act—
- (a) in subsection (3) for the words "a State, or another Territory" there were substituted the words "another State or in a Territory";
- (b) in subsection 19 for the words "of the Australian Capital Territory" there were substituted the words "of South Australia";
- (c) in subsection 19 for the words "in the Australian Capital Territory" there were substituted the words "in South Australia";
- and
- (d) in subsection 20 for the words "the Australian Capital Territory" there were substituted the words "South Australia".
51. In section 317 (4) of the Commonwealth Act—
- (a) for the words "the Australian Capital Territory" there were substituted the words "South Australia";
- and
- (b) for the words "in the Australian Capital Territory" there were substituted the words "in South Australia".
52. In section 318 of the Commonwealth Act—
- (a) in subsections (11), (12), (13) and (15) of the Commonwealth Act, for the expression "*Unclaimed Moneys Ordinance 1950*" (wherever occurring) there were substituted the expression "*Unclaimed Moneys Act, 1891-1975*";
- and
- (b) in subsection (15) for the word "Commonwealth" there were substituted the word "State".
53. For section 322 of the Commonwealth Act there were substituted the following section:
322. This Part binds the Crown in right of South Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
54. For section 334 of the Commonwealth Act there were substituted the following section:
334. This Part binds the Crown in right of South Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
55. In section 335 (9) (b) of the Commonwealth Act—
- (a) for the words "in each State or other Territory" there were substituted the words "in each other State and each Territory";
- (b) for the words "that State or other Territory" there were substituted the words "that other State or in that Territory".
56. For section 358 of the Commonwealth Act there were substituted the following section:
358. This Part binds the Crown in right of South Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

57. In section 398 (2) (d) of the Commonwealth Act—
(a) for the words “in each State or other Territory” there were substituted the words “in each other State and each Territory”;
and
(b) for the words “that State or other Territory” there were substituted the words “that other State or in that Territory”.
58. In section 425 (2) of the Commonwealth Act, after the expression “1936” there were inserted the words “of the Commonwealth as amended and in force for the time being”.
59. In section 427 of the Commonwealth Act—
(a) for the word “Minister” (wherever occurring) there were substituted the words “Treasurer of South Australia”;
and
(b) for the words “Consolidated Revenue Fund” (wherever occurring) there were substituted the words “Consolidated Account”.
60. In section 428 of the Commonwealth Act—
(a) for the word “Minister” in subsection (2) there were substituted the words “Treasurer of South Australia”;
and
(b) subsection (4) were repealed.
61. In section 441 (h) of the Commonwealth Act—
(a) for the words in subparagraph (i) “an Act or a law of the Territory” there were substituted the words “an Act of the Commonwealth or a law of the Australian Capital Territory”;
(b) for the words in subparagraphs (ii), (iii) and (v) “State Act or law of another Territory” there were substituted the words “Act or Act of any other State or law of a Territory other than the Australian Capital Territory”;
and
(c) for the words in subparagraph (iv) “an Act” there were substituted the words “an Act of the Commonwealth”.
62. In section 462 of the Commonwealth Act—
(a) for the word “Minister” (wherever occurring) there were substituted the words “Treasurer of South Australia”;
and
(b) for the words in subsection (5) “Consolidated Revenue Fund” there were substituted the words “Consolidated Account”.
63. In section 463 of the Commonwealth Act for the word “Commonwealth” there were substituted the word “Crown”.
64. In section 493 (5) of the Commonwealth Act, for the words “State Act” there were substituted the words “Act of the Commonwealth or of another State”.
65. In section 495 (1) of the Commonwealth Act, for the words “State or other Territory” there were substituted the words “other State or in a Territory”.
66. In section 516 (7) of the Commonwealth Act—
(a) for the words “a State, of another Territory” (where twice occurring) there were substituted the words “another State, of a Territory”;
(b) for the words “a State or another Territory” (where twice occurring) there were substituted the words “another State or a Territory”;
and
(c) in paragraph (e) for the words “State or other Territory” there were substituted the words “other State or of the Territory”.
67. In section 534 of the Commonwealth Act—
(a) for the expression “*Unclaimed Moneys Ordinance 1950*” (wherever occurring) there were substituted the expression “*Unclaimed Moneys Act, 1891-1975*”;
(b) in subsection (5) for the words “that Ordinance” there were substituted the words “that Act”;
and
(c) in subsection (6) for the words “the Commonwealth” there were substituted the words “South Australia”.

68. In section 552 of the Commonwealth Act, after subsection (16) there were inserted the following subsection:

- (17) The provisions of this section do not apply to—
- (a) offers of shares in a building society registered under the Building Societies Act, 1975-1981;
 - (b) offers of shares in a credit union registered under the Credit Unions Act, 1976-1980;
 - or
 - (c) offers of shares in a society registered under the Friendly Societies Act, 1919-1975.

69. In section 568 of the Commonwealth Act for the words "in a State or in another Territory" there were substituted the words "in another State or in a Territory".

70. Division 3 of Part XIV of the Commonwealth Act were repealed.

71. In Division 4 of Part XIV of the Commonwealth Act—

- (a) in section 578 (2) (a) for the words "State Act or Ordinance" there were substituted the words "Act of another State or Ordinance of a Territory";
- (b) after subsection (2) of section 578 there were inserted the following subsection:
 - (3) The provisions of this section do not affect the operation of section 62a of the Law of Property Act, 1936-1980.;
- (c) for section 579 there were substituted the following section:

579. The operation of the Industrial Conciliation and Arbitration Act, 1972-1981, is not affected by this Code.;

and

- (d) sections 580 and 581 were repealed.

Code not to affect operation of Industrial Conciliation and Arbitration Act, 1972-1981.

72. Schedule 1 to the Commonwealth Act were repealed.

73. In Schedule 3 to the Commonwealth Act—

- (a) for the words "the Act" (wherever occurring) there were substituted the words "the Code";
- (b) in regulation 1 of Table A—

- (i) for the expression "Act" means the *Companies Act 1981* there were substituted the words "Code" means the *Companies (South Australia) Code*;
- (ii) in subregulation (2) for the expression "Act 1980" there were substituted the words "*(South Australia) Code*";
- and
- (iii) in subregulation (2) for the expression "*Companies Act 1981*" there were substituted the words "*Companies (South Australia) Code*";

and

- (c) in regulation 1 of Table B—

- (i) for the expression "Act" means the *Companies Act 1981* there were substituted the words "Code" means the *Companies (South Australia) Code*;
- (ii) in subregulation (2) for the expression "Act 1980" there were substituted the words "*(South Australia) Code*";
- and
- (iii) in subregulation (2) for the expression "*Companies Act 1981*" there were substituted the words "*Companies (South Australia) Code*".

SCHEDULE 2

Section 7.

The provisions of Regulations in force for the time being under the Commonwealth Act apply as if in those Regulations—

1. For the words "the Act" (wherever occurring) there were substituted the words "the Code".
2. For the expression "*Companies Act 1981*" (wherever occurring) there were substituted the expression "*Companies (South Australia) Code*".
3. For the words "the Territory" (wherever occurring) there were substituted the words "the State".
4. For the words "the Australian Capital Territory" (wherever occurring) there were substituted the words "South Australia".

5. For the words "a State or another Territory" or "a State or of another Territory" (wherever occurring) there were substituted the words "another State or a Territory".

6. For the words "any other Territory or State" (wherever occurring) there were substituted the words "any other State or Territory".

7. For the expression "*Companies Ordinance 1962*" (wherever occurring) there were substituted the expression "*Companies Act 1962-1981*".

8. For the expression "*Companies (Acquisition of Shares) Act 1980*" (wherever occurring) there were substituted the expression "*Companies (Acquisition of Shares) (South Australia) Code*".

9. For the expression "*Securities Industry Act 1980*" (wherever occurring) there were substituted the expression "*Securities Industry (South Australia) Code*".

10. For the words "Companies Regulations" (wherever occurring) there were substituted the expression "Companies (South Australia) Regulations".

11. For the words "office of the Corporate Affairs Commission" (wherever occurring) there were substituted the words "office of the State Commission".

12. For the expression "*Unclaimed Moneys Ordinance 1950*" (wherever occurring) there were substituted the words "*Unclaimed Moneys Act 1891-1975*".

Section 8.

SCHEDULE 3

The provisions of Regulations in force for the time being under the *Companies (Fees) Act 1981* of the Commonwealth apply as if in those Regulations—

1. A reference in the Schedule to a section, subsection or paragraph, without an enactment being cited, were to be taken as a reference to that section, subsection or paragraph of the *Companies (South Australia) Code*.

2. Clause 41 of the Schedule (except for the number "15.00") were struck out and the following clause were substituted:

41. On lodging an annual return of a home unit service company, whether registered as an exempt proprietary company or otherwise.

Section 10.

SCHEDULE 4

The following headings and sections shall be included in the publication of the provisions of the Commonwealth Act under section 10:

COMPANIES (SOUTH AUSTRALIA) CODE

Relating to the formation of companies in South Australia, the regulation of companies formed in South Australia, the registration in South Australia of certain other bodies and certain other matters.

PART I.—PRELIMINARY

1. This Code may be cited as the *Companies (South Australia) Code*.

2. This Code comes into operation on the day on which the Companies (Application of Laws) Act 1982 comes into operation.

3. This Code shall be read and construed together with the agreement made on 22 December 1978 between the Commonwealth and the States in relation to a proposed scheme for the co-operative regulation of companies and the securities industry or, if that agreement is or has been amended or affected by another agreement, that agreement as so amended or affected.

4. This Code has effect subject to and in accordance with—

(a) the Companies (Application of Laws) Act 1982;

and

(b) the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981.

Section 11.

SCHEDULE 5

The following heading and provisions shall be included in the publication under section 11 of the provisions of Regulations in force for the time being under the Commonwealth Act:

COMPANIES (SOUTH AUSTRALIA) REGULATIONS

1. (1) These Regulations may be cited as the Companies (South Australia) Regulations.

(2) These Regulations shall come into operation on the day on which the Companies (Application of Laws) Act 1982 comes into operation.

SCHEDULE 6

Section 12.

The following heading and provisions shall be included in the publication under section 12 of the provisions of Regulations in force for the time being under the *Companies (Fees) Act 1981* of the Commonwealth:

COMPANIES (FEES) (SOUTH AUSTRALIA) REGULATIONS

1. (1) These Regulations may be cited as the Companies (Fees) (South Australia) Regulations.
(2) These Regulations shall come into operation on the day on which the Companies (Application of Laws) Act 1982 comes into operation.
2. In the Schedule a reference to a section, subsection or paragraph, without an enactment being cited, shall be taken as a reference to that section, subsection or paragraph of the *Companies (South Australia) Code*.
3. The fees payable for the purposes of section 8 of the Companies (Application of Laws) Act 1982 are the fees specified in the Schedule in relation to the respective matters so specified.

SCHEDULE

FEES

COMPANIES (SOUTH AUSTRALIA) CODE

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COMPANIES (SOUTH AUSTRALIA) CODE

Relating to the formation of Companies in South Australia, the regulation of companies formed in South Australia, the registration in South Australia of certain other bodies and certain other matters.

PART I

PART I

PRELIMINARY

1. This Code may be cited as the *Companies (South Australia) Code*. Short title.
2. This Code comes into operation on the day on which the Companies (Application of Laws) Act, 1982 comes into operation. Commencement.
3. This Code shall be read and construed together with the agreement made on 22 December 1978 between the Commonwealth and the States in relation to a proposed scheme for the co-operative regulation of companies and the securities industry or, if that agreement is or has been amended or affected by another agreement, that agreement as so amended or affected. Code to be read and construed together with agreement.
4. This Code has effect subject to and in accordance with—
 - (a) the Companies (Application of Laws) Act, 1982;
 - and
 - (b) the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981.Code to have effect subject to and in accordance with certain Acts.
5. (1) In this Code, unless the contrary intention appears— Interpretation.
 - “accounting records” includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up;
 - “annual general meeting”, in relation to a company, means a meeting of the company required to be held by section 240;
 - “annual return” means the return required to be made by section 263 and includes any document accompanying the return;
 - “authorized trustee corporation” means a body corporate that is declared by the regulations to be an authorized trustee corporation for the purposes of the provision in which the expression appears;
 - “articles” means articles of association;
 - “banker’s books” means—
 - (a) books of a banking corporation, including any documents used in the ordinary business of a banking corporation;
 - (b) cheques, orders for the payment of money, bills of exchange and promissory notes in the possession or under the control of a banking corporation;
 and

The publication of this document was authorized by the Attorney-General in accordance with section 10 of the Companies (Application of Laws) Act, 1982 on the 29th day of June 1982.

The several provisions set out in this document come into operation in South Australia on the day on which the Companies (Application of Laws) Act, 1982 comes into operation.

(c) securities or documents of title to securities in the possession or under the control of a banking corporation whether by way of pledge or otherwise;

“*Banking Act 1959*” means the *Banking Act 1959* of the Commonwealth as amended and in force for the time being;

“banking corporation” means—

(a) a bank as defined in section 5 of the *Banking Act 1959*;

(b) * * * * *

(c) a bank constituted under a law of a State or Territory;

“*Bankruptcy Act 1966*” means the *Bankruptcy Act 1966* of the Commonwealth as amended and in force for the time being;

“books” includes any register or other record of information and any accounts or accounting records, however compiled, recorded or stored, and also includes any document;

“borrowing corporation” means a corporation that is or will be under a liability to repay any money received or to be received by it in response to an invitation to the public to subscribe for or purchase debentures of the corporation or an offer to the public of debentures of the corporation for subscription or purchase but does not include a banking corporation;

“branch register” means—

(a) in relation to a company—a branch register of members of the company kept pursuant to section 262;

or

(b) in relation to a foreign company—a branch register of members of the company kept pursuant to section 521;

“business day” means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the State;

“certified” means—

(a) in relation to a copy of or extract from a document—certified by a statement in writing to be a true copy of or extract from the document;

or

(b) in relation to a translation of a document—certified by a statement in writing to be a correct translation of the document into the English language;

“charge” means a charge created in any way and includes a mortgage and an agreement to give or execute a charge or mortgage, whether upon demand or otherwise;

“chargee” means the holder of a charge and includes a person in whose favour a charge is to be given or executed, whether upon demand or otherwise, pursuant to an agreement;

“Commission” or “National Commission” means the National Companies and Securities Commission;

- “Commonwealth Minister” means the Minister of State for the Commonwealth for the time being administering the *Companies Act* 1981 of the Commonwealth as amended and in force for the time being;
- “*Companies (South Australia) Code*” or “Code” means the provisions applying by reason of section 6 of the Companies (Application of Laws) Act, 1982;
- “company” means a company incorporated or deemed to be incorporated under this Code or under any corresponding previous law of the State;
- “company having a share capital” includes an unlimited company with a share capital;
- “company limited by guarantee” means a company formed on the principle of having the liability of its members limited by the memorandum to the respective amounts that the members undertake to contribute to the property of the company in the event of its being wound up;
- “company limited by shares” means a company formed on the principle of having the liability of its members limited by the memorandum to the amount (if any) unpaid on the shares respectively held by them;
- “contributory” means—
- (a) in relation to a company other than a no liability company—
 - (i) a person liable as a member or past member to contribute to the property of the company in the event of its being wound up;
 - (ii) in the case of a company having a share capital—
a holder of fully paid shares in the company;and
 - (iii) before the final determination of the persons who are contributories by virtue of sub-paragraphs (i) and (ii)—a person alleged to be such a contributory;
 - (b) in relation to a body corporate to which Division 6 of Part XII applies—
 - (i) a person who is a contributory by virtue of section 471;and
 - (ii) before the final determination of the persons who are contributories by virtue of sub-paragraph (i)—a person alleged to be such a contributory;
 - (c) in relation to a no liability company—subject to section 476, a member of the company;
- “corporation” means any body corporate, whether formed or incorporated within or outside the State, and includes any company, any foreign company and any recognized company but does not include—

- (a) a body corporate that is incorporated within Australia or an external Territory and is a public authority or an instrumentality or agency of the Crown;
- (b) a corporation sole;
- or
- (c) a body corporate (not being a company) incorporated by or under a law of South Australia other than this Code or a corresponding previous enactment;

“creditors’ voluntary winding up” means a winding up under Division 3 of Part XII, other than a members’ voluntary winding up;

“dealing in securities” means (whether as principal or agent) acquiring, disposing of, subscribing for, underwriting or sub-underwriting securities or making or offering to make, or inducing or attempting to induce a person to make or to offer to make, an agreement—

- (a) for or with respect to acquiring, disposing of, subscribing for, underwriting or sub-underwriting securities;

or

- (b) the purpose or purported purpose of which is to secure a profit or gain to a person who acquires, disposes of, subscribes for, underwrites or sub-underwrites securities or to any of the parties to the agreement in relation to securities;

“debenture” includes debenture stock, bonds, notes and any other document evidencing or acknowledging indebtedness of a corporation in respect of money that is or may be deposited with or lent to the corporation, whether constituting a charge on property of the corporation or not, but does not include—

- (a) a document that merely acknowledges the receipt of money by a corporation in a case where, in respect of the money, the corporation issues, in compliance with section 97, a document prescribed by sub-section (2) of that section and complies with the other requirements of that section;

- (b) a cheque, order for the payment of money or bill of exchange;

- (c) a promissory note having a face value of not less than \$50,000;

or

- (d) for the purposes of the application of this definition to a provision of this Code in respect of which the regulations provide that the word “debenture” does not include a prescribed document or a document included in a prescribed class of documents—that document or a document included in that class of documents, as the case may be;

“deed” includes an instrument having the effect of a deed;

“director”, in relation to a corporation, includes—

(a) any person occupying or acting in the position of director of the corporation, by whatever name called and whether or not validly appointed to occupy or duly authorized to act in the position;

and

(b) any person in accordance with whose directions or instructions the directors of the corporation are accustomed to act;

“emoluments” means the amount or value of any money, consideration or benefit given, directly or indirectly, to a director of a corporation in connection with the management of affairs of the corporation or of any holding company or subsidiary of the corporation, whether as a director or otherwise, but does not include amounts in payment or reimbursement of out-of-pocket expenses incurred for the benefit of the corporation;

“executive officer”, in relation to a corporation, means any person, by whatever name called and whether or not he is a director of the corporation, who is concerned, or takes part, in the management of the corporation;

“exempt proprietary company” means a proprietary company—

(a) no share in which is, by virtue of sub-sections (5) and (6) of this section, deemed to be owned by a public company;

and

(b) no member of which is a public company;

“expert”, in relation to a matter, means any person whose profession or reputation gives authority to a statement made by him in relation to that matter;

“filed” means filed under this Code or any corresponding previous law of the State;

“financial year” means—

(a) in relation to a company incorporated under a corresponding previous law of the State—

(i) a period of 12 months, or such other period (whether longer or shorter than 12 months) not exceeding 18 months as the directors (subject to the requirements of section 240 as to the holding of annual general meetings of the company) resolve, commencing at the expiration of the period in respect of which the last profit and loss account laid before the company at an annual general meeting before the commencement of the Companies (Application of Laws) Act, 1982, was made out or, if no profit and loss account was made out and laid before the company at an annual general meeting before the commencement of the Companies (Application of Laws) Act, 1982, on the date of incorporation of the company;

and

- (ii) each period of 12 months, or such other period (whether longer or shorter than 12 months) not exceeding 18 months as the directors (subject to the requirements of section 240 as to the holding of annual general meetings of the company) resolve, commencing at the expiration of the previous financial year of the company;

(b) in relation to a company incorporated under this Code—

- (i) a period of 12 months, or such other period (whether longer or shorter than 12 months) not exceeding 18 months as the directors (subject to the requirements of section 240 as to the holding of annual general meetings of the company) resolve, commencing on the date of incorporation of the company;

and

- (ii) each period of 12 months, or such other period (whether longer or shorter than 12 months) not exceeding 18 months as the directors (subject to the requirements of section 240 as to the holding of annual general meetings of the company) resolve, commencing at the expiration of the previous financial year of the company;

and

(c) in relation to a corporation incorporated outside the State—

- (i) if a profit and loss account of the corporation is required, under the law of the place where the corporation is incorporated, to be made out in respect of a particular period—that period;

or

- (ii) in a case to which sub-paragraph (i) does not apply—a period in respect of which a profit and loss account of the corporation is made out;

“floating charge” includes a charge that conferred a floating security at the time of its creation but has since become a fixed or specific charge;

“foreign company” means—

(a) any body (including a society or association) incorporated outside the State, not being—

- (i) a recognized company;
- (ii) a corporation sole;

or

- (iii) a body corporate that is incorporated within Australia or an external Territory and is a public

authority or an instrumentality or agency of the Crown in right of the Commonwealth, in right of a State or in right of a Territory;

or

- (b) an unincorporated society, association or other body formed outside the State that, under the law of its place of formation, may sue or be sued, or may hold property in the name of the secretary or other officer of the society, association or body duly appointed for that purpose and which does not have its head office or principal place of business in the State;

“guarantor corporation”, in relation to a borrowing corporation, means a corporation that has guaranteed or has agreed to guarantee the repayment of any money received or to be received by the borrowing corporation in response to an invitation to the public to subscribe for or purchase debentures of the borrowing corporation or an offer to the public of debentures of the borrowing corporation for subscription or purchase;

“home exchange”, in relation to a company, means the stock exchange designated to the company as its Home Exchange by the Australian Associated Stock Exchanges;

“industrial instrument” means—

- (a) a contract of employment;

or

- (b) a law, award, determination or agreement relating to terms or conditions of employment;

“injury compensation” means compensation payable under any law relating to workers compensation;

“insolvent under administration” means a person who—

- (a) under the *Bankruptcy Act 1966* or the law of an external Territory, is a bankrupt in respect of a bankruptcy from which he has not been discharged;

or

- (b) under the law of a country other than Australia or the law of an external Territory, has the status of an undischarged bankrupt,

and includes—

- (c) a person who has executed a deed of arrangement under Part X of the *Bankruptcy Act 1966* or the corresponding provisions of the law of an external Territory or of the law of a country other than Australia where the terms of the deed have not been fully complied with;

and

- (d) a person whose creditors have accepted a composition under Part X of the *Bankruptcy Act 1966* or the corresponding provisions of the law of an external Territory or of the law of a country other than Australia where a final payment has not been made under that composition;

“*Insurance Act 1973*” means the *Insurance Act 1973* of the Commonwealth as amended and in force for the time being;

“investment contract” means any contract, scheme or arrangement that, in substance and irrespective of the form of the contract, scheme or arrangement, involves the investment of money in or under such circumstances that the investor acquires or may acquire an interest in or right in respect of property, whether in the State or elsewhere, that, under, or in accordance with, the terms of investment will, or may at the option of the investor, be used or employed in common with any other interest in or right in respect of property, whether in the State or elsewhere, acquired in or under like circumstances;

“issue” includes circulate, distribute and disseminate;

“leave of absence” means long service leave, extended leave, recreation leave, annual leave, sick leave or any other form of leave of absence from employment;

“*Life Insurance Act 1945*” means the *Life Insurance Act 1945* of the Commonwealth as amended and in force for the time being;

“limited company” means a company limited by shares or by guarantee or both by shares and by guarantee but does not include a no liability company;

“listed corporation” means a corporation that has been admitted to the official list of a stock exchange in Australia or an external Territory and has not been removed from that official list;

“lodged” means—

- (a) in relation to the Commission—lodged under this Code;
- (b) in relation to the Registrar of Companies—lodged or filed with the Registrar of Companies under any corresponding previous law of the State;

or

- (c) in relation to the State Commission—lodged or filed with the State Commission under any corresponding previous law of the State;

“machine-copy”, in relation to a document, means a copy made of the document by any machine in which or process by which an image of the contents of the document is reproduced from surface contact with the document or by the use of photo-sensitive material other than transparent photographic film;

“marketable securities” means debentures, stocks, shares or bonds of any Government, of any local government authority or of any corporation, association or society, and includes any right or option in respect of shares in any corporation and any prescribed interest;

“members’ voluntary winding up” means a winding up under Division 3 of Part XII where a declaration has been made and lodged pursuant to section 395;

“memorandum” means memorandum of association;

“minerals” means minerals in any form, whether solid, liquefied or gaseous and whether organic or inorganic;

“minimum subscription”, in relation to any shares offered to the public for subscription or for which the public are invited to subscribe, means the amount stated in the prospectus relating to the offer or invitation pursuant to paragraph 98 (1) (d) as the minimum amount that, in the opinion of the directors, must be raised by the issue of the shares;

“mining company” means a company the sole objects of which are mining purposes;

“mining purposes” means all or any of the following purposes:

- (a) prospecting for ores, metals or minerals;
- (b) obtaining, by any mode or method, ores, metals or minerals;
- (c) the sale or other disposal of ores, metals, minerals or other products of mining;
- (d) the carrying on of any business or activity necessary for or incidental to any of the foregoing purposes,

whether in the State or elsewhere, but does not include quarrying operations for the sole purpose of obtaining stone for building, roadmaking or similar purposes;

“Minister” means the Minister of State for South Australia for the time being administering the Companies (Application of Laws) Act, 1982;

“*National Companies and Securities Commission Act 1979*” means the *National Companies and Securities Commission Act 1979* of the Commonwealth as amended and in force for the time being;

“negative”, in relation to a document, means a transparent negative photograph used or intended to be used as a medium for reproducing the contents of the document, and includes a transparent photograph made from surface contact with the original negative photograph;

“no liability company” means a company that does not have under its memorandum and articles a contractual right to recover calls made upon its shares from a shareholder who defaults in payment of those calls;

“nominee corporation” means a corporation whose principal business is the business of holding marketable securities as a trustee or nominee;

“officer”, in relation to a corporation, includes—

- (a) a director, secretary, executive officer or employee of the corporation;
- (b) a receiver and manager of the property or any part of the property of the corporation appointed under a power contained in an instrument;
- (c) an official manager or deputy official manager of the corporation;
- (d) a liquidator of the corporation appointed in a voluntary winding up the corporation;

and

- (e) a trustee or other person administering a compromise or arrangement made between the corporation and another person or other persons,

but does not include—

- (f) a receiver who is not also a manager;
 - (g) a receiver and manager appointed by a court;
- or
- (h) a liquidator appointed by a court;

“official liquidator” means a person registered as an official liquidator under section 21 or deemed to be registered as an official liquidator under this Code;

“official manager” means a person appointed as an official manager under Part XI;

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

“prescribed interest” means any right to participate or any interest, whether enforceable or not and whether actual, prospective or contingent—

- (a) in any profits, assets or realization of any financial or business undertaking or scheme whether in the State or elsewhere;
- (b) in any common enterprise, whether in the State or elsewhere, in relation to which the holder of the right or interest is led to expect profits, rent or interest from the efforts of the promoter of the enterprise or a third party;

or

- (c) in any investment contract,

whether or not the right or interest is evidenced by a formal document and whether or not the right or interest relates to a physical asset, but does not include—

- (d) any share in, or debenture of, a corporation;
- (e) any interest in, or arising out of, a policy of life insurance;
- (f) an interest in a partnership agreement, unless the agreement or proposed agreement—

- (i) relates to an undertaking, scheme, enterprise or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts, whether or not that person is, or is to become, a party to the agreement or proposed agreement;

or

- (ii) is or would be an agreement, or is or would be within a class of agreements, prescribed by the regulations for the purposes of this paragraph;

or

- (g) 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 Division 6 of Part IV;

“principal executive officer”, in relation to a company, means the principal executive officer of the company for the time being, by whatever name called, and whether or not he is a director;

“principal register”, in relation to a company, means the register of members of the company kept pursuant to section 256;

“profit and loss account” includes income and expenditure account, revenue account or any other account showing the results of the business of a corporation for a period and, if the corporation concerned is engaged in the development or exploration of natural resources, also includes an operations account or any like account and a development account or any like account;

“promoter”, in relation to a prospectus issued by or in connection with a corporation, means a promoter of the corporation who was a party to the preparation of the prospectus or of any relevant portion of the prospectus, but does not include a person by reason only of his acting in the proper performance of the functions attaching to his professional capacity or to his business relationship with a promoter of the corporation;

“proprietary company” means—

- (a) a company that, immediately before the commencement of the Companies (Application of Laws) Act, 1982, was a proprietary company under the provisions of the Companies Act, 1962-1981;

- (b) any company incorporated as a proprietary company by virtue of section 34;

or

- (c) any company converted into a proprietary company pursuant to sub-section 70 (1),

being a company that has not ceased to be a proprietary company under section 70 or 71;

“prospectus” means—

- (a) in a case where the expression is used in relation to subscribing for shares in or debentures of, or units of shares in or units of debentures of, a corporation—a written notice, circular or other instrument inviting applications or offers from the public to subscribe for, or offering to the public for subscription, shares in or debentures of, or units of shares in or units of debentures of, as the case may be, the corporation;

- (b) in a case where the expression is used in relation to the purchase of shares in or debentures of, or units of shares in or units of debentures of, a corporation—a written notice, circular or other instrument inviting applications

or offers from the public to purchase, or offering to the public for purchase, shares in or debentures of, or units of shares in or units of debentures of, as the case may be, the corporation;

(c) in a case where the expression is used in relation to shares in or debentures of, or units of shares in or units of debentures of, a corporation otherwise than as mentioned in paragraphs (a) and (b)—a written notice, circular or other instrument inviting applications or offers from the public to subscribe for or purchase, or offering to the public for subscription or purchase, shares in or debentures of, or units of shares in or units of debentures of, as the case may be, the corporation;

(d) in a case where the expression is used in relation to a corporation otherwise than as mentioned in paragraphs (a), (b) and (c)—a written notice, circular or other instrument inviting applications or offers from the public to subscribe for or purchase, or offering to the public for subscription or purchase, any shares in or debentures of, or any units of shares in or units of debentures of, the corporation;

or

(e) in any other case where the expression is used—a written notice, circular or other instrument inviting applications or offers from the public to subscribe for or purchase, or offering to the public for subscription or purchase, any shares in or debentures of, or any units of shares in or units of debentures of, a corporation;

“public company” means a company other than a proprietary company;

“recognized company” means a body that is a company within the meaning of a provision of a law of a participating State or of a participating Territory that corresponds with this section;

“recognized foreign company” means a foreign company formed outside Australia and the external Territories that is registered as a foreign company in a participating State or a participating Territory under the provisions of the law of that State or Territory that correspond with Division 5 of Part XIII;

“registered” means registered under this Code or any corresponding previous law of the State;

“registered company auditor” means a person registered as an auditor, or deemed to be registered as an auditor, under this Code and, in relation to a corporation that is not a company, includes a person qualified to act as the auditor of the corporation under the law of the place in which the corporation is formed;

“registered foreign company” means a foreign company that is registered under Division 5 of Part XIII;

“registered liquidator” means a person registered as a liquidator under sub-section 20 (1) or (2) or deemed to be registered as a liquidator under this Code;

- “Registrar of Companies” means a person who held office as Registrar of Companies, Deputy Registrar or Assistant Registrar under the Companies Act, 1962-1974 or a corresponding previous enactment;
- “regulations” means the provisions applying as regulations made under this Code by reason of section 7 of the Companies (Application of Laws) Act, 1982;
- “related corporation”, in relation to a corporation, means a corporation that is deemed to be related to the first-mentioned corporation by virtue of sub-section 7 (5);
- “relative”, in relation to a person, means the spouse, parent or remoter lineal ancestor, son, daughter or remoter issue, or brother or sister of the person;
- “reproduction”, in relation to a document, means a machine-copy of the document or a print made from a negative of the document;
- “resolution”, in relation to a corporation, means a resolution other than a special resolution;
- “resolution for voluntary winding up” means the special resolution referred to in section 392;
- “rules” means rules of the Supreme Court of South Australia;
- “securities”, in relation to a corporation, means—
- (a) shares in, or debentures of, the corporation;
 - (b) any unit in any such shares or debentures;
- and
- (c) any prescribed interest made available by the corporation;
- “share” means share in the share capital of a corporation, and includes stock except where a distinction between stock and shares is expressed or implied;
- “sheriff” includes any person charged with the execution of a writ or other process;
- “special resolution” has the meaning given to that expression by section 248;
- “State Commission” means the Corporate Affairs Commission continued in existence by the Companies (Administration) Act, 1982;
- “statutory meeting” means the meeting referred to in section 239;
- “statutory report” means the report referred to in section 239;
- “stock exchange” means, where that expression appears in a provision for the purposes of which a regulation is in force defining that expression, a stock exchange as defined by that regulation;
- “stock market” means a market, exchange or other place at which, or a facility by means of which, securities of corporations are regularly offered for sale, purchase or exchange;
- “Table A” means Table A in Schedule 3;
- “Table B” means Table B in Schedule 3;

“transparency”, in relation to a document, means—

- (a) a developed negative or positive photograph of that document (in this definition referred to as an “original photograph”) made, on a transparent base, by means of light reflected from, or transmitted through, the document;
- (b) a copy of an original photograph made by the use of photo-sensitive material (being photo-sensitive material on a transparent base) placed in surface contact with the original photograph;

or

- (c) any one of a series of copies of an original photograph, the first of the series being made by the use of photo-sensitive material (being photo-sensitive material on a transparent base) placed in surface contact with a copy referred to in paragraph (b), and each succeeding copy in the series being made, in the same manner, from any preceding copy in the series;

“unit”, in relation to a share, debenture or other interest (whether a prescribed interest or not), means any right or interest, whether legal or equitable, in the share, debenture or other interest, by whatever term called, and includes any option to acquire any such right or interest in the share, debenture or other interest;

“unlimited company” means a company formed on the principle of having no limit placed on the liability of its members;

“voting share”, in relation to a body corporate, means an issued share in the body corporate that confers a right to vote, not being a right to vote that is exercisable only in one or more of the following circumstances:

- (a) during a period during which a dividend (or part of a dividend) in respect of the share is in arrears;
- (b) upon a proposal to reduce the share capital of the body corporate;
- (c) upon a proposal that affects rights attached to the share;
- (d) upon a proposal to wind up the body corporate;
- (e) upon a proposal for the disposal of the whole of the property, business and undertaking of the body corporate;
- (f) during the winding up of the body corporate;

“wages”, in relation to a company, means amounts payable to or in respect of an employee of the company (whether the employee is remunerated by salary, wages, commission or otherwise) under an industrial instrument, including amounts payable by way of allowance or reimbursement but not including amounts payable in respect of leave of absence.

(2) For the purposes of this Code, a person shall not be regarded as a person in accordance with whose directions or instructions the directors of a body corporate are accustomed to act by reason only that the directors act on advice given by that person in the proper performance of the functions

attaching to his professional capacity or to his business relationship with the other person.

(3) For the purposes of this Code—

- (a) a reference to an invitation to do any act or thing includes a reference to an invitation to make an offer to do that act or thing;
- (b) a reference to an invitation to the public to subscribe for or purchase debentures of a corporation includes a reference to an invitation to the public to deposit money with or lend money to a corporation;

and

- (c) a reference to an offer to the public of debentures of a corporation for subscription or purchase includes a reference to an offer to the public by a corporation to accept money that is deposited with, or money that is lent to, the corporation.

(4) A reference in this Code to, or to the making of, an offer to the public or to, or to the issuing of, an invitation to the public shall, unless the contrary intention appears, be construed as including a reference to, or to the making of, an offer to any section of the public or to, or to the issuing of, an invitation to any section of the public, as the case may be, whether selected as clients of the person making the offer or issuing the invitation or in any other manner and notwithstanding that the offer is capable of acceptance only by each person to whom it is made or that an offer or application may be made pursuant to the invitation only by a person to whom the invitation is issued, but a *bona fide* offer or invitation shall not be taken to be an offer or invitation to the public if it—

- (a) is an offer or invitation to enter into an underwriting agreement;
- (b) is made or issued to a person whose ordinary business is to buy or sell shares, debentures or prescribed interests, whether as principal or agent;
- (c) is made or issued to existing members or debenture holders of a corporation and relates to shares in, or debentures of, that corporation;
- (ca) is made or issued to holders of prescribed interests made available by a corporation pursuant to a deed that is an approved deed for the purposes of Division 6 of Part IV and is an offer or invitation that relates to prescribed interests made available by that corporation pursuant to the same approved deed;

or

- (d) is made or issued to existing members of a company in connection with a proposal referred to in section 409 and relates to shares in that company.

(5) For the purposes of the definition of “exempt proprietary company” in sub-section (1), a share in a proprietary company shall be deemed to be owned by a public company if any beneficial interest in the share is held, directly or indirectly, by—

- (a) a public company;
- (b) a proprietary company a beneficial interest in a share in which is held, directly or indirectly, by a public company;

or

(c) a proprietary company a beneficial interest in a share in which is held, directly or indirectly, by a proprietary company a beneficial interest in a share in which is held, directly or indirectly, by—

(i) a public company;

or

(ii) another proprietary company a beneficial interest in a share in which is held, directly or indirectly, otherwise than by a natural person.

(6) For the purposes of sub-section (5) but without limiting the generality of that sub-section—

(a) a reference in that sub-section to a public company shall be construed as including a reference to—

(i) a foreign company other than a foreign company that (whether or not Division 5 of Part XIII applies to it) is a foreign company of a kind referred to in sub-section 516 (7);

and

(ii) a recognized company that is not an exempt proprietary company under the corresponding law of the participating State or participating Territory in which it is incorporated;

(b) a reference in that sub-section to a public company or to a proprietary company shall be construed as not including a reference to a company in respect of which a licence under section 66, or under any corresponding previous law of the State, is in force;

and

(c) a person (including a corporation) shall be deemed to hold a beneficial interest in a share—

(i) if that person, either alone or together with another person or other persons, is entitled (otherwise than as trustee for, on behalf of, or on account of, another person) to receive, directly or indirectly, any dividends in respect of the share or to exercise, or to control the exercise of, any rights attaching to the share;

or

(ii) if that person, being a corporation, holds any beneficial interest in a share in another corporation which holds, or a subsidiary of which holds, any beneficial interest in that first-mentioned share.

(7) For the purposes of this Code, a receiver of the whole or any part of the property of a company shall be deemed to be also a manager of the company if the receiver manages affairs of the company or has power under the terms of his appointment to manage affairs of the company.

(8) A regulation made for the purposes of sub-paragraph (f) (ii) of the definition of “prescribed interest” in sub-section (1) does not apply to an agreement or a class of agreements relating to a partnership—

- (a) being a partnership for the carrying on of a profession or trade where a person carrying on that profession or trade is required by any law of the State to be registered, licensed or otherwise authorized in order to do so;

and

- (b) the business of which does not include any business other than the business of a partnership referred to in paragraph (a).

(9) The express references in this Code to companies and corporations shall not be taken to imply that references to persons do not include references to companies or corporations.

(10) In this Code—

- (a) a reference to a previous law, or provision of a previous law, or previous enactment, of South Australia or of the State corresponding to, or to a provision of, this Code includes a reference to, or to a provision of, the Companies Act, 1962-1981;

and

- (b) a reference to a previous law, or provision of a previous law, or previous enactment, of another State or of a Territory corresponding to, or to a provision of, this Code includes a reference to, or to a provision of, the law of that State or Territory corresponding to the Companies Act, 1962-1981.

6. A reference in section 12 or 15, Part VII, section 320, paragraph 364 (1) (f), section 388 or 541, sub-section 560 (1) or section 564 to affairs of a corporation shall, unless the contrary intention appears, be construed as including a reference to—

References to affairs of a corporation.

- (a) the promotion, formation, membership, control, business, trading, transactions and dealings (whether alone or jointly with another person or other persons and including transactions and dealings as agent, bailee or trustee), property (whether held alone or jointly with another person or other persons and including property held as agent, bailee or trustee), liabilities (including liabilities owed jointly with another person or other persons and liabilities as trustee), profits and other income, receipts, losses, outgoings and expenditure of the corporation;
- (b) in the case of a corporation (not being an authorized trustee corporation) that is a trustee (but without limiting the generality of paragraph (a))—matters concerned with the ascertainment of the identity of the persons who are beneficiaries under the trust, their rights under the trust and any payments that they have received, or are entitled to receive, under the terms of the trust;
- (c) the internal management and proceedings of the corporation;
- (d) any act or thing done (including any contract made and any transaction entered into) by or on behalf of the corporation, or to or in relation to the corporation or its business or property, at a time when—
 - (i) a receiver, or a receiver and manager, is in possession of, or has control over, the whole or any part of the property of the corporation;

- (ii) the corporation is under official management;
 - (iii) a compromise or arrangement made between the corporation and another person or other persons is being administered;
- or
- (iv) the corporation is being wound up,
- and, without limiting the generality of the foregoing, any conduct of such a receiver or such a receiver and manager, of any official manager or deputy official manager of the corporation, of any person administering such a compromise or arrangement or of any liquidator or provisional liquidator of the corporation;
- (e) the ownership of shares in, debentures of, and prescribed interests made available by, the corporation;
 - (f) the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares in the corporation or to dispose of, or to exercise control over the disposal of, such shares;
 - (g) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the corporation or are or have been able to control or materially to influence the policy of the corporation;
 - (h) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in, debentures of, or prescribed interests made available by, the corporation;
 - (j) where the corporation has made available prescribed interests—any matters concerning the financial or business undertaking, scheme, common enterprise or investment contract to which the interests relate;
- and
- (k) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matters referred to in any of the preceding paragraphs.

7. (1) For the purposes of this Code, a corporation shall, subject to sub-section (3), be deemed to be a subsidiary of another corporation if—

- (a) that other corporation—
 - (i) controls the composition of the board of directors of the first-mentioned corporation;
 - (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 corporation;
- or
- (iii) holds more than one-half of the issued share capital of the first-mentioned corporation (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 corporation is a subsidiary of any corporation that is that other corporation's subsidiary (including a corporation that is that other corporation's subsidiary by another application or other applications of this paragraph).

(2) Without limiting by implication the circumstances in which the composition of a corporation's board of directors is to be taken to be controlled by another corporation, the composition of a corporation's board of directors shall be taken to be controlled by another corporation if that other corporation, by the exercise of some power exercisable whether with or without the consent or concurrence of any other person by that other corporation, can appoint or remove all or a majority of the directors, and for the purposes of this provision that other corporation 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 corporation 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 corporation.

(3) In determining whether one corporation is a subsidiary of another corporation—

- (a) any shares held or power exercisable by that other corporation 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 corporation (except where that other corporation is concerned only in a fiduciary capacity);

or

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

shall be treated as held or exercisable by that other corporation;

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned corporation, 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 corporation or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other corporation if the ordinary business of that other corporation or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable only by way of security given for the purposes of a transaction entered into in the ordinary

course of business in connection with the lending of money, not being a transaction entered into with a person associated with the other corporation or its subsidiary.

(4) A reference in this Code to the holding company of a company or other corporation shall be read as a reference to a corporation of which that last-mentioned company or that other corporation is a subsidiary.

(5) Where a corporation—

(a) is the holding company of another corporation;

(b) is a subsidiary of another corporation;

or

(c) is a subsidiary of the holding company of another corporation,

that first-mentioned corporation and that other corporation shall, for the purposes of this Code, be deemed to be related to each other.

(6) For the purposes of this Code, a corporation is the ultimate holding company of another corporation if—

(a) the other corporation is a subsidiary of the first-mentioned corporation;

and

(b) the first-mentioned corporation is not itself a subsidiary of any corporation.

(7) For the purposes of this Code, a corporation is a wholly-owned subsidiary of another corporation if none of the members of the first-mentioned corporation is a person other than—

(a) that other corporation;

(b) a nominee of that other corporation;

(c) a subsidiary of that other corporation, being a subsidiary none of the members of which is a person other than that other corporation or a nominee of that other corporation;

or

(d) a nominee of such a subsidiary.

Relevant interests
in shares.

8. (1) Subject to this section, a person has a relevant interest in a share in a body corporate—

(a) for the purposes of Division 4 of Part IV or of section 261, if that share is a voting share and that person has power—

(i) to exercise, or to control the exercise of, the right to vote attached to that share;

or

(ii) to dispose of, or to exercise control over the disposal of, that share;

and

(b) for the purposes of sections 230, 231 and 232, if that person has power to dispose of, or to exercise control over the disposal of, that share.

(2) It is immaterial for the purposes of this section whether the power of a person—

- (a) to exercise, or to control the exercise of, the right to vote attached to a voting share in a body corporate;

or

- (b) to dispose of, or exercise control over the disposal of, a share,

is express or implied or formal or informal, is exercisable alone or jointly with another person or other persons, cannot be related to a particular share, or is, or is capable of being made, subject to restraint or restriction, and any such power exercisable jointly with another person or other persons shall, for those purposes, be deemed to be exercisable by either or any of those persons.

(3) A reference in this section to power or control includes a reference to power or control that is direct or indirect or is, or is capable of being, exercised as a result of, or by means of, or in breach of, or by revocation of, trusts, agreements, arrangements, understandings and practices, or any of them, whether or not they are enforceable, and a reference in this section to a controlling interest includes a reference to such an interest as gives control.

- (4) For the purposes of this section, where a body corporate has power—

- (a) to exercise, or to control the exercise of, the right to vote attached to a voting share;

or

- (b) to dispose of, or to exercise control over the disposal of, a share, and—

- (c) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to the exercise of the power;

- (d) a person has a controlling interest in the body corporate;

or

- (e) a person has power to exercise, or to control the exercise of, the voting power attached to not less than the prescribed percentage of the voting shares in the body corporate,

that person shall be deemed to have the same power in relation to that share as the body corporate has.

(5) For the purposes of paragraph (4) (e), a person shall be deemed to have the power referred to in that paragraph if—

- (a) a person associated with the first-mentioned person has that power;

- (b) persons associated with the first-mentioned person together have that power;

or

- (c) the first-mentioned person and a person or persons associated with him together have that power.

- (6) Where a person—

- (a) has entered into an agreement with respect to an issued share;

- (b) has a right relating to an issued share, whether the right is enforceable presently or in the future and whether on the fulfilment of a condition or not;

or

- (c) has an option with respect to an issued share,

and, on performance of the agreement, enforcement of the right or exercise of the option, that person would have a relevant interest in the share, he shall, for the purposes of this section, be deemed to have that relevant interest in the share.

(7) For the purposes of this section, where a body corporate is deemed by sub-section (6) to have a relevant interest in a share and—

- (a) the body corporate or its directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to the exercise of, or the control of the exercise of, any right to vote attached to that share, or in relation to the disposal of, or the exercise of control over the disposal of, that share;

- (b) a person has a controlling interest in the body corporate;

or

- (c) a person has power to exercise, or to control the exercise of, the voting power attached to not less than the prescribed percentage of the voting shares in the body corporate,

that person shall be deemed to have a relevant interest in that share.

(8) A relevant interest in a share shall be disregarded—

- (a) for the purposes of Division 4 of Part IV and sections 230, 231, 232 or 261—

- (i) if the ordinary business of the person who has the relevant interest includes the lending of money and he has authority to exercise his powers as the holder of the relevant interest only by reason of a security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money, not being a transaction entered into with a person associated with the first-mentioned person;

- (ii) if the relevant interest is that of a person who has it by reason of his holding a prescribed office;

- (iii) if the share is subject to a trust, the relevant interest is that of a trustee and—

- (A) a beneficiary is deemed, by sub-section (6), to have a relevant interest in the share by virtue of a presently enforceable and unconditional right referred to in paragraph (b) of that sub-section;

or

- (B) the trustee is a bare trustee;

or

- (iv) if the ordinary business of the person who has the relevant interest includes dealing in securities and he has

authority to exercise his powers as the holder of the relevant interest only by reason of instructions given to him by or on behalf of another person to dispose of that share on behalf of the other person in the ordinary course of business;

and

- (b) for the purposes of Division 4 of Part IV or of section 261, if the relevant interest is that of a person who has it by reason only of his having been appointed as a proxy or representative to vote at a particular meeting of members, or of a class of members, of a corporation, not being an appointment in return for the making of which the person or a person associated with the person provided valuable consideration.

(9) For the purposes of sub-paragraph (8) (a) (iii), a trustee shall not be taken not to be a bare trustee by reason only of the fact that the trustee is entitled in his capacity as a trustee to be remunerated out of the income or property of the trust.

(10) A relevant interest in a share shall not be disregarded by reason only of—

- (a) its remoteness;

or

- (b) the manner in which it arose.

(11) The regulations may provide that relevant interests, or particular classes of relevant interests, in shares in bodies corporate, or in particular classes of bodies corporate, shall, in such circumstances and subject to such conditions (if any) as are specified in the regulations, be disregarded for the purposes of the provisions of this Code referred to in sub-section (1) or for the purposes of such of those provisions as are specified in the regulations.

(12) A reference in this section to the prescribed percentage is a reference to 20 per cent or, where a lesser percentage is prescribed by regulations in force for the time being for the purposes of section 11 of the *Companies (Acquisition of Shares) (South Australia) Code*, a reference to that lesser percentage.

9. (1) A reference in this Code to a person associated with another person shall be construed as a reference to—

Associated persons.

- (a) if the other person is a corporation—

- (i) a director or secretary of the corporation;

- (ii) a corporation that is related to the other person;

- or

- (iii) a director or secretary of such a related corporation;

- (b) where the matter to which the reference relates is the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a corporation—a person with whom the other person has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied—

- (i) by reason of which either of those persons may exercise, directly or indirectly control the exercise of, or sub-

stantially influence the exercise of, any voting power attached to a share in the corporation;

- (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the corporation;

or

- (iii) under which either of those persons may acquire from the other of them shares in the corporation or may be required to dispose of such shares in accordance with the directions of the other of them;

- (c) a person in concert with whom the other person is acting, or proposes to act, in respect of the matter to which the reference relates;

- (d) a person with whom the other person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates;

or

- (e) if the other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with a person as mentioned in paragraph (b), (c) or (d)—that last-mentioned person.

(2) A person shall not be taken to be associated with another person by virtue of paragraph (1) (b), (c), (d) or (e) by reason only that—

- (a) one of those persons furnishes advice to, or acts on behalf of, the other person in the proper performance of the functions attaching to his professional capacity or to his business relationship with the other person;

- (b) without limiting the generality of paragraph (a), where the ordinary business of one of those persons includes dealing in securities—specific instructions are given to the person by or on behalf of the other person to acquire shares on behalf of the other person in the ordinary course of that business;

or

- (c) the other person has been appointed by the first-mentioned person as a proxy or representative to exercise, at a meeting of members or of a class of members of a company, votes attached to shares of which the first-mentioned person is the holder, where the relevant interest of that other person in those shares that arises by reason of his appointment as a proxy or representative would be disregarded under sub-section 8 (8) by reason of paragraph (b) of that sub-section.

(3) For the purposes of paragraph (1) (b), it is immaterial that the power of a person to exercise, control the exercise of, or influence the exercise of, voting power is in any way qualified.

PART II

PART II

ADMINISTRATION

DIVISION 1—POWERS OF INSPECTION

DIVISION 1

Interpretation.

10. In this Division—

“books” includes banker’s books;

“premises” includes any structure, building, aircraft, vehicle, vessel or place (whether built upon or not) and any part of such a structure, building, aircraft, vehicle, vessel or place.

11. (1) Any book that is required by a provision of this Code to be kept by a company or by a registered foreign company shall be open for inspection without charge by a person authorized by the Commission for the purposes of this section.

Commission may inspect books without charge.

(2) An authorization under sub-section (1) may be of general application or may be limited to inspecting a particular book or books or a particular class of books.

12. (1) The powers of the Commission under sub-section (2), or the powers of an authorized person under sub-section (3), to make a requirement of a corporation or person shall not be exercised except—

Power of Commission to require production of books.

(a) for the purpose of the performance of a function or the exercise of a power by the Commission under a Code that is a relevant Code for the purposes of the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981 or under a law of a participating State or of a participating Territory that corresponds with such a relevant code;

or

(b) where the requirement relates to a matter that constitutes or may constitute—

(i) a contravention of, or failure to comply with, a provision of a relevant Code or corresponding law referred to in paragraph (a);

(ii) a contravention of, or failure to comply with, a provision of the Companies Act, 1962-1981, as in force at any time or of a previous law of a participating State or participating Territory that corresponded with that Act;

or

(iii) an offence relating to a company that involves fraud or dishonesty or concerns the management of affairs of the company.

(2) The Commission may, at any time, by notice in writing—

(a) give a direction to—

(i) a corporation;

or

(ii) a person who is or has been an officer or employee of, or an agent, banker, solicitor, auditor or other person

acting in any capacity for or on behalf of, a corporation (including a corporation that is in the course of being wound up or has been dissolved),

requiring the production, at such time and place as are specified in the direction, of such books relating to affairs of the corporation as are so specified;

or

(b) give a direction to any person requiring the production, at such time and place as are specified in the direction, of any books relating to affairs of a corporation (including a corporation that is in the course of being wound up or has been dissolved) that are in the custody or under the control of the person.

(3) The Commission may from time to time authorize a person, on producing (if required to do so) such evidence of his authority as is prescribed—

(a) to require by notice in writing any corporation to produce to the authorized person forthwith or, if a time and place at which the books are to be produced are specified in the notice, at that time and place, such books relating to affairs of the corporation as are specified by the authorized person;

(b) to require by notice in writing any person who is or has been an officer or employee of, or an agent, banker, solicitor, auditor or other person acting in any capacity for or on behalf of, a corporation (including a corporation that is in the course of being wound up or has been dissolved) to produce to the authorized person forthwith such books relating to affairs of the corporation as are specified by the authorized person;

or

(c) to require by notice in writing any person to produce to the authorized person forthwith any books relating to affairs of a corporation (including a corporation that is in the course of being wound up or has been dissolved) that are in the custody or under the control of the person.

(4) An authorization under sub-section (3) may be of general application or may be limited to making requirements of a particular corporation or other person or particular corporations or other persons.

(5) Where the Commission, or a person authorized by the Commission, requires the production of any books under this section and a person has a lien on the books, the production of the books does not prejudice the lien.

(6) Where a person exercises a power under this section to require another person to produce books—

(a) if the books are produced, the first-mentioned person—

(i) may take possession of the books and may make copies of, or take extracts from, the books;

(ii) may require the other person, or any person who was party to the compilation of the books, to make a statement providing any explanation that the person concerned is able to provide as to any matter relating

to the compilation of the books or as to any matter to which the books relate;

- (iii) may retain possession of the books for such period as is necessary to enable the books to be inspected, and copies of, or extracts from, the books to be made or taken, by or on behalf of the Commission;

and

- (iv) during that period shall permit a person who would be entitled to inspect any one or more of the books if they were not in the possession of the first-mentioned person to inspect at all reasonable times such of the books as that person would be so entitled to inspect;

or

- (b) if the books are not produced, the first-mentioned person may require the other person—

- (i) to state, to the best of his knowledge and belief, where the books may be found;

and

- (ii) to identify the person who, to the best of his knowledge and belief, last had custody of the books and to state, to the best of his knowledge and belief, where that last-mentioned person may be found.

(7) Where this section confers a power on a person to require another person to produce books relating to affairs of a corporation, the first-mentioned person also has power to require the other person (whether or not he requires the other person to produce books and whether or not any books are produced pursuant to such a requirement), so far as the other person is able to do so, to identify property of the corporation and explain the manner in which the corporation has kept account of that property.

(8) A person shall not be subject to any liability by reason that the person complies with a direction given or purporting to have been given under sub-section (2), or a requirement made, or purporting to have been made, under sub-section (3).

(9) A power conferred by this section to make a requirement of a person extends, if the person is a body corporate, including a body corporate that is in the course of being wound up, or was a body corporate, being a body corporate that has been dissolved, to making that requirement of any person who is or has been an officer of the body corporate.

(10) For the purposes of this section, “officer”, in relation to a body corporate, includes—

- (a) a director, secretary, executive officer or employee of the body corporate;
- (b) a receiver, or a receiver and manager, of the property or any part of the property of the body corporate;
- (c) an official manager or a deputy official manager of the body corporate;
- (d) a liquidator or provisional liquidator of the body corporate;

and

- (e) a trustee or other person administering a compromise or arrangement made between the body corporate and another person or other persons.

Power of
magistrate to
issue warrant to
seize books.

13. (1) If a magistrate is satisfied, on information on oath or affirmation laid by an employee of the Commission or by another person authorized in writing by the Commission, that there are reasonable grounds for suspecting that there are on particular premises in the State any books the production of which has been required under section 12 or under a provision of a law of a participating State or of a participating Territory that corresponds with section 12 and which have not been produced in compliance with that requirement, the magistrate may issue a warrant authorizing any member of the Police Force of South Australia together with any other person named in the warrant—

- (a) to enter those premises (using such force as is necessary for the purpose);
- (b) to search the premises and to break open and search any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, in the premises;
- (c) to take possession of, or secure against interference, any books that appear to be books the production of which was so required;

and

- (d) to deliver any books possession of which is so taken into the possession of a person authorized by the Commission to receive them.

(2) An information laid for the purposes of sub-section (1) shall state that the person laying the information suspects that there are on particular premises in the State books the production of which has been required under section 12 or under a provision of a law of a participating State or of a participating Territory that corresponds with section 12 and which have not been produced in compliance with that requirement and shall specify the grounds on which the person so suspects.

(3) Where a magistrate issues a warrant under sub-section (1), he shall state on the information laid under that sub-section—

- (a) which of the grounds set out in the information as required by sub-section (2) he has relied on to justify the issue of the warrant;

and

- (b) particulars of any other grounds relied on by him to justify the issue of the warrant.

(4) There shall be stated in a warrant issued under this section—

- (a) whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night;

and

- (b) a date, being a date not later than 7 days after the date of issue of the warrant, upon which the warrant ceases to have effect.

(5) Where, under this section, a person takes possession of, or secures against interference, any books, and a person has a lien on the books, the

taking of possession of the books or the securing of the books against interference does not prejudice the lien.

(6) Where, under this section, a person takes possession of, or secures against interference, any books, that person or any person to whose possession the books were delivered under paragraph (1) (d)—

- (a) may make copies of, or take extracts from, the books;
- (b) may require any person who was party to the compilation of the books to make a statement providing any explanation that that person is able to provide as to any matter relating to the compilation of the books or as to any matter to which the books relate;
- (c) may retain possession of the books for such period as is necessary to enable the books to be inspected, and copies of, or extracts from, the books to be made or taken, by or on behalf of the Commission;

and

- (d) during that period shall permit a person who would be entitled to inspect any one or more of those books if they were not in the possession of the first-mentioned person to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

(7) The powers conferred by this section are in addition to, and not in derogation of, any other powers conferred by law.

14. (1) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement made under section 12 or 13. Offences.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(2) A person shall not, in purported compliance with a requirement made under section 12 or 13, furnish information or make a statement that is false or misleading in a material particular.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(3) It is a defence to a prosecution for an offence against sub-section (2) if the defendant proves that he believed on reasonable grounds that the information or statement was true and was not misleading.

(4) A person shall not, without reasonable excuse, obstruct or hinder—

- (a) the Commission or another person in the exercise of any power under section 12;
- or

- (b) a person executing a warrant issued under section 13.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(5) The occupier or person in charge of any premises that a person enters pursuant to a warrant referred to in sub-section 13 (1) shall provide the last-mentioned person with all reasonable facilities and assistance for the effective exercise of his powers under the warrant.

Penalty: \$2,500 or imprisonment for 6 months, or both.

(6) A person is not excused from making a statement providing an explanation as to any matter relating to the compilation of any books or as to any matter to which any books relate pursuant to a requirement made of him in accordance with section 12 or 13 on the ground that the statement

might tend to incriminate him but, where the person claims before making a statement that the statement might tend to incriminate him, the statement is not admissible in evidence against him in criminal proceedings other than proceedings under this section.

(7) Subject to sub-section (6), a statement made by a person in compliance with a requirement made under section 12 or 13 may be used in evidence in any criminal or civil proceedings against the person.

Copies or extracts
of books to be
admitted in
evidence.

15. (1) Subject to this section, in any legal proceedings (whether proceedings under this Code or otherwise), a copy of or extract from a book relating to affairs of a corporation is admissible in evidence as if it were the original book or the relevant part of the original book.

(2) A copy of or extract from a book is not admissible in evidence under sub-section (1) unless it is proved that the copy or extract is a true copy of the book or of the relevant part of the book.

(3) For the purposes of sub-section (2), evidence that a copy of or extract from a book is a true copy of the book or of a part of the book may be given by a person who has compared the copy or extract with the book or the relevant part of the book and may be given either orally or by an affidavit sworn, or by a declaration made, before a person authorized to take affidavits or statutory declarations.

Privilege.

16. (1) Where—

(a) the Commission, or a person authorized by the Commission, makes a requirement under section 12 or 13 of a duly qualified legal practitioner in respect of a book;

and

(b) the book contains a privileged communication made by or on behalf of or to the legal practitioner in his capacity as a legal practitioner,

the legal practitioner is entitled to refuse to comply with the requirement unless the person to whom or by or on behalf of whom the communication was made or, if the person is a body corporate that is under official management or in the course of being wound up, the official manager or the liquidator, as the case may be, agrees to the legal practitioner complying with the requirement but, where the legal practitioner so refuses to comply with a requirement, he shall forthwith furnish, in writing, to the Commission or authorized person—

(c) if he knows the name and address of the person to whom or by or on behalf of whom the communication was made—that name and address;

and

(d) sufficient particulars to identify the book, or the part of the book, containing the communication.

(2) Where—

(a) under section 12 or 13, the Commission, or a person authorized by the Commission, requires a duly qualified legal practitioner to make a statement providing an explanation as to any matter relating to the compilation of books or as to any matter to which any books relate;

and

- (b) the legal practitioner is not able to make that statement without disclosing a privileged communication made by or on behalf of or to the legal practitioner in his capacity as a legal practitioner,

the legal practitioner is entitled to refuse to comply with the requirement, except to the extent that he is able to comply with the requirement without disclosing any privileged communication referred to in paragraph (b), unless the person to whom or by or on behalf of whom the communication was made or, if the person is a body corporate that is under official management or in the course of being wound up, the official manager or the liquidator, as the case may be, agrees to the legal practitioner complying with the requirement but, where the legal practitioner so refuses to comply with a requirement, he shall forthwith furnish, in writing, to the Commission or authorized person—

- (c) if he knows the name and address of the person to whom or by or on behalf of whom the communication was made—that name and address;

and

- (d) if the communication was made in writing—sufficient particulars to identify the document containing the communication.

Penalty: \$1,000 or imprisonment for 3 months, or both.

16A. Where the Commission has reason to suspect that a person has committed an offence under a provision of this Code, the Commission may make such investigation as the Commission thinks expedient for the due administration of this Code.

Investigation of
certain matters.

DIVISION 2—REGISTRATION OF AUDITORS AND LIQUIDATORS

DIVISION 2

17. (1) A natural person may make an application to the Commission—

- (a) for registration as an auditor;
(b) for registration as a liquidator;

or

- (c) for registration as a liquidator of a specified corporation, being a corporation that is to be wound up pursuant to the provisions of this Code.

Application for
registration as
auditor or
liquidator.

(2) An application under this section shall be made in writing as prescribed and shall contain such information as is prescribed.

(3) This section has effect subject to section 28.

18. (1) Subject to this section, where an application for registration as an auditor is made under section 17 and before the expiration of 6 months after the date of commencement of the Companies (Application of Laws) Act, 1982, by a person who was, immediately before that date, registered as a company auditor under the Companies Act, 1962-1981—

Registration of
auditors.

- (a) the Commission shall grant the application and register the applicant as an auditor unless the Commission is satisfied that the

person is not a fit and proper person to be registered as an auditor;

and

(b) if the Commission is satisfied that the person is not a fit and proper person to be registered as an auditor, the Commission shall refuse the application.

(2) Subject to this section, where an application for registration as an auditor (not being an application to which sub-section (1) applies) is made under section 17, the Commission shall grant the application and register the applicant as an auditor if—

(a) the applicant—

(i) is a member of the The Institute of Chartered Accountants in Australia, the Australian Society of Accountants or any other prescribed body;

(ii) holds a degree, diploma or certificate from a prescribed university or another prescribed institution in Australia and has passed examinations in such subjects, under whatever name, as the appropriate authority of the university or other institution certifies to the Commission to represent a course of study in accountancy (including auditing) of not less than 3 years' duration and in commercial law (including company law) of not less than 2 years' duration;

or

(iii) has other qualifications and experience that, in the opinion of the Commission, are equivalent to the qualifications mentioned in sub-paragraph (i) or (ii);

(b) the Commission is satisfied that the applicant has had such practical experience in auditing as is prescribed;

and

(c) the Commission is satisfied that the applicant is capable of performing the duties of an auditor and is otherwise a fit and proper person to be registered as an auditor,

but otherwise the Commission shall refuse the application.

(3) The Commission shall not register as an auditor a person who—

(a) is prohibited, by virtue of an order made under section 562, under a corresponding provision of a previous law of the State or under any provision of a law, or a previous law, of another State or of a Territory that corresponds with that section, from acting as a director of, or from being concerned in or taking part in the management of, a company or other corporation;

or

(b) is, by virtue of section 227, prohibited, without the leave of the Court, from acting as a director or promoter of, or from being concerned in or taking part in the management of, a corporation.

(4) Subject to sub-section (8), the Commission may refuse to register as an auditor a person who is not resident in Australia.

(5) Where the Commission grants an application by a person for registration as an auditor, the Commission shall cause to be issued to the person a certificate by the Commission stating that the person has been registered as an auditor and specifying the date on which the application was granted.

(6) Where—

(a) in a certificate issued to a person under sub-section (5) (including a certificate issued pursuant to this sub-section) a date is specified for the purposes of sub-section 26 (2);

and

(b) the person requests the Commission to alter the date so specified and surrenders the certificate to the Commission,

the Commission may cancel the certificate and issue to the person under sub-section (5), in place of the cancelled certificate, a new certificate that specifies a different date for the purposes of sub-section 26 (2).

(7) A registration under this section shall be deemed to have taken effect at the commencement of the day specified in the certificate as the date on which the application for registration was granted and remains in force until—

(a) the registration is cancelled by the Commission or by the Companies Auditors and Liquidators Disciplinary Board constituted under the Companies (Administration) Act, 1982;

or

(b) the person who is registered dies.

(8) The Commission shall not refuse to register a person as an auditor unless the Commission has afforded the person an opportunity to appear at a hearing before the Commission and to make submissions and give evidence to the Commission in relation to the matter.

(9) Where the Commission refuses an application by a person for registration as an auditor, the Commission shall, not later than 14 days after the decision, give to the person notice in writing setting out the decision and setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

19. A person who holds office as, or is for the time being exercising the powers and performing the duties of, the Auditor-General of South Australia shall be deemed to be registered as an auditor under this Division.

Auditor-General
deemed to be
registered as
auditor.

20. (1) Subject to this section, where an application for registration as a liquidator is made under section 17 and before the expiration of 6 months after the date of commencement of the Companies (Application of Laws) Act, 1982 by a person who was, immediately before that date, registered as a liquidator under the Companies Act, 1962-1981—

Registration of
liquidators.

(a) the Commission shall grant the application and register the applicant as a liquidator unless the Commission is satisfied that the person is not a fit and proper person to be registered as a liquidator;

or

- (b) if the Commission is satisfied that the person is not a fit and proper person to be registered as a liquidator—the Commission shall refuse the application.

(2) Subject to this section, where an application for registration as a liquidator (not being an application to which sub-section (1) applies) is made under section 17, the Commission shall grant the application if—

- (a) the applicant—

(i) is a member of The Institute of Chartered Accountants in Australia, the Australian Society of Accountants or any other prescribed body;

(ii) holds a degree, diploma or certificate from a prescribed university or another prescribed institution in Australia and has passed examinations in such subjects, under whatever name, as the appropriate authority of the university or other institution certifies to the Commission to represent a course of study in accountancy of not less than 3 years' duration and in commercial law (including company law) of not less than 2 years' duration;

or

(iii) has other qualifications and experience that, in the opinion of the Commission, are equivalent to the qualifications mentioned in sub-paragraph (i) or (ii);

- (b) the Commission is satisfied as to the experience of the applicant in connection with the winding up of corporations;

and

- (c) the Commission is satisfied that the applicant is capable of performing the duties of a liquidator and is otherwise a fit and proper person to be registered as a liquidator,

but otherwise the Commission shall refuse the application.

(3) Where an application for registration as a liquidator of a specified corporation is made under section 17, the Commission shall grant the application and register the applicant as a liquidator of that corporation if the Commission is satisfied that the applicant has sufficient experience and ability, and is a fit and proper person, to act as liquidator of the corporation, having regard to the nature of the property or business of the corporation and the interests of its creditors and contributories, but otherwise the Commission shall refuse the application.

(4) The Commission shall not register as a liquidator, or as a liquidator of a specified corporation, a person who—

- (a) is prohibited, by virtue of an order made under section 562, under a corresponding provision of a previous law of the State or under any provision of a law, or a previous law, of another State or of a Territory that corresponds with that section, from acting as a director of, or from being concerned in or taking part in the management of, a company or other corporation;

or

- (b) is, by virtue of section 227, prohibited, without the leave of the Court, from acting as a director or promoter of, or from being

concerned in or taking part in the management of, a corporation.

(5) Subject to sub-section (10), the Commission may refuse to register as a liquidator or as a liquidator of a specified corporation a person who is not resident in Australia.

(6) Where—

(a) the Commission grants an application by a person for registration as a liquidator or as a liquidator of a specified corporation;

and

(b) the person has complied with the requirements of section 22, the Commission shall cause to be issued to the person a certificate by the Commission—

(c) stating that the person has been registered as a liquidator or as a liquidator of a specified corporation;

(d) specifying a date as the date of commencement of the registration, being—

(i) the date on which the Commission granted the application;
or

(ii) the date on which the person complied with the requirements of section 22,

whichever was the later;

and

(e) in the case of a person who is registered under sub-section (3) as a liquidator of a specified corporation—setting out the name of that corporation.

(7) Where—

(a) in a certificate issued to a person under sub-section (6) (including a certificate issued pursuant to this sub-section) a date is specified for the purposes of sub-section 26 (2);

and

(b) the person requests the Commission to alter the date so specified and surrenders the certificate to the Commission,

the Commission may cancel the certificate and issue to the person under sub-section (6), in place of the cancelled certificate, a new certificate that specifies a different date for the purposes of sub-section 26 (2).

(8) The registration of a person as a liquidator under sub-section (1) or (2) comes into force at the commencement of the day specified in the certificate as the date of commencement of the registration and remains in force until—

(a) the registration is cancelled by the Commission or by the Companies Auditors and Liquidators Disciplinary Board constituted under the Companies (Administration) Act, 1982;

or

(b) the person dies.

(9) The registration of a person as a liquidator of a specified corporation under sub-section (3) comes into force at the commencement of the day specified in the certificate as the date of commencement of the registration and remains in force until—

- (a) the registration is cancelled by the Commission or by the Companies Auditors and Liquidators Disciplinary Board constituted under the Companies (Administration) Act, 1982;
- (b) the person dies;
- or
- (c) the dissolution of the corporation takes effect.

(10) The Commission shall not refuse to register a person as a liquidator, or as a liquidator of a specified corporation, unless the Commission has afforded the person an opportunity to appear at a hearing before the Commission and to make submissions and give evidence to the Commission in relation to the matter.

(11) Where the Commission refuses an application by a person for registration as a liquidator, or as a liquidator of a specified corporation, the Commission shall, not later than 14 days after the decision, give to the person notice in writing setting out the decision and setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

Registration of
official
liquidators.

21. (1) The Commission may register as an official liquidator a natural person who is a registered liquidator.

(2) A person who is registered as an official liquidator is entitled, upon request, to be issued with a certificate of his registration.

(3) The Commission may, pursuant to the power conferred on it by sub-section (1), register as official liquidators as many registered liquidators as it thinks fit.

Security to be
given by
liquidators.

22. (1) Where the Commission grants an application by a person for registration as a liquidator or as a liquidator of a specified corporation, the person shall lodge and maintain with the local authority a security for the due performance of his duties as such a liquidator in such form and for such amount as is, from time to time, determined by the Commission in relation to that liquidator and with such surety or sureties (if any) as the Commission, from time to time, requires.

(2) Where a security is lodged with the local authority in accordance with sub-section (1), the security may be applied by the local authority in such circumstances, for such purposes and in such manner as is prescribed.

(3) The regulations may make provision for or in relation to—

- (a) the discharge in whole or part by the local authority of securities lodged pursuant to this section;
- and
- (b) the release by the local authority of sureties referred to in sub-section (1) from all or any of their obligations as such sureties.

(4) In this section, "local authority" means the State Commission.

23. (1) The Commission shall cause a Register of Auditors to be kept for the purposes of this Code and shall cause to be entered in the Register in relation to a person who is registered as an auditor—

Register of
auditors.

- (a) the name of the person;
- (b) the date on which the application by that person for registration as an auditor was granted;
- (c) the address of the principal place where the person practises as an auditor and the address of the other places (if any) at which he so practises;
- (d) if the person practises as an auditor as a member of a firm or under a name or style other than his own—the name of that firm or the name or style under which he so practises;

and

- (e) particulars of any suspension of the registration of the person as an auditor and of any action taken in respect of the person under paragraph 27 (10) (a), (b) or (c),

and may cause to be entered in the Register in relation to a person who is registered as an auditor such other particulars as the Commission considers appropriate.

(2) Where a person ceases to be registered as an auditor under this Division, the Commission shall cause to be removed from the Register of Auditors the name of the person and any other particulars entered in the Register in relation to that person.

(3) A person may inspect and make copies of, or take extracts from, the Register of Auditors.

24. (1) The Commission shall cause a Register of Liquidators to be kept for the purposes of this Code and shall cause to be entered in the Register—

Registers of
liquidators and
official
liquidators.

- (a) in relation to a person who is registered as a liquidator—

- (i) the name of the person;
- (ii) the date of commencement of the registration of that person as a liquidator;
- (iii) the address of the principal place where the person practises as a liquidator and the addresses of the other places (if any) at which he so practises;
- (iv) if the person practises as a liquidator as a member of a firm or under a name or style other than his own name—the name of that firm or the name or style under which he so practises;

and

- (v) particulars of any suspension of the registration of the person as a liquidator and of any action taken in respect of the person under paragraph 27 (10) (a), (b) or (c);

and

- (b) in relation to a person who is registered as a liquidator of a specified corporation—

- (i) the name of the person;
- (ii) the name of the corporation;
- (iii) the date of commencement of the registration of the person as a liquidator of the corporation;
- (iv) the address of the principal place where the person proposes to perform his functions as the liquidator of the corporation;
- (v) if the person practises a profession as a member of a firm or under a name or style other than his own name, being a profession by virtue of which he is qualified to be appointed as a liquidator of the corporation—the name and address of that firm or the name or style under which he so practises;

and

- (vi) particulars of any suspension of the registration of the person as a liquidator of that corporation and of any action taken in respect of the person under paragraph 27 (10) (a), (b) or (c),

and may cause to be entered in the Register in relation to a person who is registered as a liquidator, or as a liquidator of a specified corporation, such other particulars as the Commission considers appropriate.

(2) The Commission shall cause a Register of Official Liquidators to be kept for the purposes of this Code and shall cause to be entered in the Register the name, and such other particulars as the Commission considers appropriate, of any person registered as an official liquidator.

(3) Where a person ceases to be registered under this Division as a liquidator, as a liquidator of a specified corporation or as an official liquidator, the Commission shall cause to be removed from the Register of Liquidators or from the Register of Official Liquidators, as the case may be, the name of the person and any other particulars entered in that Register in relation to that person.

(4) A person may inspect and make copies of, or take extracts from, the Register of Liquidators or the Register of Official Liquidators.

Notification of
certain matters.

25. (1) Where—

- (a) a person who is a registered company auditor ceases to practise as an auditor;

or

- (b) a change occurs in any matter particulars of which are required by paragraph 23 (1) (a), (c) or (d) to be entered in the Register of Auditors in relation to a person who is a registered company auditor,

the person shall, not later than 21 days after the occurrence of the event concerned, lodge with the Commission, in the prescribed form, particulars in writing of that event.

(2) Where—

(a) a person who is a registered liquidator ceases to practise as a liquidator;

or

(b) a change occurs in any matter particulars of which are required by sub-paragraph 24 (1) (a) (i), (iii) or (iv) to be entered in the Register of Liquidators in relation to a person who is a registered liquidator,

the person shall, not later than 21 days after the occurrence of the event concerned, lodge with the Commission, in the prescribed form, particulars in writing of that event.

(3) Where—

(a) a person who is registered as a liquidator of a specified corporation ceases to act as a liquidator in the winding up of that corporation;

or

(b) a change occurs in any matter particulars of which are required by sub-paragraph 24 (1) (b) (i), (ii), (iv) or (v) to be entered in the Register of Liquidators in relation to a person who is registered as a liquidator of a specified corporation,

the person shall, not later than 21 days after the occurrence of the event concerned, lodge with the Commission, in the prescribed form, particulars in writing of that event.

(4) Where a person who is registered as an auditor, as a liquidator or as a liquidator of a specified corporation—

(a) becomes an insolvent under administration;

(b) becomes, by virtue of sub-section 227 (2), prohibited, without the leave of the Court, from acting as a director or promoter of, or from being concerned in or taking part in the management of, a corporation;

or

(c) becomes prohibited, by virtue of an order made under section 562 or under a provision of a law in force in another State or in a Territory that corresponds with that section, from acting as a director of, or from being concerned in or taking part in the management of, a company or other corporation,

the person shall, not later than 3 days after the occurrence of the event concerned, lodge with the Commission, in the prescribed form, particulars in writing of that event.

26. (1) Where a person applies to the Commission for registration as an auditor or as a liquidator and his application is granted under section 18 or sub-section 20 (1) or (2) within one year after the commencement of the Companies (Application of Laws) Act, 1982, the Commission may, in the certificate issued under sub-section 18 (5) or 20 (6) (in this section referred to as the “relevant certificate”), specify a date for the purposes of sub-section (2) of this section, being a date that is not more than 3 years after the date (in this section referred to as the “commencement date”) that is, in the relevant certificate, specified pursuant to sub-section 18 (5) or 20 (6), as the case may be.

Triennial
statements by
registered auditors
and liquidators.

(2) Where, in a certificate issued to a registered company auditor or a registered liquidator under sub-section 18 (5) or 20 (6), as the case may be, a date is specified for the purposes of this sub-section, the registered company auditor or registered liquidator shall lodge with the Commission, within one month after that date, a statement setting out, in respect of the period commencing on the commencement date and ending on the first-mentioned date, such information as is prescribed.

(3) A person who is a registered company auditor or a registered liquidator shall, within one month after the expiration of the period of 3 years commencing—

(a) in the case of a person to whom sub-section (2) applies—on the date specified in the relevant certificate for the purposes of sub-section (2);

or

(b) in the case of a person to whom sub-section (2) does not apply—on the commencement date,

and of each subsequent period of 3 years, lodge with the Commission a statement in respect of that period of 3 years setting out such information as is prescribed.

(4) The Commission may, on the application of a registered company auditor or a registered liquidator made before the expiration of the period for lodging a statement under sub-section (2) or (3), in its discretion extend, or further extend, that period.

(5) The Commission may, by notice in writing served on the person, require a person who is registered as a liquidator of a specified corporation to lodge with the Commission, within a period specified in the notice, a statement in respect of a period specified in the notice setting out such information as is prescribed and, where such a notice is served on a person, the person shall lodge the statement as required by the notice.

Cancellation or
suspension of
registration.

27. (1) Where a person who is registered as an auditor, as a liquidator, as a liquidator of a specified corporation or as an official liquidator under this Division requests the Commission to cancel his registration, the Commission may, in its discretion, cancel the registration of that person as an auditor, as a liquidator, as a liquidator of that corporation or as an official liquidator, as the case may be.

(2) The Commission may, at any time, in its discretion, cancel or suspend the registration as an official liquidator of a person who is so registered and the decision of the Commission cancelling or suspending the registration of a person as an official liquidator is final.

(3) Where the Commission decides to exercise its power under sub-section (2) to cancel or suspend the registration of a person as an official liquidator, the Commission shall, not later than 14 days after the decision, give to the person a notice in writing setting out the decision and setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

(4) The Board may, if it is satisfied on application by the Commission—

(a) that a person registered as an auditor under this Division—

- (i) is an insolvent under administration;
- (ii) is, by virtue of sub-section 227 (2), prohibited, without the leave of the Court, from acting as a director or promoter of, or from being concerned in or taking part in the management of, a corporation;
- (iii) is prohibited, by virtue of an order made under section 562, under a corresponding provision of a previous law of the State or under any provision of a law, or a previous law, of another State or of a Territory that corresponds with that section, from acting as a director of, or from being concerned in or taking part in the management of, a company or other corporation;
- (iv) is incapable, by reason of mental infirmity, of managing his affairs;
- (v) has failed to comply with the provisions of section 26;
- or
- (vi) has ceased to be resident in Australia;

or

- (b) that a person registered as an auditor under this Division has failed, whether within or outside the State to carry out adequately and properly the duties of an auditor or is otherwise not a fit and proper person to remain registered as an auditor,

by order, cancel, or suspend for a specified period, the registration of that person as an auditor.

(5) The Board may, if it is satisfied on application by the Commission—

- (a) that a person registered as a liquidator under this Division—
 - (i) is an insolvent under administration;
 - (ii) is, by virtue of sub-section 227 (2), prohibited, without the leave of the Court, from acting as a director or promoter of, or from being concerned in or taking part in the management of, a corporation;
 - (iii) is prohibited, by virtue of an order made under section 562, under a corresponding provision of a previous law of the State or under any provision of a law, or a previous law, of another State or of a Territory that corresponds with that section, from acting as a director of, or from being concerned in or taking part in the management of, a company or other corporation;
 - (iv) is incapable, by reason of mental infirmity, of managing his affairs;
 - (v) has failed to comply with the provisions of section 26;
 - or
 - (vi) has ceased to be resident in Australia;

or

- (b) that a person registered as a liquidator under this Division has failed, whether within or outside the State, to carry out ade-

quately and properly the duties of a liquidator or is otherwise not a fit and proper person to remain registered as a liquidator, by order, cancel, or suspend for a specified period, the registration of that person as a liquidator.

(6) The Board may, if it is satisfied on application by the Commission—

(a) that a person registered under this Division as the liquidator of a specified corporation—

(i) is an insolvent under administration;

(ii) is, by virtue of sub-section 227 (2), prohibited, without the leave of the Court, from acting as a director or promoter of, or from being concerned in or taking part in the management of, a corporation;

(iii) is prohibited, by virtue of an order made under section 562, under a corresponding provision of a previous law of the State or under any provision of a law, or a previous law, of another State or of a Territory that corresponds with that section, from acting as a director of, or from being concerned in or taking part in the management of, a company or other corporation;

(iv) is incapable, by reason of mental infirmity, of managing his affairs;

(v) has failed to comply with a requirement made of him under sub-section 26 (5);

or

(vi) has ceased to be resident in Australia;

or

(b) that a person registered under this Division as a liquidator of a specified corporation has failed, whether within or outside the State, to carry out adequately and properly the duties of a liquidator in respect of the winding up of that corporation or is otherwise not a fit and proper person to remain registered as a liquidator of that corporation,

by order, cancel, or suspend for a specified period, the registration of that person as a liquidator of that corporation.

(7) Where the Commission makes an application to the Board under sub-section (4) in respect of a person who is also registered as a liquidator or as a liquidator of a specified corporation, the Board may, in addition to making an order under that sub-section, if it is satisfied as to any of the matters specified in paragraph (5) (a) or (b) or 6 (a) or (b), make an order cancelling, or suspending for a specified period, the registration of that person as a liquidator or as a liquidator of that corporation, as the case may be, and, where the Board makes such an order, the order shall, for the purposes of this section, be deemed to have been made under sub-section (5) or (6), as the case may be.

(8) Where the Commission makes an application to the Board under sub-section (5) in respect of a person who is also registered as an auditor or as a liquidator of a specified corporation, the Board may, in addition to

making an order under that sub-section, if it is satisfied as to any of the matters specified in paragraph (4) (a) or (b) or (6) (a) or (b), make an order cancelling, or suspending for a specified period, the registration of that person as an auditor or as a liquidator of that corporation, as the case may be, and, where the Board makes such an order, the order shall, for the purposes of this section, be deemed to have been made under sub-section (4) or (6), as the case may be.

(9) Where the Commission makes an application to the Board under sub-section (6) in respect of a person who is also registered as an auditor or as a liquidator, the Board may, in addition to making an order under that sub-section, if it is satisfied as to any of the matters specified in paragraph (4) (a) or (b) or (5) (a) or (b), make an order cancelling, or suspending for a specified period, the registration of that person as an auditor or as a liquidator, as the case may be, and, where the Board makes such an order, the order shall, for the purposes of this section, be deemed to have been made under sub-section (4) or (5), as the case may be.

(10) Where, on application made by the Commission under this section in relation to a person who is registered as an auditor, as a liquidator or as a liquidator of a specified corporation, the Board is satisfied of the matters set out in paragraph (4) (b), (5) (b) or (6) (b), as the case may be, the Board may, in addition to or instead of cancelling or suspending the registration of that person as an auditor, liquidator or liquidator of that corporation, as the case may be, deal with that person in one or more of the following ways:

- (a) by imposing on that person a penalty not exceeding \$1,000;
- (b) by admonishing or reprimanding that person;
- (c) by requiring that person to give an undertaking to engage in, or to refrain from engaging in, specified conduct,

and if a person fails to give an undertaking when required to do so under paragraph (c) or contravenes or fails to comply with an undertaking given pursuant to a requirement under that paragraph, the Board may, subject to sub-section (11), cancel, or suspend for a specified period, the registration of the person as an auditor, as a liquidator or as a liquidator of a specified corporation, as the case may be.

(11) The Board shall not—

- (a) cancel or suspend the registration of a person as an auditor, as a liquidator, or as a liquidator of a specified corporation;
- or
- (b) deal with a person in any of the ways mentioned in paragraphs (10) (a), (b) and (c),

unless the Board has afforded the person an opportunity to appear at a hearing before the Board and to make submissions and give evidence to the Board in relation to the matter.

(11A) The Chairman or a member of the Board may summon a person to appear before the Board at a hearing held for the purposes of this section to give evidence and to produce such documents (if any) as are referred to in the summons, being documents relating to the matters that are the subject of the hearing.

(11B) The Board may, at a hearing, take evidence on oath or affirmation and for that purpose the Chairman or a member of the Board may—

- (a) require a person appearing at the hearing to give evidence either to take an oath or make an affirmation;

and

- (b) administer an oath or affirmation to a person so appearing at the hearing.

(11C) The oath or affirmation to be taken or made by a person for the purposes of sub-section (11B) is an oath or affirmation that the answers he will give to the questions asked him will be true.

(11D) A person shall not—

- (a) insult the Chairman or a member of the Board in the performance of his functions or the exercise of his powers as a member at a hearing before the Board held for the purposes of this section;
- (b) interrupt a hearing before the Board held for the purposes of this section;
- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Board is conducting a hearing for the purposes of this section;

or

- (d) do any other act that would, if the Board were a court of record, constitute contempt of that court.

Penalty: \$1,000 or imprisonment for 3 months.

(12) Where—

- (a) the Board conducts a hearing in relation to a person in accordance with subsection (11);

and

- (b) the Board cancels or suspends the registration of the person as an auditor, as a liquidator or as a liquidator of a specified corporation, or deals with the person in any of the ways mentioned in paragraph (10) (a), (b) or (c),

the Board may require that person to pay an amount specified by the Board, being all or part of—

- (c) the costs of and incidental to that hearing;
- (d) the costs of the Commission in relation to that hearing;

or

- (e) the costs mentioned in paragraph (c) and the costs mentioned in paragraph (d).

(13) Where—

- (a) the Board conducts a hearing in relation to a person in accordance with sub-section (11);

and

- (b) the Board refuses to make an order cancelling or suspending the registration of the person as an auditor, as a liquidator or as a liquidator of a specified corporation, as the case requires, and does not deal with the person in any of the ways mentioned in paragraphs (10) (a), (b) and (c),

the Board may require the Commission to pay an amount specified by the Board, being all or part of—

- (c) the costs of and incidental to that hearing;
 - (d) the costs of the person in relation to that hearing;
- or
- (e) the costs mentioned in paragraph (c) and the costs mentioned in paragraph (d).

(14) The Board may exercise any of its powers under this section in relation to a person as a result of conduct engaged in by that person whether or not that conduct constituted or might constitute an offence, and whether or not any proceedings have been brought or are to be brought in relation to that conduct.

(15) Where the Board decides to exercise any of its powers under this section in relation to a person who is registered as an auditor, as a liquidator or as a liquidator of a specified corporation (other than the power to order the payment of costs by that person under sub-section (12)), the Board shall, not later than 14 days after the decision, give to the person a notice in writing setting out the decision and setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

(16) A decision of the Commission under sub-section (1) to cancel the registration of a person as an auditor, as a liquidator, as a liquidator of a specified corporation or as an official liquidator comes into effect forthwith upon the making of the decision.

(17) A decision of the Commission under sub-section (2) to cancel the registration of a person as an official liquidator comes into effect at the expiration of the day on which notice of the decision is given to the person in accordance with sub-section (3).

(18) Subject to sub-section (19), a decision of the Board to cancel or suspend the registration of a person as an auditor, as a liquidator or as a liquidator of a specified corporation comes into effect at the expiration of the day on which notice of the decision is given to the person in accordance with sub-section (15).

(19) The Board may, in its discretion, postpone the coming into effect of a decision referred to in sub-section (18) to enable the Commission or the person concerned to appeal against the decision and, where the Board so postpones the coming into effect of a decision, the decision comes into effect—

- (a) where neither the Commission nor the person concerned appeals against the decision pursuant to sub-section (26) or (27) within the prescribed period—at the expiration of that period;
 - (b) where either the Commission or the person concerned appeals against the decision pursuant to sub-section (26) or (27)—
 - (i) if the Commission or the person concerned, as the case may be, withdraws the appeal before it is determined by the Court—upon the withdrawal of the appeal;
- or
- (ii) if the Commission or the person concerned, as the case may be, does not so withdraw the appeal and the Court confirms or modifies the decision—at a time fixed by the Court;

or

(c) where the Commission and the person concerned both appeal against the decision pursuant to sub-sections (26) and (27)—

(i) if both the Commission and the person concerned withdraw the appeals before they are determined by the Court—upon the withdrawal of the later of the appeals to be withdrawn;

or

(ii) if either the Commission or the person concerned does not so withdraw its or his appeal, or neither the Commission nor the person concerned withdraws its or his appeal, and the Court confirms or modifies the decision—at a time fixed by the Court.

(20) A person whose registration as an auditor, as a liquidator, as a liquidator of a specified corporation or as an official liquidator is suspended shall, except for the purposes of sub-section 23 (2), 24 (3) or 26 (2), (3) or (5), be deemed not to be registered as an auditor, liquidator, liquidator of that corporation or official liquidator, as the case may be, so long as the registration is suspended.

(21) The amount of a penalty imposed on a person under sub-section (10) may be recovered in a court of competent jurisdiction as a debt due to the Crown.

(22) Where—

(a) under sub-section (12), the Board requires a person to pay all or part of the costs of and incidental to a hearing conducted by the Board in relation to that person (whether or not the Board also requires that person to pay all or part of the costs of the Commission in relation to that hearing);

or

(b) under sub-section (13), the Board requires the Commission to pay all or part of the costs of and incidental to a hearing conducted by the Board on the application of the Commission (whether or not the Board also requires the Commission to pay all or part of the costs of the person in relation to whom the hearing was conducted),

the amount of the costs of and incidental to the hearing so required to be paid by that person or by the Commission, as the case may be, may be recovered in a court of competent jurisdiction as a debt due to the Crown.

(23) Where, under sub-section (12), the Board requires a person to pay all or part of the costs of the Commission in relation to a hearing conducted by the Board in relation to that person (whether or not the Board also requires that person to pay all or part of the costs of and incidental to the hearing), the amount of the costs of the Commission so required to be paid by that person may be recovered in a court of competent jurisdiction as a debt due to the Crown.

(24) Where, under sub-section (13), the Board requires the Commission to pay all or part of the costs of a person in relation to a hearing conducted by the Board in relation to that person (whether or not the Board also requires the Commission to pay all or part of the costs of and incidental to

the hearing), the amount of the costs of that person so required to be paid by the Commission may be recovered in a court of competent jurisdiction as a debt due to that person.

(25) Evidence of any statement made by a person at a hearing held for the purposes of this section in relation to that person shall not be admitted in evidence in criminal proceedings against that person other than proceedings in respect of the falsity of the statement.

(26) A person (other than the Commission) aggrieved by a decision of the Board under this section may, within such period as is prescribed, appeal to the Court, which may confirm, reverse or modify the decision and make such orders and give such directions in the matter as it thinks fit.

(27) The Commission may, within such period as is prescribed, appeal to the Court against a decision of the Board under this section, (including a refusal to make an order under this section) and the Court may confirm, reverse or modify the decision and make such orders and give such directions in the matter as it thinks fit.

(28) In this section, "Board" means the Companies Auditors and Liquidators Disciplinary Board constituted under the Companies (Administration) Act, 1982.

28. (1) A person who has applied for registration as an auditor or liquidator under the provisions of a law of a participating State or participating Territory that correspond with this Division is not entitled to apply to the Commission for registration as an auditor or liquidator, as the case may be, under this Code before he has been notified of the results of his application.

Certain persons not to apply for registration as auditor or liquidator.

(2) A person whose application for registration as an auditor or liquidator under the provisions of a law of a participating State or participating Territory that correspond with this Division has been refused is not entitled, without the leave of the Supreme Court of that State or Territory, to apply to the Commission for registration as an auditor or liquidator, as the case may be, under this Code.

(3) A person whose registration as an auditor or liquidator has been cancelled or suspended under the provisions of a law of a participating State or participating Territory that correspond with section 27 (other than subsection (1)) is not entitled, without the leave of the Supreme Court of that State or Territory, to apply to the Commission for registration as an auditor or liquidator, as the case may be, under this Code.

29. (1) A person who is registered as an auditor, as a liquidator or as an official liquidator under the provisions of a law of a participating State or participating Territory that correspond with this Division shall be deemed to be registered as an auditor, as a liquidator or as an official liquidator, as the case may be, under this Code.

Certain persons deemed to be registered under this Code.

(2) A person who is deemed to be registered as an auditor under the provision of a law of a participating State or participating Territory that corresponds with section 19 shall be deemed to be registered as an auditor under this Code.

30. (1) An auditor is not, in the absence of malice on his part, liable to any action for defamation at the suit of any person in respect of—

Auditors and other persons to enjoy qualified privilege in certain circumstances.

(a) any statement that he makes, orally or in writing, in the course of his duties as auditor;

(b) any statement that he makes, orally or in writing, on a report of the directors under section 270 or the corresponding provision of a law of a participating State or of a participating Territory or on any statement, report or other document that is deemed, for any purpose, to be part of the first-mentioned report;

or

(c) the giving of any notice, or the sending of any copy of accounts, group accounts or a report, to the Commission under sub-section 285 (9) or (10).

(2) A person is not, in the absence of malice on his part, liable to any action for defamation at the suit of any person—

(a) in respect of the publishing of any document prepared by an auditor in the course of his duties and required by or under this Code, or required by or under the corresponding law of a participating State or of a participating Territory, to be lodged with the Commission, whether or not the document has been so lodged;

or

(b) in respect of the publishing of any statement made by an auditor as mentioned in sub-section (1).

(3) This section does not limit or affect any right, privilege or immunity that an auditor or other person has, apart from this section, as defendant in an action for defamation.

DIVISION 3

DIVISION 3—REGISTERS AND REGISTRATION OF DOCUMENTS

Registers.

31. (1) The Commission shall, subject to this Code, keep such registers as it considers necessary in such form as it thinks fit.

(2) A person may—

(a) inspect any document lodged with the Commission or with the State Commission or the Registrar of Companies, not being—

(i) an application under section 17;

(ii) a document lodged under section 25 or 26;

or

(iii) a document that has been destroyed or otherwise disposed of;

(b) require a certificate of the incorporation of any company or any other certificate authorized by this Code to be given by the Commission;

or

(c) require a copy of or extract from any document that he is entitled to inspect pursuant to paragraph (a) or any certificate referred

to in paragraph (b) to be given, or given and certified, by the Commission.

(3) If a reproduction or transparency of a document or certificate is produced for inspection, a person is not entitled pursuant to paragraph (2) (a) to require the production of the original of that document or certificate.

(4) The reference in paragraph (2) (c) to a document or certificate includes, where a reproduction or transparency of that document or certificate has been incorporated with a register kept by the Commission, a reference to that reproduction or transparency and, where such a reproduction or transparency has been so incorporated, a person is not entitled pursuant to that paragraph to a copy of or extract from the original of that document or certificate.

(5) A copy of or extract from any document lodged with the Commission or with the State Commission or the Registrar of Companies, and certified by the Commission, is, in any proceedings, admissible in evidence as of equal validity with the original document.

(6) The reference in sub-section (5) to a document includes, where a reproduction or transparency of that document has been incorporated with a register kept by the Commission, a reference to that reproduction or transparency.

(6a) Where the National Commission is required by law to produce to a court or other authority a document lodged with the National Commission or lodged with the Registrar of Companies or with the State Commission, the National Commission may produce to the court or authority—

(a) a copy of the document;

or

(b) where a reproduction or transparency of the document has been incorporated with a register kept by the National Commission—
a copy of the reproduction or transparency,

certified under the seal of the National Commission to be a true copy, and production of the certified copy shall be deemed to constitute compliance with the requirement.

(7) In any proceedings—

(a) a certificate by the Commission that, at a date or during a period specified in the certificate, no company was registered under this Code or a corresponding previous law of the State by a name specified in the certificate shall be received as *prima facie* evidence that at that date or during that period, as the case may be, no company was registered by that name under this Code or any corresponding previous law of the State;

and

(b) a certificate by the Commission that a requirement of this Code specified in the certificate—

(i) had or had not been complied with at a date or within a period specified in the certificate;

or

(ii) had been complied with at a date specified in the certificate but not before that date,

shall be received as *prima facie* evidence of matters specified in the certificate.

(8) If the Commission is of opinion that a document submitted for lodgment with the Commission—

- (a) contains matter contrary to law;
 - (b) contains matter that, in a material particular, is false or misleading in the form or context in which it is included;
 - (c) by reason of an omission or misdescription has not been duly completed;
 - (d) does not comply with the requirements of this Code;
- or
- (e) contains an error, alteration or erasure,

the Commission may refuse to register or receive the document and may request—

- (f) that the document be appropriately amended or completed and re-submitted;
 - (g) that a fresh document be submitted in its place;
- or
- (h) where the document has not been duly completed, that a supplementary document in the prescribed form be lodged.

(9) The Commission may require a person who submits a document for lodgment with the Commission to produce to the Commission such other document, or to furnish to the Commission such information, as the Commission thinks necessary in order to form an opinion whether it may refuse to receive or register the document.

(10) The Commission may, if in the opinion of the Commission it is no longer necessary or desirable to retain them, destroy or dispose of—

- (a) in relation to a corporation—
 - (i) any return of allotment of shares for cash that has been lodged for not less than 2 years;
 - (ii) any annual return or balance-sheet that has been lodged for not less than 7 years or any document creating or evidencing a charge, or the complete or partial satisfaction of a charge, where a memorandum of satisfaction of the charge has been registered for not less than 7 years;

or

 - (iii) any other document (other than the constituent documents or any other document affecting them) that has been lodged or registered for not less than 15 years;
 - (b) in relation to a corporation that has been dissolved or has ceased to be registered for not less than 15 years, any document lodged or registered;
- or
- (c) any document a transparency of which has been incorporated with a register kept by the Commission.

(11) If a corporation or other person, having made default in complying with—

(a) any provision of this Code or of any other law that requires the lodging in any manner with the Commission of any return, account or other document or the giving of notice to the Commission of any matter;

or

(b) any request of the Commission to amend or complete and resubmit any document or to submit a fresh document,

fails to make good the default within 14 days after the service on the corporation or person of a notice requiring it to be done, the Court or any court of summary jurisdiction may, on an application by any member or creditor of the corporation or by the Commission, make an order directing the corporation or any officer of the corporation or the person to make good the default within such time as is specified in the order.

(12) Any such order may provide that all costs of and incidental to the applications shall be borne by the corporation or by any officers of the corporation responsible for the default or by the person.

(13) A corporation that, or an officer of a corporation or other person who, contravenes or fails to comply with an order under sub-section (11) is guilty of an offence.

Penalty: \$5,000 or imprisonment for 1 year, or both.

(14) Nothing in this section prejudices the operation of any law imposing penalties on a corporation or its officers or on another person in respect of a default mentioned in sub-section (11).

32. (1) If, in the case of a corporation incorporated or registered in the State, any of the constituent documents of, or any other document relating to, the corporation lodged with the Commission or the State Commission or the Registrar of Companies has been lost or destroyed, any person may apply to the Commission for leave to lodge with the Commission a copy of the document as originally lodged.

Relodging of lost
registered
documents.

(2) Where such an application is made, the Commission may direct that notice of the application be given to such persons and in such manner as it thinks fit.

(3) Whether or not an application has been made to the Commission under sub-section (1), the Commission, upon being satisfied—

(a) that an original document has been lost or destroyed;

(b) of the date of the lodging of that document;

and

(c) that a copy of that document produced to the Commission is a correct copy,

may certify upon the copy that it is so satisfied and grant leave for the copy to be lodged in the manner required by law in respect of the original.

(4) Upon the lodgment the copy has, and shall be deemed to have had from such date as is mentioned in the certificate as the date of the lodging of the original, the same force and effect for all purposes as the original.

(5) The Court may, by order made upon application by any person aggrieved and after notice to any other person as directed by the Court,

confirm, vary or rescind the certificate, and the order may be lodged with the Commission and shall be registered by it, but no payments, contracts, dealings, acts or things made, had or done in good faith before the registration of the order and upon the faith of and in reliance upon the certificate shall be invalidated or affected by any such variation or rescission.

(6) Where a transparency of a document referred to in sub-section (1) has been incorporated with a register kept by the Commission and is lost or destroyed as referred to in that sub-section, the foregoing provisions of this section have effect as if the document of which it is a transparency had been so lost or destroyed.

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PART III

CONSTITUTION OF COMPANIES

DIVISION 1—INCORPORATION

DIVISION 1

33. (1) Subject to this Code, any 5 or more persons, or, where the company to be formed will be a proprietary company, any 2 or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum and complying with the requirements as to registration, form an incorporated company.

Formation of companies.

(2) A company may be—

- (a) a company limited by shares;
- (b) a company limited by guarantee;
- (c) a company limited both by shares and by guarantee;
- (d) an unlimited company;

or

(e) in the case of a mining company, a no liability company.

(3) Subject to sub-section (4)—

- (a) an association or partnership consisting of more than 20 persons that has for its object the acquisition of gain by the association or partnership or individual members of the association or partnership shall not be formed unless it is incorporated under this Code or is formed pursuant to an Act or letters patent;

and

- (b) a person who participates in the purported formation of an association or partnership in contravention of paragraph (a) is guilty of an offence.

(4) Where a profession or calling is declared by the Ministerial Council by notice published in the *Gazette* to be a profession or calling that may be carried on by an unincorporated association or partnership consisting of not more than the number of persons specified in the notice, an association or partnership formed for the purpose of carrying on that profession or calling and consisting of not more than that number of persons may carry on that profession or calling notwithstanding that it is not incorporated under this Code and is not formed pursuant to an Act or letters patent.

34. (1) A company having a share capital (other than a no liability company) may be incorporated as a proprietary company if a provision of its memorandum or articles—

Proprietary companies.

- (a) restricts the right to transfer its shares;
- (b) limits to not more than 50 the number of its members (counting joint holders of shares as one person and not counting any person in the employment of the company or of its subsidiary or any person who, while previously in the employment of the company or of its subsidiary was, and thereafter has continued to be, a member of the company);
- (c) prohibits any invitation to the public to subscribe for, and any offer to the public to accept subscriptions for, any shares in, or debentures of, the company;

and

- (d) prohibits any invitation to the public to deposit money with, and any offer to the public to accept deposits of money with, the company for fixed periods or payable at call, whether bearing or not bearing interest.

(2) Where, upon the commencement of the Companies (Application of Laws) Act, 1982, neither the memorandum nor the articles of a company that is a proprietary company by virtue of paragraph (a) of the definition of "proprietary company" in sub-section 5 (1) contains or contain the restrictions, limitations and prohibitions required by sub-section (1) of this section to be included in the memorandum or articles of a company that may be incorporated as a proprietary company, the articles of the company shall be deemed to include each such restriction, limitation or prohibition that is not so included and a restriction on the right to transfer its shares that is so deemed to be included in its articles shall be deemed to be a restriction that prohibits the transfer of shares except to a person approved by the directors of the company.

(3) Where a restriction, limitation or prohibition that is deemed to be included in the articles of a company under sub-section (2) is inconsistent with any provision already included in the memorandum or articles of the company, that restriction, limitation or prohibition shall, to the extent of the inconsistency, prevail.

(4) A proprietary company may, by special resolution, alter any restriction on the right to transfer its shares included, or deemed to be included, in its memorandum or articles or any limitation on the number of its members included, or deemed to be included, in its memorandum or articles, but not so that the memorandum and articles of the company cease to include the limitation required by paragraph (1) (b) to be included in the memorandum or articles of a company that may be incorporated as a proprietary company.

Registration and
incorporation.

35. (1) Persons desiring the incorporation of a company shall lodge the memorandum and the articles (if any) of the proposed company with the Commission together with the other documents required to be lodged by or under this Code and the Commission shall, subject to this Code, register the company by registering the memorandum and articles (if any).

(2) On the registration of the memorandum, the Commission shall certify under its common seal that the company is, on and from the date specified in the certificate, incorporated and that the company is—

- (a) a company limited by shares;
- (b) a company limited by guarantee;
- (c) a company limited both by shares and by guarantee;
- (d) an unlimited company;

or

- (e) a no liability company,

as the case may be, and, where applicable, that it is a proprietary company.

(3) The Commission shall keep a copy of a certificate under sub-section (2) and sub-sections 31 (2) and (5) apply to that copy as if it were a document lodged with the Commission.

(4) On and from the date of incorporation specified in the certificate of incorporation, but subject to this Code, the subscribers to the memorandum, together with such other persons as from time to time become members of the company, are an incorporated company by the name set out in the memorandum.

(5) The company—

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

(b) is capable of suing and being sued;

(c) has perpetual succession and shall have a common seal;

and

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

(6) The members of the company have such liability as members of the company to contribute to the property of the company in a winding up of the company as is provided by this Code.

(7) The subscribers to the memorandum shall be deemed to have agreed to become members of the company and, on the incorporation of the company, each subscriber becomes such a member and his name shall be entered in the register of members of the company.

(8) Each other person who agrees to become a member of the company and whose name is entered in the register of members of the company becomes a member of the company.

(9) A company shall not be registered under sub-section (1) unless the name under which the company is proposed to be registered is reserved under section 40 in respect of the company.

36. (1) A corporation cannot be a member of a company that is its holding company, and any allotment or transfer of shares in a company to its subsidiary is void. Membership of holding company.

(2) Any purported acquisition of units of shares in a company that is a holding company by its subsidiary is void.

(3) Neither sub-section (1) nor (2) applies where—

(a) the subsidiary is concerned as a personal representative;

or

(b) the subsidiary is concerned as a trustee and—

(i) the holding company or a subsidiary of the holding company is not beneficially interested under the trust;

or

(ii) the holding company or a subsidiary of the holding company is beneficially interested under the trust only by way of a security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money, not being a transaction entered into with a person associated with the holding company or a subsidiary of the holding company.

(4) This section does not prevent a subsidiary that was, at the commencement of the Companies Act, 1962-1981, a member of its holding company from continuing to be a member but, subject to sub-section (3), the subsidiary does not have a right to vote at meetings of the holding company or of any class of members of the holding company.

(5) This section does not prevent a subsidiary from continuing to be a member of its holding company if, at the time when it becomes a subsidiary of the holding company, it already holds shares in that holding company, but, subject to sub-section (3)—

(a) the subsidiary does not have a right to vote at meetings of the holding company or of any class of members of the holding company;

and

(b) the subsidiary shall, within the period of 12 months or such longer period as the Court may allow after becoming the subsidiary of its holding company, dispose of all of its shares in the holding company.

(6) Subject to sub-section (3), sub-sections (1), (2), (4) and (5) apply in relation to a nominee for a corporation that is a subsidiary as if references in those sub-sections to such a corporation included references to a nominee for it.

(7) In relation to a holding company that is either a company limited by guarantee or an unlimited company, the reference in this section to shares shall, whether or not the holding company has a share capital, be construed as including a reference to the interest of its members as such, whatever the form of that interest.

Requirements as
to memorandum.

37. (1) The memorandum of a company shall be printed, divided into numbered paragraphs, dated, and signed by the persons desiring the formation of the company, and shall state, in addition to other requirements—

- (a) the name of the company;
- (b) the objects of the company;
- (c) unless the company is an unlimited company, the amount of share capital (if any) with which the company proposes to be registered and the division of that share capital into shares of a fixed amount;
- (d) if the company is a company limited by shares, that the liability of the members is limited;
- (e) if the company is a company limited by guarantee or both by shares and by guarantee, that the liability of the members is limited and that each member undertakes to contribute to the property of the company, in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding a specified

amount in addition to the amount (if any) unpaid on any shares held by him;

- (f) if the company is an unlimited company, that the liability of the members is unlimited;
- (g) if the company is a no liability company, that the acceptance of shares in the company does not constitute a contract to pay calls in respect of the shares or to make any contribution towards the debts and liabilities of the company;
- (h) the full names, addresses and occupations of the subscribers, to the memorandum being natural persons, and the corporate names, and the addresses of the registered or principal offices, of the subscribers to the memorandum being corporations;

and

- (j) that those subscribers are desirous of being formed into a company pursuant to the memorandum and (where the company is to have a share capital) respectively agree to take the number of shares in the capital of the company set out opposite their respective names.

(2) Each subscriber to the memorandum—

- (a) shall, if the company is to have a share capital, state in words—

- (i) the number of shares (being not less than one) that he agrees to take;

and

- (ii) if the shares in the company are divided into classes, the class or the respective classes in which the shares that he agrees to take are included;

and

- (b) whether or not the company is to have a share capital, shall sign the memorandum in the presence of at least one witness (not being another subscriber).

(3) A witness to the signature of a subscriber to the memorandum shall attest the signature and add his address.

(4) A reference in sub-section (1) or (2) to the signing of the memorandum of a company shall, in the case of the signing by a person being a body corporate, be construed as including a reference to the affixing in accordance with the constituent documents of the body corporate of the common or official seal of the body corporate to the memorandum and, where a body corporate signs the memorandum by so affixing its common or official seal, sub-section (2) does not require a witness to the affixing of that seal.

(5) A statement in the memorandum of a company limited by shares that the liability of members is limited means that the liability of the members is limited to the amount (if any) unpaid on the shares respectively held by them.

Interpretation.

38. (1) For the purposes of this Division a name shall be taken to be available for reservation in the State unless the name—

- (a) is a name that is reserved or registered under this Division or, in the opinion of the Commission, so closely resembles such a name as to be likely to be mistaken for it;
 - (b) is, in the opinion of the Commission, undesirable;
- or
- (c) is a name, or a name of a kind, that the Ministerial Council has directed the Commission not to accept for registration.

(2) Notwithstanding sub-section (1), a name—

- (a) that, in the opinion of the Commission, so closely resembles a name that is reserved or registered under this Division as to be likely to be mistaken for it;
 - (b) that is, in the opinion of the Commission, undesirable;
- or
- (c) that is a name, or a name of a kind, that the Ministerial Council has directed the Commission not to accept for registration,

shall be taken to be available for reservation in the State in relation to a corporation or intended corporation if the Ministerial Council has consented to the name being reserved or registered under this Division in respect of that corporation or intended corporation.

(3) For the purposes of this Division, a name shall be taken to be available for reservation in a participating State or a participating Territory if it is available for reservation in that State or Territory under the provision of a law of that State or Territory that corresponds with this section.

(4) Where the Ministerial Council gives a direction to the Commission in accordance with paragraph (1) (c), the Commission shall cause particulars of the direction to be published in the *Gazette*.

(5) For the purposes of section 537, sub-section (2) of this section shall be taken to provide for the review by the Ministerial Council of decisions of the Commission made under paragraph (1) (a) or (b) of this section.

Names of particular classes of companies.

39. (1) A limited company shall have the word “Limited” or the abbreviation “Ltd.” as part of and at the end of its name.

(2) A no liability company shall have the words “No Liability” or the abbreviation “N.L.” as part of and at the end of its name.

(3) A proprietary company shall have the word “Proprietary” or the abbreviation “Pty.” as part of its name, inserted immediately before the word “Limited” or before the abbreviation “Ltd.” or, in the case of an unlimited company, at the end of its name.

(4) A description of a company shall not be taken to be inadequate or incorrect by reason of the use of—

- (a) the abbreviation “Co.” or “Coy.” in lieu of the word “Company” contained in the name of the company;
- (b) the abbreviation “Pty.” in lieu of the word “Proprietary” contained in the name of the company;

- (c) the abbreviation "Ltd." in lieu of the word "Limited" contained in the name of the company;
 - (d) the symbol "&" in lieu of the word "and" contained in the name of the company;
 - (e) the abbreviation "N.L." in lieu of the words "No Liability" contained in the name of the company;
- or
- (f) any of those words in lieu of the corresponding abbreviation or symbol contained in the name of the company.

40. (1) A person may apply in the prescribed form to the Commission for the reservation in the State of a name set out in the application as the name of an intended company.

Reservation and registration of name of intended company.

(2) Subject to sub-section (3), if—

- (a) the Commission is satisfied that an application made under sub-section (1) for the reservation of a name is made in good faith;

and

- (b) the name is available for reservation in the State,

the Commission shall reserve the name for a period of 2 months from the date of lodgment of the application, and, where the Commission so reserves the name, the name shall be deemed to have been reserved from that date.

(3) Where—

- (a) an application is made under sub-section (1) for the reservation of a name;

- (b) the application states that it is desired to reserve that name in a participating State or participating Territory;

and

- (c) the name is not available for reservation in that State or Territory,

the Commission shall not reserve the name.

(4) Where—

- (a) a name is reserved under this section in respect of an intended company;

and

- (b) the Commission registers the company by that name under section 35,

the Commission shall register the name of the company in the State and where the Commission so registers the name, the name ceases to be reserved under this section.

(5) Where a name has been reserved under this section in respect of an intended company and—

- (a) the name was not available for reservation in the State or in a State or Territory specified in the application for reservation as mentioned in paragraph (3) (b);

or

- (b) the person who applied for the reservation of the name notifies the Commission in writing that he no longer desires the name to be reserved,

the Commission shall cancel the reservation of the name.

(6) The reservation of a name under this section in respect of an intended company does not of itself entitle the intended company to be registered by that name.

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

Reservation of
name of intended
recognized
company.

41. Where—

- (a) a name has been reserved in respect of an intended recognized company under the provision of a law of a participating State or participating Territory that corresponds with sub-section 40 (2);

and

- (b) the application for the reservation of that name stated that it was desired to reserve the name in the State,

the Commission shall reserve that name in the State and, where the name is so reserved, the reservation remains in force until that name ceases to be reserved, or until the reservation of that name is cancelled by the Commission, under the provision of the law of that State or Territory that corresponds with section 40.

Registration of
name of
recognized
company.

42. Where—

- (a) a name has been reserved in respect of an intended recognized company under section 41;

and

- (b) the name is registered in respect of that recognized company under the provision of a law of a participating State or participating Territory that corresponds with sub-section 40 (4),

the Commission shall register that name in the State and, where the name is so registered, the registration remains in force until it is cancelled by the Commission under this Division or until the registration of that name in the State or Territory referred to in paragraph (b) is cancelled under the law of that State or Territory.

Reservation and
registration of
proposed new
name of
company.

43. (1) A company may apply in the prescribed form to the Commission for the reservation in the State of a name set out in the application as the name to which the company proposes to change its name.

(2) Subject to sub-section (3), if—

- (a) the Commission is satisfied that an application made under sub-section (1) for the reservation of a name is made in good faith;

and

- (b) the name is available for reservation in the State,

the Commission shall reserve the name for a period of 2 months from the date of lodgment of the application, and, where the Commission so reserves the name, the name shall be deemed to have been reserved from that date.

(3) Where—

- (a) an application is made under sub-section (1) for the reservation of a name;
 - (b) the application states that the present name of the company is registered in a participating State or participating Territory;
- and
- (c) the name in respect of which the application is made is not available for reservation in that State or Territory,

the Commission shall not reserve the name.

(4) Where—

- (a) a name is reserved under this section in respect of a company;
- and
- (b) the company changes its name to that reserved name (in this sub-section referred to as the “new name”) under section 65,

the Commission shall register the new name of the company in the State and, where the Commission so registers the new name—

- (c) the new name ceases to be reserved under this section;
- and

- (d) the Commission shall cancel the registration under this Division of the name by which the company was registered before it changed its name to the new name.

(5) Where a name has been reserved under sub-section (2) in respect of a company and—

- (a) the name was not available for reservation in the State or in a State or Territory specified in the application for reservation as mentioned in paragraph (3) (b);

or

- (b) the company notifies the Commission in writing that it no longer desires the name to be reserved,

the Commission shall cancel the reservation of the name.

(6) The reservation of a name under this section in respect of a company does not of itself entitle the company to change its name to that name.

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

44. Where—

- (a) a name has been reserved in respect of a recognized company under the provision of a law of a participating State or participating Territory that corresponds with sub-section 43 (2);

and

- (b) the application for the reservation of that name states that the present name of the recognized company is registered in the State,

the Commission shall reserve the name referred to in paragraph (a) in the State and, where the name is so reserved, the reservation remains in force

Reservation of
proposed new
name of
recognized
company.

until the name ceases to be reserved, or until the reservation of the name is cancelled by the Commission, under the provision of the law of that State or Territory that corresponds with section 43.

Registration of
new name of
recognized
company.

45. Where—

(a) a name has been reserved in respect of a recognized company under section 44;

and

(b) the name is registered in respect of that recognized company under the provision of a law of a participating State or participating Territory that corresponds with sub-section 43 (4),

the Commission shall register that name in the State and, where the name is so registered, the registration remains in force until it is cancelled by the Commission under this Division or until the registration of that name in the State or Territory referred to in paragraph (b) is cancelled under the law of that State or Territory.

Reservation and
registration of
name of intended
foreign company
or foreign
company.

46. (1) A person may apply in the prescribed form to the Commission for the reservation in the State of a name set out in the application as the name of an intended foreign company that is proposed to be registered as a foreign company under Division 5 of Part XIII.

(2) A foreign company that proposes to become registered in the State under Division 5 of Part XIII may apply in the prescribed form to the Commission for the reservation in the State of a name set out in the application as the name by which the foreign company proposes to become so registered.

(3) Subject to sub-section (4), if—

(a) the Commission is satisfied that an application made under sub-section (1) or (2) for the reservation of a name is made in good faith;

and

(b) the name is available for reservation in the State,

the Commission shall reserve the name for a period of 2 months from the date of lodgment of the application, and, where the Commission so reserves the name, the name shall be deemed to have been reserved from that date.

(4) Where—

(a) an application is made under sub-section (1) or (2) for the reservation of a name in respect of an intended foreign company that is to be formed, or a foreign company that was formed, outside Australia and the external Territories;

(b) the application states that it is desired to reserve that name in a participating State or participating Territory;

and

(c) the name is not available for reservation in that State or Territory,

the Commission shall not reserve the name.

(5) Where—

(a) a name is reserved under this section in respect of an intended foreign company or a foreign company;

and

- (b) the intended foreign company is formed and is registered, or the foreign company is registered, by that name as a foreign company under Division 5 of Part XIII,

the Commission shall register the name of the foreign company in the State and, where the Commission so registers the name, the name ceases to be reserved under this section.

(6) Where a name has been reserved under this section in respect of an intended foreign company or a foreign company and—

- (a) the name was not available for reservation in the State or in a State or Territory specified in the application for reservation as mentioned in paragraph (4) (b);

or

- (b) the person who applied for the reservation of the name or the foreign company notifies the Commission in writing that he or it, as the case may be, no longer desires the name to be reserved,

the Commission shall cancel the reservation of the name.

(7) The reservation of a name under this section in respect of an intended foreign company or a foreign company does not of itself entitle the intended foreign company or the foreign company to be registered by that name under Division 5 of Part XIII.

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

(9) Notwithstanding anything in paragraph 38 (1) (a), a name shall not be taken, for the purposes of this section, not to be available for reservation in the State or in another State or in a Territory by reason only that the name is already reserved or registered under this Division or under the provisions of a law of the State or Territory that correspond with this Division, as the case may be, in respect of the foreign company that has applied for the reservation of the name under this section.

47. Where—

- (a) a name has been reserved under the provision of a law of a participating State or participating Territory that corresponds with sub-section 46 (3) in respect of an intended foreign company that is to be formed, or a foreign company that was formed, outside Australia and the external Territories;

Reservation of name of intended recognized foreign company or recognized foreign company.

and

- (b) the application for the reservation of that name stated that it was desired to reserve the name in the State,

the Commission shall reserve that name in the State and, where a name is so reserved, the reservation remains in force until that name ceases to be reserved, or until the reservation of that name is cancelled by the Commission, under the provision of the law of that State or Territory that corresponds with section 46.

48. Where—

Registration of name of recognized foreign company.

- (a) a name has been reserved in respect of an intended foreign company or a foreign company under section 47;

and

- (b) the name is registered in respect of that foreign company under the provision of a law of a participating State or participating Territory that corresponds with sub-section 46 (5),

the Commission shall register that name in the State and, where the name is so registered, the registration remains in force until it is cancelled by the Commission under this Division or until the registration of that name in the State or Territory referred to in paragraph (b) is cancelled under the law of that State or Territory.

Reservation and registration of proposed new name of registered foreign company.

49. (1) A registered foreign company may apply in the prescribed form to the Commission for the reservation in the State of a name set out in the application as the name to which the registered foreign company has changed its name or to which the registered foreign company proposes to change its name.

- (2) Subject to sub-section (3) if—

- (a) the Commission is satisfied that an application made under sub-section (1) for the reservation of a name is made in good faith;

and

- (b) the name is available for reservation in the State,

the Commission shall reserve the name for a period of 2 months from the date of lodgment of the application, and, where the Commission so reserves the name, the name shall be deemed to have been reserved from that date.

- (3) Where—

- (a) an application for the reservation of a name is made under sub-section (1) in respect of a foreign company formed outside Australia and the external Territories;

- (b) the application states—

- (i) where the foreign company has already changed its name to the name in respect of which the application is made—that the former name of the foreign company is registered in a participating State or participating Territory;

or

- (ii) where the foreign company proposes to change its name to the name in respect of which the application is made—that the present name of the foreign company is registered in a participating State or participating Territory;

and

- (c) the name in respect of which the application is made is not available for reservation in that State or Territory,

the Commission shall not reserve the name.

- (4) Where—

(a) a name is reserved under this section in respect of a registered foreign company;

and

(b) whether before or after the name is reserved under this section, the registered foreign company changed or changes its name to that reserved name (in this sub-section referred to as the “new name”),

the Commission shall register the new name of the registered foreign company in the State and, where the Commission so registers the new name—

(c) the new name ceases to be reserved under this section;

and

(d) the Commission shall cancel the registration under this Division of the name by which the registered foreign company was registered before it changed its name to the new name.

(5) Where a name has been reserved under this section in respect of a registered foreign company and—

(a) the name was not available for reservation in the State or in a State or Territory specified in the application for reservation as mentioned in paragraph (3) (b);

or

(b) the registered foreign company notifies the Commission in writing that it no longer desires the name to be reserved,

the Commission shall cancel the reservation of the name.

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

50. Where—

(a) a name has been reserved in respect of a recognized foreign company under the provision of a law of a participating State or participating Territory that corresponds with sub-section 49 (2);

and

(b) the application for the reservation of that name states that the present name of the recognized foreign company is registered in the State,

the Commission shall reserve the name referred to in paragraph (a) in the State and, where the name is so reserved, the reservation remains in force until the name ceases to be reserved, or until the reservation of the name is cancelled by the Commission, under the provision of the law of that State or Territory that corresponds with section 49.

Reservation of
proposed new
name of
recognized foreign
company.

51. Where—

(a) a name has been reserved in respect of a recognized foreign company under section 50;

and

Registration of
new name of
recognized foreign
company.

- (b) the name is registered in respect of that recognized foreign company under the provision of a law of a participating State or participating Territory that corresponds with sub-section 49 (4),

the Commission shall register that name in the State and, where the name is so registered, the registration remains in force until it is cancelled by the Commission under this Division or until the registration of that name in the State or Territory referred to in paragraph (b) is cancelled under the law of that State or Territory.

Reservation and registration of name of recognized company proposing to transfer incorporation to the State.

52. (1) A recognized company that proposes to transfer its incorporation to the State may apply in the prescribed form to the Commission for the reservation in the State of a name set out in the application as the name by which the recognized company intends to register upon transfer of its incorporation pursuant to Division 4.

- (2) Subject to sub-section (3), if—

- (a) the Commission is satisfied that an application made under sub-section (1) for the reservation of a name is made in good faith;

and

- (b) the name is available for reservation in the State,

the Commission shall reserve the name for a period of 2 months from the date of lodgment of the application, and, where the Commission so reserves the name, the name shall be deemed to have been reserved from that date.

- (3) Where—

- (a) an application is made under sub-section (1) for the reservation of a name;

- (b) the application states that the name of the recognized company is registered in a participating State or participating Territory;

and

- (c) the name in respect of which the application is made is not available for reservation in that State or Territory,

the Commission shall not reserve the name.

- (4) Where—

- (a) a name is reserved under this section in respect of a recognized company;

and

- (b) the recognized company is registered by that name as a company pursuant to Division 4,

the Commission shall register the name of the company in the State and, where the Commission so registers the name—

- (c) the name ceases to be reserved under this section;

and

- (d) if a registration of that name in respect of that recognized company is in force under any other provision of this Division, the Commission shall cancel that last-mentioned registration.

(5) Where a name has been reserved under sub-section (2) in respect of a recognized company and—

- (a) the name was not available for reservation in the State or in a State or Territory specified in the application for reservation as mentioned in paragraph (3) (b);

or

- (b) the recognized company notifies the Commission in writing that it no longer desires the name to be reserved,

the Commission shall cancel the reservation of the name.

(6) The reservation of a name under this section in respect of a recognized company does not of itself entitle the recognized company to be registered pursuant to Division 4 by that name.

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

(8) Notwithstanding anything in paragraph 38 (1) (a), a name shall not be taken, for the purposes of this section, not to be available for reservation in the State or in another State or in a Territory by reason only that the name is already reserved or registered under this Division or under the provisions of a law of the State or Territory that correspond with this Division, as the case may be, in respect of the recognized company that has applied for the reservation of the name under this section.

53. (1) Where a name has been reserved in respect of a company under the provision of a law of a participating State or participating Territory that corresponds with sub-section 52 (2), the Commission shall reserve that name in the State.

Reservation of name of company or recognized company proposing to transfer incorporation to participating State or Territory.

(2) Where—

- (a) a name has been reserved in respect of a recognized company under the provision of a law of a participating State or participating Territory that corresponds with sub-section 52 (2);

and

- (b) the application for the reservation of that name states that the name of the recognized company is registered in the State,

the Commission shall reserve the name in respect of which the application is made in the State and, where the name is so reserved, the reservation remains in force until the name ceases to be reserved, or until the reservation of the name is cancelled by the Commission, under the provision of the law of that State or Territory that corresponds with section 52.

54. Where—

- (a) a name has been reserved in respect of a company or a recognized company under section 53;

and

- (b) the name is registered under the provision of a law of a participating State or participating Territory that corresponds with sub-section 52 (4),

the Commission shall register that name in the State and, where the Commission so registers the name—

- (c) the registration remains in force until it is cancelled by the Commission under this Division or until the registration of that

Registration of name of recognized company after transfer of incorporation to participating State or Territory.

name in the State or Territory referred to in paragraph (b) is cancelled under the law of that State or Territory;

and

- (d) if a registration of that name in respect of that company or that recognized company is in force under any other provision of this Division, the Commission shall cancel that last-mentioned registration.

Reservation and registration of name of foreign company proposing to transfer incorporation to the State.

55. (1) A foreign company that proposes to transfer its incorporation to the State may apply in the prescribed form to the Commission for the reservation in the State of a name set out in the application as the name by which the foreign company intends to be registered upon transfer of its incorporation pursuant to Division 4.

(2) Subject to sub-section (3), if—

- (a) the Commission is satisfied that an application made under sub-section (1) for the reservation of a name is made in good faith;

and

- (b) the name is available for reservation in the State,

the Commission shall reserve the name for a period of 2 months from the date of lodgment of the application, and, where the Commission so reserves the name, the name shall be deemed to have been reserved from that date.

(3) Where—

- (a) an application is made under sub-section (1) for the reservation of a name;

- (b) the application states that the name of the foreign company is registered in a participating State or participating Territory;

and

- (c) the name in respect of which the application is made is not available for reservation in that State or Territory,

the Commission shall not reserve the name.

(4) Where—

- (a) a name is reserved under this section in respect of a foreign company;

and

- (b) the foreign company is registered by that name as a company pursuant to Division 4,

the Commission shall register the name of the company in the State and, where the Commission so registers the name—

- (c) the name ceases to be reserved under this section;

and

- (d) if a registration of that name in respect of that foreign company is in force under any other provision of this Division, the Commission shall cancel that last-mentioned registration.

(5) Where a name has been reserved under sub-section (2) in respect of a foreign company and—

- (a) the name was not available for reservation in the State or in a State or Territory specified in the application for reservation as mentioned in paragraph (3) (b);

or

- (b) the foreign company notifies the Commission in writing that it no longer desires the name to be reserved,

the Commission shall cancel the reservation of the name.

(6) The reservation of a name under this section in respect of a foreign company does not of itself entitle the foreign company to be registered pursuant to Division 4 by that name.

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

(8) Notwithstanding anything in paragraph 38 (1) (a), a name shall not be taken, for the purposes of this section, not to be available for reservation in the State or in another State or in a Territory by reason only that the name is already reserved or registered under this Division or under the provisions of a law of the State or Territory that correspond with this Division, as the case may be, in respect of the foreign company that has applied for the reservation of the name under this section.

56. Where—

- (a) a name has been reserved in respect of a foreign company under the provision of a law of a participating State or participating Territory that corresponds with sub-section 55 (2);

and

- (b) the application for the reservation of that name states that the name of the foreign company is registered in the State,

the Commission shall reserve the name in respect of which the application was made in the State and, where the name is so reserved, the reservation remains in force until that name ceases to be reserved, or until the reservation of that name is cancelled by the Commission, under the provision of the law of that State or Territory that corresponds with section 55.

57. Where—

- (a) a name has been reserved in respect of a foreign company under section 56;

and

- (b) the name is registered under the provision of a law of a participating State or participating Territory that corresponds with sub-section 55 (4),

the Commission shall register that name in the State and, where the Commission so registers the name—

- (c) the registration remains in force until it is cancelled by the Commission under this Division or until the registration of that name in the State or Territory referred to in paragraph (b) is cancelled under the law of that State or Territory;

and

Reservation of name of foreign company proposing to transfer incorporation to participating State or Territory.

Registration of name of foreign company that has become a recognized company after transfer of incorporation to participating State or Territory.

- (d) if a registration of that name in respect of that foreign company is in force under any other provision of this Division, the Commission shall cancel that last-mentioned registration.

Extension of reservation.

58. Where—

- (a) at any time during a period for which a name is reserved under this Division (whether or not pursuant to the exercise on a previous occasion or previous occasions of a power under this section) an application is made to the Commission for an extension of that period;

and

- (b) the Commission is satisfied that the application is made in good faith,

the Commission may extend that period for a further period of 2 months.

Notification that registration of name desired in another State or in a Territory.

59. Where a name is registered under this Division in respect of a company or a registered foreign company (being a foreign company formed outside Australia and the external Territories), the company or the registered foreign company may notify the Commission in writing that it desires the name to be registered in another State or in a Territory.

Registration of name of recognized company or recognized foreign company in the State.

60. Where—

- (a) the Commission is notified by a recognized company or a recognized foreign company in accordance with the provision of a law of a participating State or participating Territory that corresponds with section 59 that it desires its name to be registered in the State;

and

- (b) the name is available for reservation in the State,

the Commission shall register that name in the State and, where the name is so registered, the registration remains in force until it is cancelled by the Commission under this Division or until the registration of that name in the State or Territory referred to in paragraph (a) is cancelled under the law of that State or Territory.

Notification that registration of name no longer desired in a participating State or Territory.

61. (1) Where—

- (a) a name has been registered under this Division in respect of a company;

and

- (b) that name has been registered in respect of that company under the provisions of a law of a participating State or participating Territory that corresponds with this Division,

the company may notify the Commission in writing that it no longer desires the name to be registered in that State or Territory.

(2) Where—

- (a) a name has been registered under this Division in respect of a registered foreign company;

and

- (b) that name has been registered in respect of that registered foreign company under the provisions of a law of a participating State or participating Territory that correspond with this Division,

the registered foreign company may notify the Commission in writing that it no longer desires the name to be registered in that State or Territory.

62. (1) Where—

- (a) a name has been registered in respect of a recognized company under this Division;

and

- (b) the Commission is notified by the recognized company, in accordance with the provision of a law of a participating State or participating Territory that corresponds with sub-section 61 (1), that the recognized company no longer desires the name to be registered in the State,

the Commission shall cancel the registration of the name in the State.

(2) Where—

- (a) a name has been registered in respect of a recognized foreign company under this Division;

and

- (b) the Commission is notified in accordance with the provision of a law of a participating State or participating Territory that corresponds with sub-section 61 (2), that the recognized foreign company no longer desires the name to be registered in the State,

the Commission shall cancel the registration of the name in the State.

63. (1) Where a name has been registered under this Division in respect of a company and the company is dissolved, the Commission shall cancel the registration of that name.

Cancellation of registration where company or foreign company dissolved or foreign company ceases to be registered.

(2) Where a name has been registered under this Division in respect of a registered foreign company and the registered foreign company is dissolved, the Commission shall cancel the registration of that name.

(3) Where a name has been registered under this Division in respect of a registered foreign company and the registered foreign company ceases to be registered under Division 5 of Part XIII, the Commission shall cancel the registration of that name.

64. Where—

- (a) a name has been registered under this Division in respect of a recognized company or a recognized foreign company;

and

- (b) at the time when the name was reserved under this Division or, if the name was registered under section 60, at the time when the name was so registered, the name was not available for reservation in the State,

the Commission may cancel the registration of the name in the State.

Cancellation of registration where name registered by mistake.

65. (1) A company may, by special resolution and with the approval of the Commission, change its name.

(2) The Commission shall not approve a change of name of a company under sub-section (1) unless the proposed new name is reserved in respect of the company under section 43.

(3) If the name of a company is (whether through inadvertence or otherwise and whether originally or by change of name) a name that is not available for reservation in the State, the company may, by special resolution, change its name to a name that is reserved in respect of that company under section 43 and, if the Commission so directs, shall so change it within 6 weeks after the date of direction or such longer period as the Commission allows, unless the Ministerial Council, by instrument in writing, annuls the direction, and if the company fails to comply with the direction it is guilty of an offence.

(4) Where the name of a company incorporated before the commencement of the Companies Act, 1962-1981 pursuant to any corresponding previous law of the State has not been changed since the commencement of that Act, the Commission shall not, except with the approval of the Ministerial Council, exercise its power under sub-section (3) to direct the company to change its name.

(5) A change of name of a company pursuant to this Code does not operate—

- (a) to create a new legal entity;
- (b) to prejudice or affect the identity of the body corporate constituted by the company or its continuity as a body corporate;
- (c) to affect the property, or the rights or obligations, of the company;
- or
- (d) to render defective any legal proceedings by or against the company,

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

(6) Notwithstanding anything in paragraph 38 (1) (a), a name of a company shall not be taken, for the purposes of sub-section (3), not to be available for reservation in the State by reason only that the name is registered under this Division in respect of that company.

Ommission of
"Limited" in
names of
charitable and
other companies.

66. (1) Where it is proved to the satisfaction of the Commission that a proposed limited company—

- (a) is being formed for the purpose of providing recreation or amusement or promoting commerce, industry, art, science, religion, charity, patriotism, pension or superannuation schemes or any other object useful to the community;
- (b) will apply its profits (if any) or other income in promoting its objects;

and

- (c) will prohibit the payment of any dividend to its members,

the Commission may (after requiring, if it thinks fit, the proposal to be advertised in such manner as it directs either generally or in a particular

case), by licence, authorize the proposed company to be registered as a company with limited liability without the addition of the word "Limited" to its name, and the company may be registered accordingly.

(2) Where it is proved to the satisfaction of the Commission—

(a) that the objects of a limited company are restricted to those specified in sub-section (1) and to objects incidental or conducive to those so specified;

and

(b) that by its memorandum or articles the company is required to apply its profits (if any) or other income in promoting its objects and is prohibited from paying any dividend to its members,

the Commission may, by licence, authorize the company to change its name to a name that does not contain the word "Limited", being a name approved by the Commission.

(3) A licence under this section may be issued on such conditions as the Commission thinks fit, and any conditions on which a licence is so issued are binding on the company and shall, if the Commission so directs, be inserted in the memorandum or articles of the company and the memorandum or articles may, by special resolution, be altered to give effect to any such direction.

(4) A company in respect of which a licence under this section is in force is exempt from complying with the provisions of this Code relating to the use of the word "Limited" as part of its name.

(5) The Commission may, in a licence issued to a company under this section or by notice in writing served on a company in respect of which a licence under this section is in force, exempt the company from complying with such of the provisions of this Code as are specified in the licence or notice relating to the lodging of annual returns and of returns of particulars of directors, principal executive officers and secretaries.

(6) * * * * *

(7) The Commission may, by notice in writing served on a company revoke any exemption held by the company from the provisions of this Code relating to the lodging of annual returns and of returns of particulars of directors, principal executive officers and secretaries.

(8) Subject to sub-section (9), a licence under this section may at any time be revoked by the Commission and, where a licence is so revoked—

(a) the name of the company shall be deemed to be altered by the addition of the word "Limited" at the end of the name;

and

(b) the company ceases to enjoy the exemptions and privileges granted, by reason of the licence, by or under this Code.

(9) Before a licence is revoked, the Commission shall give to the company notice in writing of the intention of the Commission to revoke the licence and shall afford the company an opportunity to appear at a hearing before the Commission and make submissions and give evidence to the Commission in relation to the matter.

(10) Where a licence issued under this section is revoked, a provision of the memorandum of the company that was inserted in compliance with

a condition on which the licence was issued may be altered in the same manner as a provision of that memorandum with respect to the objects of the company may be altered, and section 73 applies to a proposal for such an alteration accordingly.

(11) Where a licence under this section is in force in respect of a company, an alteration of the memorandum or articles of the company, not being an alteration consisting solely of a change of the name of the company, does not have any effect unless—

- (a) a statement setting out the text of the alteration or proposed alteration has been lodged with the Commission and the alteration or proposed alteration has been approved by the Commission;

and

- (b) the alteration is made in accordance with the articles of the company and the provisions of this Code.

(12) Where an alteration or proposed alteration of the memorandum or articles of a company, not being an alteration consisting solely of a change of the name of the company, is approved as mentioned in paragraph (11) (a) and the alteration is made as mentioned in paragraph (11) (b), the alteration has effect notwithstanding a failure to obtain any consent or approval required to be obtained by virtue of a provision contained in the licence referred to in sub-section (11) or a provision inserted in the memorandum or articles of the company for the purposes of sub-section (3) or the corresponding provision of a previous law of the State.

DIVISION 3

DIVISION 3—POWERS AND STATUS

Powers.

67. The powers of a company include—

- (a) power to make donations for patriotic or for charitable purposes;
- (b) power to transact any lawful business in aid of the Commonwealth in the prosecution of any war in which the Commonwealth is engaged;

and

- (c) unless expressly excluded or modified by the memorandum or articles, the powers set out in schedule 2.

Ultra vires
transactions.

68. (1) No act of a company (including the entering into of an agreement by the company), and no conveyance or transfer of property to or by a company, is invalid by reason only of the fact that the company was without capacity or power to do the act or to execute or take the conveyance or transfer.

(2) Any such lack of capacity or power may be asserted or relied upon only in—

- (a) proceedings against the company by a member of the company or, where the company has issued debentures secured by a floating charge over all or any of the property of the company, by the holder of any of those debentures or the trustees for the holders of those debentures to restrain the doing of any

act or acts or the conveyance or transfer of any property to or by the company;

- (b) proceedings by the company, or by a member of the company, against the present or former officers of the company;

or

- (c) an application by the Commission to wind up the company.

(3) If the unauthorized act, conveyance or transfer sought to be restrained in any proceedings under paragraph (2) (a) is being, or is to be, performed or made pursuant to any contract to which the company is a party, the Court may, if all the parties to the contract are parties to the proceedings and if the Court deems it to be just and equitable, set aside and restrain the performance of the contract and may allow to the company or to the other parties to the contract (as the case requires) compensation for the loss or damage sustained by either of them that may result from the action of the Court in setting aside and restraining the performance of the contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the Court as a loss or damage sustained.

69. (1) Subject to this section—

Change of status.

- (a) an unlimited company may convert to a limited company if it was not, within the previous 3 years, a limited company that became an unlimited company pursuant to paragraph (e) or any corresponding provision of a previous law of the State;
- (b) a no liability company all the issued shares in which are fully paid up may convert to a company limited by shares;
- (c) a company limited by shares may convert to a company limited both by shares and by guarantee;
- (d) a company limited by guarantee may convert to a company limited both by shares and by guarantee;

and

- (e) a limited company may convert to an unlimited company.

(2) Where a company applies in writing to the Commission for a change of status as provided by sub-section (1) and, subject to sub-sections 73 (11), (12) and (13) as applied by sub-section (7) of this section, lodges with the application the prescribed documents relating to the application, the Commission shall issue to the company a certificate of incorporation—

- (a) appropriate to the change of status applied for;

and

- (b) specifying, in addition to the particulars prescribed in respect of a certificate of incorporation of a company of that status, that the certificate is issued pursuant to this section,

and, upon the issue of such a certificate of incorporation, the company is a company having the status specified in the certificate.

(3) Where the status of a company is changed pursuant to this section, notice of the change of status shall be published by the company in such manner (if any) as the Commission directs.

(4) In sub-section (2), “prescribed documents”, in relation to an application referred to in that sub-section, means—

- (a) a printed copy of a special resolution of the company—
- (i) resolving to change the status of the company and specifying the status sought;
 - (ii) making such alterations to the memorandum of the company as are necessary to bring the memorandum into conformity with the requirements of this Code relating to the memorandum of a company of the status sought;
 - (iii) in the case of a company that has registered articles—making such alterations and additions (if any) to the articles as are necessary to bring the articles into conformity with the requirements of this Code relating to the articles of a company of the status sought;
 - (iv) in the case of a company that has no registered articles—adopting such articles (if any) as are required by this Code to be registered in respect of a company of the status sought or are proposed by the company as the registered articles of the company upon the change in its status;
- and
- (v) changing the name of the company to a name by which it could be registered if it were a company of the status sought;
- (b) where, by a special resolution referred to in paragraph (a), the memorandum of the company is altered or the articles of the company are altered or added to, or articles are adopted by the company—a printed copy of the memorandum as altered, the articles as altered or added to, or the articles adopted, as the case may be;
- and
- (c) in the case of an application by a limited company to convert to an unlimited company—
- (i) the prescribed form of assent to the application subscribed by or on behalf of all the members of the company;
- and
- (ii) a statement in writing by a director or secretary of the company verifying that the persons by whom or on whose behalf such a form of assent is subscribed constitute the whole membership of the company and, if a member has not subscribed the form himself, that the director or secretary making the statement has taken all reasonable steps to satisfy himself that each person who subscribed the form was lawfully empowered so to do.

(5) The provisions of sub-sections 72 (2) to (10), inclusive, do not apply to or in relation to an application under this section or to any prescribed documents in relation to the application.

(6) A special resolution passed for the purposes of an application under this section takes effect only upon the issue under this section of a certificate of incorporation of the company to which the resolution relates.

(7) With such modifications as are necessary, sub-sections 73 (6) to (13), inclusive, apply to and in respect of the proposal, passing and lodging, and the cancellation or confirmation by the Court, of a special resolution relating to a change of status as if it were a special resolution under section 73.

(8) A change in the status of a company pursuant to this section does not operate—

- (a) to create a new legal entity;
 - (b) to prejudice or affect the identity of the body corporate constituted by the company or its continuity as a body corporate;
 - (c) to affect the property, or the rights or obligations, of the company;
- or
- (d) to render defective any legal proceedings by or against the company,

and any legal proceedings that could have been continued or commenced by or against the company before the change in its status may, notwithstanding the change in its status, be continued or commenced by or against it after the change in its status.

70. (1) A public company having a share capital (other than a no liability company) may convert to a proprietary company by lodging with the Commission a copy of a special resolution—

Change from
public to
proprietary
company or from
proprietary to
public company.

- (a) determining to convert to a proprietary company and specifying an appropriate alteration to its name;

and

- (b) altering the provisions of its memorandum or articles so far as is necessary to impose the restrictions, limitations and prohibitions referred to in sub-section 34 (1).

(2) A proprietary company may, subject to anything contained in its memorandum or articles, convert to a public company by lodging with the Commission a copy of a special resolution determining to convert to a public company and specifying an appropriate alteration to its name, and thereupon the restrictions, limitations and prohibitions referred to in sub-section 34 (1) as included in or deemed to be included in the memorandum or articles of the company cease to form part of the memorandum or articles.

(3) On compliance by a company with the provisions of sub-section (1) or (2) and on the issue of a certificate of incorporation of the company altered accordingly, the company is a proprietary company or a public company, as the case requires.

(4) With such modifications as are necessary, sub-sections 73 (6) to (13), inclusive, apply in respect of the proposal, passing and lodging, and the cancellation or confirmation by the Court, of a special resolution relating to the conversion of a company pursuant to sub-section (1) or (2) of this section as if it were a special resolution under section 73.

(5) A conversion of a company pursuant to sub-section (1) or (2) does not operate—

- (a) to create a new legal entity;
- (b) to prejudice or affect the identity of the body corporate constituted by the company or its continuity as a body corporate;

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

(d) to render defective any legal proceedings by or against the company, and any legal proceedings that could have been continued or commenced by or against the company before the conversion may, notwithstanding the conversion, be continued or commenced by or against it after the conversion.

Default in complying with requirements as to proprietary companies.

71. (1) Where, on the application of the Commission with respect to a proprietary company or of any member or creditor of a proprietary company, the Court is satisfied that default has been made in relation to the company in complying with a prohibition of a kind specified in paragraph 34 (1) (c) or (d) that is included, or is deemed to be included, in the memorandum or articles of the company, the Court may, by order, determine that, on such date as the Court specifies in its order, the company ceased to be a proprietary company.

(2) Where—

(a) default has been made in relation to a proprietary company in complying with a limitation of a kind specified in paragraph 34 (1) (b) that is included, or is deemed to be included, in the memorandum or articles of the company;

(b) a proprietary company has been convicted of an offence under sub-section (7) of this section;

(c) the memorandum or articles of a proprietary company have been so altered that they no longer include restrictions, limitations or prohibitions of the kinds specified in sub-section 34 (1);

or

(d) a proprietary company has ceased to have a share capital,

the Commission may, by notice in writing served on the company, determine that, on such date as is specified in the notice, the company ceased to be a proprietary company.

(3) Where, under this section, the Court or the Commission determines that a company has ceased to be a proprietary company—

(a) the company is a public company and shall be deemed to have been a public company on and from the date specified in the order or notice;

(b) the company shall, on the date so specified, be deemed to have changed its name by the omission from the name of the word “Proprietary” or the abbreviation “Pty.”, as the case requires;

and

(c) where an order has been made under sub-section (1)—the company shall, within a period of 14 days after the date of the order, lodge with the Commission an office copy of the order.

(4) Where the Court is satisfied that a default or alteration referred to in sub-section (1) or (2) has occurred but that it was accidental or due to inadvertence or to some other sufficient cause or that on other grounds it is just and equitable to grant relief, the Court may, on such terms and conditions as to the Court seem just and expedient, determine that the company has not ceased to be a proprietary company.

(5) A company that, by virtue of a determination made under this section, has become a public company shall not convert to a proprietary company without the leave of the Court.

(6) If a company fails to comply with paragraph (3) (c), the company and any officer of the company who is in default are each guilty of an offence.

(7) Where any subscription for shares in or debentures of, or any deposit of money with, a proprietary company is arranged by or through a solicitor, broker, agent or any other person (whether an officer of the company or not) who invites the public to make use of his services in arranging investments or holds himself out to the public as being in a position to arrange investments, the company and any person, including any officer of the company, who is a party to the arrangement are each guilty of an offence.

Penalty: \$1,000 or imprisonment for 3 months, or both.

(8) Where default is made in relation to a proprietary company in complying with any restriction, limitation or prohibition of a kind specified in sub-section 34 (1) that is included, or deemed to be included, in the memorandum or articles of the company, the company and any officer of the company who is in default are each guilty of an offence.

Penalty: \$1,000 or imprisonment for 3 months or both.

(9) An act or transaction is not invalid by reason of the commission of an offence against sub-section (7) or (8).

72. (1) The memorandum of a company may be altered to the extent and in the manner provided by this Code but not otherwise.

General provisions as to alteration of memorandum.

(2) Subject to any other provision of this Code requiring the lodging with the Commission of any resolution of a company, any order of the Court, or any other document, affecting the memorandum of a company, the company shall, within 14 days after the passing of any such resolution, the making of any such order or the execution of any such document, lodge with the Commission a copy of the resolution, an office copy of the order or a copy of the document, as the case may be.

(3) Where an alteration or alterations in the memorandum of a company has or have been made (whether before or after the commencement of the Companies (Application of Laws) Act, 1982, the company shall, on being required by the Commission to do so, lodge with the Commission a printed copy of the memorandum as altered by the alteration or alterations.

(4) If a company contravenes or fails to comply with sub-section (2) or (3), the company and any officer of the company who is in default are each guilty of an offence.

(5) The Commission shall register every resolution, order or other document lodged with it under this Code that affects the memorandum of a company, and, except in the case of a resolution under section 121, the alteration of the memorandum to which the resolution, order or other document relates shall take effect on, and not before, the registration of the resolution, order or other document.

(6) Where a resolution, order or other document has been registered by the Commission under sub-section (5)—

(a) in the case of an order—the Commission shall certify the registration of the order;

and

(b) in the case of a resolution or other document—the Commission shall, if so requested by the company, certify the registration of the resolution or document.

(7) A certificate of the Commission as to the registration of an order is conclusive evidence that all the requirements of this Code with respect to the alteration to which the order relates and any confirmation of that alteration have been complied with.

(8) Notice of the registration shall be published in such manner (if any) as the Court or the Commission directs.

(9) The Commission shall, where appropriate, issue a certificate of incorporation in accordance with the alteration made to the memorandum.

(10) The Commission shall keep a copy of a certificate issued under sub-section (9), and sub-sections 31 (2) and (5) apply to that copy as if it were a document lodged with the Commission.

Alterations of provisions of memorandum.

73. (1) Subject to this section, a company may, by special resolution, alter the provisions of its memorandum with respect to the objects or powers of the company.

(2) Subject to this section, sub-section 78 (3) and section 320, if a provision of the memorandum of a company could lawfully have been contained in the articles of the company, the company may, unless the memorandum prohibits the alteration of that provision, alter that provision by special resolution.

(3) The memorandum of a company may provide that a special resolution altering or adding to a provision contained in the memorandum, being a provision that could lawfully have been contained in the articles of the company, does not have any effect unless and until a further requirement specified in the memorandum has been complied with.

(4) Without limiting the generality of sub-section (3), the further requirement referred to in that sub-section may be a requirement—

(a) that the relevant special resolution be passed by a majority consisting of a greater number of members than is required to constitute the resolution as a special resolution;

(b) that the consent or approval of a particular person be obtained;

or

(c) that a particular condition be fulfilled.

(5) Nothing in sub-section (2) permits the alteration of a provision of the memorandum of a company that relates to rights to which only members included in a particular class of members are entitled.

(6) Notice of a general meeting specifying the intention to propose, as a special resolution, a resolution for the alteration of the provisions of the memorandum of a company with respect to the objects or powers of the company shall be given—

(a) to all members;

(b) to all trustees for debenture holders;

and

- (c) if there are no trustees for, or for a particular class of, debenture holders—to all debenture holders, or all debenture holders of that class, as the case may be, whose names are, at the time of the posting of the notice, known to the company.

(7) The Court may, in the case of any person or class of persons, for such reasons as seem sufficient to the Court, dispense with the notice referred to in sub-section (6).

(8) If an application for the cancellation of an alteration is made to the Court in accordance with this section by—

- (a) in the case of an alteration of a provision or provisions of the memorandum with respect to the objects or powers of a company—the holders of not less than 10% in nominal value of the company's debentures;

or

- (b) in the case of any alteration of a provision or provisions of the memorandum—the holders of not less, in the aggregate, than 10% in nominal value of the company's issued share capital or any class of that capital or, if the company is not limited by shares, not less than 10% of the company's members,

the alteration does not have any effect except so far as it is confirmed by the Court.

(9) The application shall be made within 21 days after the date on which the resolution altering the provision or provisions of the memorandum of the company was passed, and may be made, on behalf of the persons entitled to make the application, by such one or more of their number as they appoint in writing for the purpose.

(10) On the application, the Court shall have regard to the rights and interests of the members of the company or of any class of them as well as to the rights and interests of the creditors and may do all or any of the following:

- (a) if the Court thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase (otherwise than by the company or a subsidiary of the company) of the interests of dissentient members;
- (b) give such directions and make such orders as the Court thinks expedient for facilitating or carrying into effect any such arrangement;
- (c) make an order cancelling the alteration or confirming the alteration either wholly or in part and on such terms and conditions as the Court thinks fit.

(11) Notwithstanding any other provision of this Code, a copy of a resolution altering a provision or provisions of the memorandum of a company as provided by sub-section (1) or (2) shall not be lodged with the Commission before the expiration of 21 days after the passing of the resolution or, if an application to the Court has been made, before the application has been determined by the Court, whichever is the later.

(12) If an application has not been made to the Court in accordance with this section, a copy of the resolution shall be lodged with the Commission by the company within 14 days after the expiration of the 21 days referred to in sub-section (11).

(13) If an application has been made to the Court in accordance with this section, a copy of the resolution, together with an office copy of the order of the Court, shall be lodged with the Commission by the company within 14 days after the application has been determined by the Court.

Substitution by company of memorandum and articles for deed or settlement.

73A. (1) A company may, by special resolution, substitute a memorandum and articles for its deed of settlement and may, by the same resolution, alter one or more of the objects of the company.

(2) Section 73 shall apply to a special resolution referred to in sub-section (1) as though it were a resolution for the alteration of the memorandum of the company with respect to its objects and powers and the deed of settlement of the company were the memorandum of the company.

(3) In addition to the other requirements of section 73 the company shall lodge with the Commission a copy of the memorandum and articles substituted for the deed of settlement.

(4) Upon registration by the Commission of the memorandum and articles they shall become the memorandum and articles of the company and shall apply to the company as if it were a company registered and incorporated under Part III of this Code and the deed of settlement shall cease to apply to or in relation to the company.

Articles of association.

74. (1) There may, in the case of a company limited by shares or a no liability company, and there shall, in the case of a company limited by guarantee or limited both by shares and by guarantee or an unlimited company, be registered with the memorandum, articles signed by the subscribers to the memorandum prescribing regulations for the company.

(2) Articles shall be—

(a) printed;

(b) divided into numbered paragraphs;

and

(c) signed by each subscriber to the memorandum in the presence of at least one witness (not being another subscriber).

(3) A witness to a signature to the articles of a subscriber to the memorandum shall attest the signature and add his address.

(4) A reference in sub-section (1) to the signing of the articles of a company shall, in the case of the signing by a person being a body corporate, be construed as including a reference to the affixing in accordance with the constituent documents of the body corporate of the common seal or official seal of the body corporate to the articles and, where a body corporate signs the articles by so affixing its common or official seal, sub-section (2) does not require a witness to the affixing of that seal.

(5) In the case of an unlimited company that has a share capital, the articles shall state the amount of share capital with which the company proposes to be registered and the division of that share capital into shares of a fixed amount.

Adoption of Table A or B.

75. (1) Articles may—

(a) in the case of a company other than a no liability company—
adopt all or any of the regulations contained in Table A;

or

(b) in the case of a no liability company—adopt all or any of the regulations contained in Table B.

(2) In the case of a company limited by shares incorporated after the commencement of the Companies (Application of Laws) Act, 1982, if articles are not registered, or if articles are registered then in so far as the articles do not exclude or modify the regulations contained in Table A, those regulations shall, so far as applicable, be the articles of the company in the same manner and to the same extent as if they were contained in registered articles.

(3) In the case of a no liability company incorporated after the commencement of the Companies (Application of Laws) Act, 1982, if articles are not registered, or if articles are registered then in so far as the articles do not exclude or modify the regulations contained in Table B, those regulations shall, so far as applicable, be the articles of the company in the same manner and to the same extent as if they were contained in registered articles.

76. (1) Subject to this Code, a company may by special resolution alter or add to its articles. Alteration of articles.

(2) The memorandum of a company may provide that a special resolution altering or adding to the articles of the company does not have any effect unless and until a further requirement specified in the memorandum has been complied with.

(3) Without limiting the generality of sub-section (2), the further requirement referred to in that sub-section may be a requirement—

(a) that the relevant special resolution be passed by a majority consisting of a greater number of members than is required to constitute the resolution as a special resolution;

(b) that the consent or approval of a particular person be obtained;

or

(c) that a particular condition be fulfilled.

(4) Subject to this Code, an alteration or addition so made in the articles is, on and from the date of the special resolution or such later date as is specified in the resolution, as valid as if originally contained in the articles and is subject in like manner to alteration by special resolution.

(5) Subject to this section, a company has the power, and shall be deemed always to have had the power, to amend its articles—

(a) in the case of a company other than a no liability company—by the adoption of all or any of the regulations contained in Table A;

or

(b) in the case of a no liability company—by the adoption of all or any of the regulations contained in Table B,

by reference only to the regulations in the Table or to the numbers of particular regulations contained in the Table, without being required in the special resolution effecting the amendment to set out the text of the regulations so adopted.

PART III
DIVISION 3Memorandum
and articles of
companies limited
by guarantee.

77. (1) In the case of a company limited by guarantee and not having a share capital and registered on or after 1 March 1935, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member is void.

(2) For the purposes of the provisions of this Code relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles or in any resolution of a company limited by guarantee and registered on or after 1 March 1935 purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital notwithstanding that the nominal amount or number of the shares or interests is not specified by the memorandum or articles or the resolution, as the case may be.

Effect of
memorandum
and articles.

78. (1) Subject to this Code, the memorandum and articles, when registered, bind the company and the members of the company to the same extent as if they respectively had been signed and sealed by each member and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.

(2) Subject to the provisions of this Code relating to no liability companies, all money payable by a member to the company under the memorandum or articles is a debt due by him to the company, and is of the nature of a specialty debt.

(3) Notwithstanding anything in the memorandum or articles of a company, no member of the company, unless either before or after the alteration is made he agrees in writing to be bound by the alteration concerned, is bound by an alteration made in the memorandum or articles after the date on which he became a member so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company.

Copies of
memorandum
and articles.

79. (1) A company shall, on being so required by a member, send to him a copy of the memorandum and of the articles (if any) of the company—

(a) if the company requires the payment of an amount not exceeding the prescribed amount—within 21 days after the payment is received by the company or within such longer period as the Commission approves;

or

(b) in a case to which paragraph (a) does not apply—within 21 days after the request was made or within such longer period as the Commission approves.

(2) Where an alteration is made in the memorandum or articles of a company, a copy of the memorandum or articles shall not be issued by the company after the date of alteration unless—

(a) the copy is in accordance with the memorandum or articles as altered by the alteration;

or

(b) a printed copy of the order or resolution making the alteration is annexed to the copy of the memorandum or articles and the particular clauses or articles affected are indicated in ink.

(3) Where an alteration or alterations in the articles of a company has or have been made (whether before or after the commencement of the Companies (Application of Laws) Act, 1982), the company shall, on being required by the Commission to do so, lodge with the Commission a printed copy of the articles as altered by the alteration or alterations.

(4) Where an agreement a copy of which is required to be lodged with the Commission under section 251 affects the memorandum or articles of a company, a copy of the memorandum or articles shall not be issued, and a copy of the articles shall not be lodged with the Commission, by the company after the agreement is entered into, unless a copy of the agreement is annexed to the copy of the memorandum or articles.

(5) If a company contravenes or fails to comply with this section, the company and any officer of the company who is in default are each guilty of an offence.

80. (1) In so far as the formalities of making, varying or discharging a contract are concerned, a person acting under the express or implied authority of a company may make, vary or discharge a contract in the name of or on behalf of the company in the same manner as if that contract were made, varied or discharged by a natural person.

Confirmation of
contracts and
authentication
and execution of
documents.

(2) The making, variation or discharging of a contract in accordance with sub-section (1) is effectual in law and binds the company and other parties to the contract.

(3) A contract or other document executed, or purporting to have been executed, whether before or after the commencement of the Companies (Application of Laws) Act, 1982, under the common seal of a company is not invalid by reason only that a person attesting the affixing of the common seal was in any way, whether directly or indirectly, interested in that contract or other document or in the matter to which that contract or other document relates.

(4) This section does not prevent a company from making, varying or discharging a contract under its common seal.

(5) This section does not apply to the making, variation or discharging of a contract before the commencement of the Companies (Application of Laws) Act, 1982, but shall apply whether the company gives its authority before or after the commencement of the Companies (Application of Laws) Act, 1982.

(6) This section does not affect the operation of a law that requires some consent or sanction to be obtained, or some procedure to be complied with, in relation to the making, variation or discharge of a contract.

(7) A document or proceeding requiring authentication by a company may be authenticated by the signature of an officer of the company and need not be authenticated under the common seal of the company.

(8) A company may, by writing under its common seal, empower a person, either generally or in respect of a specified matter or specified matters, as its agent or attorney to execute deeds on its behalf, and a deed signed by such an agent or attorney on behalf of the company and under his seal or, subject to sub-sections (10) and (11), under the appropriate official seal of the company, binds the company and has the same effect as if it were under the common seal of the company.

(9) The authority of an agent or attorney empowered pursuant to subsection (8), as between the company and a person dealing with him, continues during the period (if any) mentioned in the instrument conferring the authority or, if no period is so mentioned, until notice of the revocation or termination of his authority has been given to the person dealing with him.

(10) A company the objects of which require or comprise the transaction of business outside the State may, if authorized by its articles, have for use outside the State in place of its common seal one or more official seals, each of which shall be a facsimile of the common seal of the company with the addition on its face of the name of every place where it is to be used.

(11) The person affixing such an official seal shall, in writing under his hand, certify on the instrument to which it is affixed the date on which and the place at which it is affixed.

(12) A document sealed with such an official seal shall be deemed to be sealed with the common seal of the company.

81. (1) In this section—

(a) a reference to a non-existent company purporting to enter into a contract shall be construed as a reference to—

(i) a person executing a contract in the name of a company, where no such company exists;

or

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

(b) a reference to a person who purports to execute a contract on behalf of a non-existent company shall be construed as a reference to a person who executes a contract or purports to enter into a contract as mentioned in sub-paragraph (a) (i) or (ii);

(c) a reference, in relation to the purported entry into a contract by a non-existent company, to the formation of the company shall be construed as a reference to—

(i) where a person has executed a contract in the name of a company and no such company exists—the formation of a company that, having regard to all the circumstances, is reasonably identifiable with the company in the name of which the person executed the contract;

or

(ii) where a person has purported to enter into a contract as agent or trustee for a proposed company—the formation of a company that, having regard to all the circumstances, is reasonably identifiable with the proposed company.

(2) Where—

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

and

- (b) the company is formed within a reasonable time after the contract is purported to be entered into,

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

(3) Where a company ratifies a contract as provided by sub-section (2), the company is bound by, and entitled to the benefit of, that contract as if the company had been formed before the contract was entered into and had been a party to that contract.

(4) Where a non-existent company purports to enter into a contract and—

- (a) the company is not formed within a reasonable time after the contract is purported to be entered into;

or

- (b) the company is formed within such a reasonable time but does not ratify the contract within a reasonable time after the company is formed,

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

- (c) where the company has not been formed as mentioned in paragraph (a)—the company had been formed, and had ratified the contract as provided by sub-section (2);

or

- (d) where the company has been formed as mentioned in paragraph (b)—the company had ratified the contract as provided by sub-section (2),

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

(5) Where—

- (a) proceedings are brought to recover damages under sub-section (4) in relation to a contract purported to be entered into by a non-existent company;

and

- (b) the company has been formed,

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

- (c) an order directing the company to transfer or pay to any party to the contract who is named in the order, any property, or an amount not exceeding the value of any benefit, received by the company as a result of the contract;
- (d) an order that the company pay the whole or a specified portion of any damages that, in those proceedings, the defendant has been, or is, found liable to pay.

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

(7) Where—

- (a) a non-existent company purports to enter into a contract;
- (b) the company is formed, and ratifies the contract as provided by sub-section (2);
- (c) the contract is discharged by a breach of the contract constituted by a refusal or failure of the company to perform all or any of its obligations under the contract;

and

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

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

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

(9) Where a person has, as provided by sub-section (8), consented to another person being exempted from liability in relation to a contract that the other person purported to execute on behalf of a non-existent company—

- (a) notwithstanding sub-section (4), that first-mentioned person is not entitled to recover damages from that other person in relation to that contract;

and

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

(10) If—

- (a) a non-existent company purports to enter into a contract;
- (b) the company is formed;

and

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

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

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

(12) Where—

(a) a person purports to enter into a contract as trustee for a proposed company;

and

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

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

(13) For the purposes of this section, a contract may be ratified by a company in the same manner as a contract may be made by a company under section 80 and the provisions of section 80 have effect as if—

(a) the references in that section to making a contract were references to ratifying a contract;

and

(b) the reference in sub-section (3) of that section to a contract executed, or purporting to have been executed, under the common seal of a company where a reference to a contract ratified, or purporting to have been ratified, under the common seal of a company.

82. (1) If, at any time, the number of members of a company (counting joint holders of shares as one person) is reduced—

(a) in the case of a proprietary company—below 2;

or

(b) in the case of any other company—below 5,

and the company carries on business for more than 6 months while the number is so reduced, every person who, at any time when the company so carries on business after those 6 months, is a member of the company and is aware that the company is carrying on business with fewer than 2 or 5 members, as the case may be—

(c) is severally liable for the payment of any debt of the company contracted at a time when—

(i) the company so carries on business after those 6 months;

and

(ii) he is a member,

and may be severally sued for payment of that debt;

Prohibition of carrying on business with fewer than statutory minimum number of members.

and

(d) is guilty of an offence.

(2) Sub-section (1) does not apply in relation to a company the whole of the issued shares of which are held by a holding company that is a company within the meaning of this Code or of the corresponding law of a participating State or a participating Territory.

DIVISION 4

Certificate
authorizing
application for
transfer of
incorporation.

DIVISION 4—TRANSFER OF INCORPORATION

83. (1) A company may apply to the Commission for a certificate authorizing the company to make an application for registration as a company under the corresponding law of a participating State or participating Territory.

(2) An application under sub-section (1)—

(a) shall be in the prescribed form;

and

(b) shall be accompanied by—

(i) a declaration in writing signed by the directors of the company or, in the case of a company having more than 2 directors, a majority of the directors, to the effect that they have made an inquiry into the affairs of the company and that at a meeting of directors have formed the opinion that the company will be able to pay its debts as they fall due;

and

(ii) a statement of affairs of the company showing, in the prescribed form, the assets and liabilities of the company made up to the latest practicable date before the making of the application.

(3) Where a company applies, under sub-section (1), for a certificate authorizing the company to make an application for registration as a company under the corresponding law of a participating State or a participating Territory, the Commission shall issue the certificate if—

(a) the company has passed a special resolution approving the application for the certificate;

(b) the company has given to its creditors, in a manner approved by the Commission, notice of its intention to apply for such a certificate;

(c) the name of the company is reserved under a provision of a law of that State or Territory that corresponds with section 52;

(d) the Commission is not aware of any failure of the company to comply with any requirement of this Code that is applicable to it;

(e) the Commission is not aware of any other reason why the certificate should not be granted;

and

(f) the Minister has consented to the issuing of the certificate, but otherwise the Commission shall refuse to issue the certificate.

(4) A certificate may be issued under sub-section (3) subject to such conditions as are specified in the certificate.

(5) A company is not entitled to make an application under sub-section (1) if—

(a) the company is in the course of being wound up or an application to wind up the company has been filed and has not been dealt with;

(b) a receiver, or a receiver and manager, has been appointed, and is acting, in respect of the property or part of the property of the company;

(c) the company is under official management;

or

(d) the company has entered into a compromise or arrangement with another person or other persons and the administration of the compromise or arrangement has not been concluded or an application has been made to the Court for the approval of such a compromise or arrangement and has not been dealt with.

(6) With such modifications as are necessary, sub-sections 73 (6) to (13), inclusive, apply to and in respect of the proposal, passing and lodging, and the cancellation or confirmation by the Court, of a special resolution relating to an application for a certificate under this section as if it were a special resolution under section 73.

84. (1) Subject to sub-section (3), a recognized company may apply to the Commission to be registered as a company under this Code.

Application by
recognized
company for
registration under
Division.

(2) An application by a recognized company under sub-section (1)—

(a) shall be in the prescribed form;

(b) shall be accompanied by—

(i) a certificate issued not earlier than 1 month before the date on which the application is lodged to that recognized company under the provision of the law of the State or Territory in which the recognized company was incorporated that corresponds with sub-section 83 (3);

(ia) notice in the prescribed form of the address of the proposed registered office of the recognized company in the State;

and

(ii) a certified copy of each of such documents as are specified by the Commission;

and

(c) shall be lodged with the Commission.

(3) A recognized company is not entitled to make an application under sub-section (1) if—

- (a) the recognized company is in the course of being wound up or an application to wind up the recognized company has been lodged and has not been dealt with;
 - (b) a receiver, or a receiver and manager, has been appointed, and is acting, in respect of the property or part of the property of the recognized company;
 - (c) the recognized company is under official management;
- or
- (d) the recognized company has entered into a compromise or arrangement with another person or other persons and the administration of the compromise or arrangement has not been concluded or an application has been made to a court for the approval of such a compromise or arrangement and has not been dealt with.

Application by
foreign company
for registration
under Division.

85. (1) Subject to sub-section (2), a corporation that was incorporated or formed—

- (a) in a State other than a participating State;
 - (b) in a Territory other than a participating Territory;
- or
- (c) outside Australia and the external Territories,

may apply to the Commission to be registered under this Code as a company of one of the following classes:

- (d) a company limited by shares;
- (e) a company limited by guarantee;
- (f) a company limited both by shares and by guarantee;
- (g) an unlimited company;
- (h) in the case of a mining company—a no liability company.

(2) A corporation is not entitled to make an application under sub-section (1) if—

- (a) the corporation is in the course of being wound up or an application to wind up the corporation has been lodged and has not been dealt with;
 - (b) a receiver, or a receiver and manager, has been appointed, and is acting, in respect of the property or part of the property of the corporation;
 - (c) the corporation is under official management;
- or
- (d) the corporation has entered into a compromise or arrangement with another person or other persons and the administration of the compromise or arrangement has not been concluded or an application has been made to a court for the approval of such a compromise or arrangement and has not been dealt with.

(3) The Commission shall not grant an application by a corporation under sub-section (1) for registration as a company under this Code unless—

- (a) under the law for the time being in force in the place where the corporation was incorporated or formed—
- (i) the transfer of the incorporation of the corporation is authorized;
 - (ii) the corporation is of a class that is the same or substantially the same as one of the classes of companies referred to in sub-section (1);
 - (iii) the constituent documents of the corporation specify the name and objects of the corporation;
 - (iv) where the liability of the members of the corporation is limited—the extent to which, and the manner in which, that liability is limited is defined in the constituent documents of the corporation;

and

- (v) where the corporation has a share capital and the liability of its members is limited—its capital is of a fixed amount and is divided into shares of a fixed amount;
- (b) the corporation has complied with the regulations (if any) of the law of the place where it was incorporated or formed that relate to the transfer of its incorporation;
- (c) where the law of the place where the corporation was incorporated or formed does not require the members of the corporation, or a specified proportion of those members, to consent to the transfer of the incorporation of the corporation—not less than three-quarters of such members of the corporation as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, consent to the transfer of the incorporation of the corporation at a meeting of which not less than 21 days' notice specifying the intention of the corporation to apply for such a transfer is given;

and

- (d) the name of the corporation is reserved in the State under section 55.

(4) An application by a corporation under sub-section (1) shall be in the prescribed form, shall be lodged with the Commission and shall be accompanied by—

- (a) a certified copy of the certificate of incorporation or registration of the corporation in the place of its incorporation or a document having the same effect;
- (b) evidence acceptable to the Commission that the corporation is not, by reason of sub-section (2), disqualified from making the application;
- (c) evidence acceptable to the Commission that the requirements of paragraphs (3) (a), (b) and (c) have been satisfied;
- (d) a certified printed copy of the constituent document or of each of the constituent documents of the corporation;
- (e) in the case of a corporation applying to be registered as a company having a share capital, a statement specifying—

- (i) the nominal share capital of the corporation and the number and classes of shares into which the share capital is divided;
 - (ii) the number of shares taken up and the amount paid on each share;
- and
- (iii) subject to sub-section (6), the full name, or the surname and at least one Christian or given name and other initials, and the address, of each of the shareholders and the number and class of shares held by each person named;
- (f) in relation to each existing charge on property of the corporation that would be a registrable charge within the meaning of Division 9 of Part IV if the corporation were a company as defined in sub-section 5 (1), the documents required to be lodged by sub-section 201 (3);
- (fa) notice in the prescribed form of the address of the proposed registered office of the corporation in the State;
- and
- (g) such other documents or information as the Commission requires and specifies by notice in writing to the corporation.
- (5) Where a document required by sub-section (4) to be lodged with the Commission has previously been lodged with the Commission pursuant to Division 5 of Part XIII, the Commission may, for the purposes of this section, dispense with the requirement that the document be lodged with the Commission.
- (6) Where a corporation—
- (a) has more than 500 members;
 - (b) satisfies the Commission that it will keep its principal register at a place in the State within 25 kilometres of the office of the State Commission;
- and
- (c) satisfies the Commission that it will provide reasonable accommodation and facilities for persons to inspect and take copies of its list of members and its particulars of shares transferred,
- the corporation is not required to comply with sub-paragraph (4) (e) (iii).

Registration of corporations as companies.

- 86.** (1) Where a corporation applies to the Commission under section 84 to be registered as a company—
- (a) if the Commission is satisfied that the corporation—
 - (i) has complied with the requirements of that section and with any conditions to which the certificate issued to the corporation under the provision of the law of a participating State or a participating Territory that corresponds with section 83 is subject;
- and
- (ii) is not disqualified by reason of sub-section 84 (3) from making the application,

the Commission shall grant the application and register the corporation as a company;

or

- (b) if the Commission is not so satisfied—the Commission shall refuse the application.

(2) Where a corporation applies to the Commission under section 85 to be registered as a company—

- (a) if the Commission is satisfied that the corporation has complied with the requirements of that section and is not disqualified by reason of that section from making the application or from being granted registration as a company—the Commission shall grant the application and register the corporation as a company;

or

- (b) if the Commission is not so satisfied—the Commission shall refuse the application.

(3) Where the Commission grants an application by a corporation under section 84 or 85—

- (a) if, in the case of a corporation incorporated in a participating State or participating Territory, the corporation was incorporated as a proprietary company or, in any other case, the constituent documents of the corporation comply with the requirements of sub-section 34 (1)—the Commission shall register the corporation as a proprietary company;

or

- (b) if paragraph (a) does not apply—the Commission shall register the company as a public company.

(4) Where the Commission grants an application by a corporation under section 84 or 85, the Commission shall register the corporation as a company of one of the following classes:

- (a) a company limited by shares;
- (b) a company limited by guarantee;
- (c) a company limited both by shares and by guarantee;
- (d) an unlimited company;

or

- (e) a no liability company,

being whichever of those classes is—

- (f) in the case of a corporation that was incorporated under the law of a participating State or participating Territory—equivalent to the class in which the corporation is included under the law of that State or Territory;

or

- (g) in the case of any other corporation—the same or substantially the same as the class in which that corporation is included

under the law of the place where the corporation was incorporated.

(5) Where the Commission grants an application by a corporation under this Division for registration as a company, the Commission shall cause to be issued to the corporation a certificate under the common seal of the Commission—

- (a) stating that the corporation has been registered under this Division as a company and specifying the date of commencement of the registration;
- (b) stating that that company is—
 - (i) a company limited by shares;
 - (ii) a company limited by guarantee;
 - (iii) a company limited both by shares and by guarantee;
 - (iv) an unlimited company;
 - or
 - (v) a no liability company,
 as the case requires;

and

- (c) stating that that company is a proprietary company or a public company, as the case requires.

(6) The Commission shall cause a register to be kept for the purposes of this section and, where a corporation is registered under this Division as a company—

- (a) shall cause to be entered in the register—
 - (i) the name of the corporation;
 - and
 - (ii) the date of commencement of the registration of the corporation as a company;

and

- (b) shall cause to be incorporated with the register—
 - (i) in the case of a corporation registered as a company under sub-section (1)—the application lodged by the corporation under sub-section 84 (2) and the documents that, by virtue of paragraph 84 (2) (b), accompanied that application;
 - and
 - (ii) in the case of a corporation registered as a company under sub-section (2)—the application lodged by the corporation under sub-section 85 (4) and the documents that, by virtue of paragraphs 85 (4) (a) to (g), inclusive, accompanied that application.

(7) Where a corporation is registered under this Division as a company and, immediately before the corporation was so registered, it was registered pursuant to Division 5 of Part XIII, the Commission shall, upon the regis-

tration of the corporation as a company, remove the name of the corporation from the register kept pursuant to that Division and may retain such of the documents registered pursuant to that Division that relate to the corporation as the Commission thinks fit.

87. (1) Where, pursuant to section 86, the Commission registers a corporation as a company, then, from the commencement of the day specified in the certificate issued under sub-section 86 (5) as the date of commencement of the registration of that corporation as a company—

Effect of registration.

- (a) the corporation shall be deemed to be a company duly incorporated under this Code;
- (b) subject to the succeeding provisions of this Division, the provisions of this Code extend and apply to the corporation, and to persons and matters associated with the corporation, as if the corporation were a company duly incorporated under this Code;
- (c) the corporation—
 - (i) is capable of performing all the functions of a company duly incorporated under this Code;
 - (ii) is capable of suing and being sued;
 - (iii) has perpetual succession and shall have a common seal; and
 - (iv) has power to acquire, hold and dispose of property;

and

- (d) the members of the corporation have such liability to contribute to the property of the corporation in the event of its being wound up under the provisions of this Code as is provided by the provisions of this Code as they apply to the corporation by virtue of the succeeding provisions of this Division.

(2) Sub-section (1) does not operate—

- (a) to create a new legal entity;
- (b) to prejudice or affect the identity of the body corporate constituted by the corporation or its continuity as a body corporate;
- (c) to affect the property of the corporation;
- (d) to affect any appointment made, resolution passed or any other act or thing done in relation to the corporation pursuant to a power conferred by any of the constituent documents of the corporation or by the law of the place where the corporation was incorporated;

or

- (e) except to the extent provided by this Division, to affect any rights, powers, authorities, duties, functions, liabilities or obligations of the corporation or any other person.

(3) Sub-section (1) does not operate to render defective any legal proceedings by or against the corporation, and any legal proceedings that could have been continued or commenced by or against the corporation before its

registration as a company may, notwithstanding the registration, be continued or commenced by or against the corporation after its registration.

(4) Where, pursuant to sub-section 86 (2), the Commission registers a corporation as a company—

- (a) the provisions of the constituent documents of the corporation that would, if the corporation had been incorporated under this Code, have been required by this Code to be included in its memorandum of association shall be deemed to be the registered memorandum of association of the company;

and

- (b) the provisions of the constituent documents of the corporation that do not, by virtue of paragraph (a), constitute the registered memorandum of association shall be deemed to be the registered articles of association of the company,

and those provisions of the constituent documents, to the extent to which they so constitute the registered memorandum of association or the registered articles of association of the company, bind the company and its members accordingly.

(5) A reference in sub-section (4) to the constituent documents of a corporation shall, if any of those documents is or are in a language other than English, be construed as a reference to the translation of the document or documents concerned into the English language that was lodged with the application for registration under this Division irrespective of the correctness of the translation, but nothing in this sub-section affects any liabilities of the corporation or its members that existed immediately before the registration of the corporation as a company.

Alterations to
constituent
documents of
foreign
companies.

88. (1) A corporation that is registered under sub-section 86 (2) as a company of a particular class shall, within 90 days after the date of commencement of registration of the corporation, by special resolution, make such alterations (if any) to its constituent document as—

- (a) are necessary to express in Australian currency any amounts of money specified in the constituent documents;
- (b) are necessary to ensure that the constituent documents comply with the requirements of this Code relating to constituent documents of companies of that class;

and

- (c) are necessary or expedient to give effect to the provisions of this Division, or are incidental to giving effect to those provisions.

(2) Where a corporation is required by paragraph (1) (a) to alter its constituent documents to express in Australian currency amounts of money specified in those documents, the alterations shall all be made on the basis of the same rate, being a rate fixed by resolution of the corporation before the passing of the special resolution referred to in sub-section (1), and the resolution fixing that rate, when passed pursuant to this sub-section, shall, for the purposes of section 251, be deemed to be a special resolution.

(3) Where a corporation is required by sub-section (1) to alter its constituent documents, the corporation shall, if the Commission so directs, apply to the Court, within a time specified by the Commission, for an order

approving the constituent documents of the corporation as altered in accordance with the resolution referred to in that sub-section.

(4) Where, pursuant to sub-section (3), a corporation applies to the Court for an order approving its constituent documents as altered in accordance with sub-section (1), the Court may, if it is satisfied that the resolutions altering the constituent documents have been duly passed and that the alterations to the constituent documents satisfy the requirements of sub-section (1), make an order approving the constituent documents of the corporation as altered in accordance with those resolutions, with such modifications (if any) to the constituent documents as it thinks fit.

(5) Subject to sub-section (6), section 72 applies in relation to a resolution passed by a corporation pursuant to sub-section (1) or an order of the Court made in relation to a corporation under sub-section (4) as if the references in sub-sections 72 (2), (3), (5) and (9) to the memorandum of a company were references to the constituent documents of the corporation.

(6) Where a corporation would, but for this sub-section, be required by sub-section (5) and section 72 to lodge with the Commission a printed copy of its constituent documents as altered by a special resolution referred to in sub-section (1) or by an order of the Court made under sub-section (4) the corporation may instead lodge with the Commission a copy of the special resolution or an office copy of the order of the Court, as the case may be, and, if the memorandum of the corporation has been altered by the resolution or the order, a printed copy of the memorandum as altered.

(7) Where the constituent documents of a corporation registered as a company having a share capital are altered in accordance with this section, from the time when the alterations take effect—

- (a) the amount of the nominal share capital and the nominal value of each share shall be taken to be the amount and value respectively expressed in the altered constituent documents;
- (b) each person who held shares in the corporation immediately before the alteration took effect holds the same number of shares as he held before the alterations took effect and, in the case of a corporation shares in which are divided into 2 or more classes, the same number of shares in each class as he held before the alterations took effect;

and

- (c) the amount paid up on each share in the corporation shall be deemed to be an amount in Australian currency that bears to the nominal value of the share under the altered constituent documents the same proportion as, immediately before the alterations took effect, the amount paid up on the share bore to the nominal value of the share, and the amount of the share capital paid up shall be calculated accordingly.

(8) If a corporation fails to comply with the provisions of sub-section (1), (2) or (3), the corporation and any officer of the corporation who is in default are each guilty of an offence.

89. Where—

- (a) a company has applied, under the provision of the law of a participating State or of a participating Territory that corre-

Effect of
registration of
company under
corresponding
law.

sponds with section 84, for registration as a company under the law of that State or Territory;

and

- (b) the Commission has registered that company as a company under the law of that State or Territory,

the company shall, from the time at which it is deemed, by virtue of the provision of a law of that State or Territory that corresponds with section 87, to be a company duly incorporated under the law of that State or Territory, cease to be incorporated under this Code.

Application of
this Code to
corporations
registered under
this Division.

90. (1) Sub-section 75 (1) does not apply in relation to a corporation that has been registered under this Division as a company unless the members of the corporation, by special resolution, resolve that the sub-section should apply to the corporation.

(2) Section 239 does not apply in relation to a corporation that has been registered under this Division as a company.

(3) Section 240 applies in relation to a corporation that has been registered under this Division as a company as if—

- (a) sub-section 240 (2) were omitted;

and

- (b) there were omitted from paragraph 240 (5) (a) “or the period of 18 months referred to in sub-section (2)”.

(4) Where a corporation that is a holding company is registered as a company under sub-section 86 (2), section 268 applies in relation to subsidiaries of the corporation that were subsidiaries of the corporation on the date of commencement of the registration of the corporation as a company under sub-section 86 (2) and, notwithstanding sub-section 268 (2), the action referred to in sub-section 268 (1) shall be taken in relation to those subsidiaries within 12 months after that date.

(5) Section 360 applies in relation to a corporation that has been registered under this Division as a company as if a reference to a past member of the company included a reference to a person who had been a member of the corporation but had ceased to be such a member before the corporation was registered under this Division as a company but such a person is liable to contribute to the property of the company only to an amount sufficient for—

- (a) payment of debts and liabilities contracted by the corporation before it was so registered;

- (b) payment of the costs, charges and expenses of winding up the corporation, in so far as those costs, charges and expenses relate to the debts and liabilities referred to in paragraph (a);

and

- (c) the adjustment of the rights of the contributories among themselves, in so far as the adjustment relates to the debts and liabilities referred to in paragraph (a).

(6) Without prejudice to section 87, Part III of the Companies (Application of Laws) Act, 1982 applies to a corporation that has been registered under this Division as a company, and to persons and matters associated

with that corporation, as if that corporation had been incorporated under the law of the State corresponding with this Code that was in force immediately before the commencement of the Companies (Application of Laws) Act, 1982 and as if that Act commenced on the date of commencement of the registration of that corporation as a company under section 86.

91. (1) A corporation that is registered under this Division as a company shall, within 14 days after the date of commencement of the registration of the corporation—

Establishment of registers and minute books.

- (a) establish the registers required to be kept by the provisions of sections 131, 143, 147, 172, 209, 231, 238 and 256 and include in those registers such of the information required to be included in those registers as is available to the corporation at the date of commencement of the registration;

and

- (b) establish books to be used for the entry of minutes of proceedings of meetings for the purpose of compliance with section 253 and comply with the requirements of sub-section 254 (1) in relation to those books.

(2) Where, before the expiration of the period of 14 days referred to in sub-section (1)—

- (a) pursuant to sub-section 131 (5), 143 (3), 147 (6), 172 (3), 209 (4), 231 (8), 238 (6), or 257 (3), a person requests a corporation that has been registered under this Division as a company to furnish the person with, or make available for inspection by the person, a copy of, or of a part of, a register kept pursuant to a requirement of this Code;

or

- (b) pursuant to sub-section 254 (2), a person requests a corporation that has been registered under this Division as a company to furnish the person with a copy of any minutes of a general meeting,

the period within which the corporation is obliged to comply with that request shall be deemed to commence at the expiration of that period of 14 days.

92. (1) Where a corporation that is registered under sub-section 86 (2) had, before its registration, issued any share warrant, the bearer of the share warrant is entitled, on surrendering it to the corporation for cancellation, to have his name entered as a member in the register of members of the corporation.

Share warrants.

(2) A corporation that is registered under sub-section 86 (2) is liable to compensate a person for any loss incurred by him by reason of the corporation entering in the register of its members the name of the bearer of a share warrant issued before the registration of the corporation in respect of shares specified in the share warrant without the share warrant being surrendered and cancelled.

(3) Subject to this section, the articles of a corporation that is registered under sub-section 86 (2) may provide that the bearer of a share warrant in relation to shares in the corporation is to be deemed to be a member of the corporation either to the full extent or for any purpose defined in the articles.

Certificate of
registration
conclusive
evidence.

93. A certificate of registration under this Division as a company under the common seal of the Commission is conclusive evidence that all the requirements of this Division in respect of registration of the company under this Division and of matters precedent and incidental to the registration of the company under this Division have been complied with, and that the corporation referred to in the certificate is duly registered under this Division as a company and is deemed to be a company duly incorporated under this Code.

PART IV

PROSPECTUSES, SECURITIES AND CHARGES

DIVISION 1—PROSPECTUSES

DIVISION 1

94. (1) For the purposes of this Code, a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form or context in which it is included. Interpretation.

(2) For the purposes of the application of section 95 or 96, if forms referred to in the section concerned that are the same or substantially the same are issued to the public or are issued to any section of the public, whether selected as clients of the person issuing the forms or in any other manner, each of the forms shall be deemed to be issued to the public notwithstanding that each form may be used only by the person to whom it is issued, but forms shall not be taken to be issued to the public by reason only that—

- (a) they are issued to persons whose ordinary business is to buy or sell shares, debentures or prescribed interests, whether as principal or agent;
- (b) they are issued to existing members or debenture holders of a corporation and relate to shares in, or debentures of, that corporation;
- (c) they are issued to holders of prescribed interests made available by a corporation pursuant to a deed that is an approved deed for the purposes of Division 6 and relate to prescribed interests made available by that corporation pursuant to the same approved deed;

or

- (d) they are issued to existing members of a company in connection with a proposal referred to in section 409 and relate to shares in that company.

(3) A reference in this Division to a statement includes a reference to matter that is not written but, by reason of the form or context in which it appears, conveys a message.

95. (1) It is unlawful to issue—

- (a) a form of application for shares in, or debentures of, a corporation that is to be formed;

or

- (b) a form to accompany a deposit of money with, or a loan of money to, a corporation that is to be formed.

(2) Sub-section (1) does not apply if—

- (a) the form is not issued to the public;

and

- (b) the invitation or offer to which the form relates is not issued or made to the public.

(3) A corporation that, or another person who, does any act or thing that is unlawful by reason of sub-section (1) and any officer of such a corporation who is in default are each guilty of an offence.

Prohibition of issue of certain documents in relation to proposed corporations.

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

Forms of application for shares or debentures to be attached to prospectus.

96. (1) A form of application for shares in or debentures of a corporation or a form to accompany a deposit of money with, or a loan of money to, a corporation shall not be issued by the corporation or by any other person unless the form is attached to a prospectus and a copy of the form and a copy of the prospectus have been registered by the Commission under this Code or the corresponding law of a participating State or of a participating Territory.

(2) Sub-section (1) does not apply if—

(a) the form is not issued to the public;

and

(b) the invitation or offer to which the form relates is not issued or made to the public.

(3) A corporation that, or another person who, contravenes this section and any officer of such a corporation who is in default are each guilty of an offence.

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

Invitations or offers in relation to borrowings by a corporation.

97. (1) An invitation to the public to subscribe for or purchase debentures of a corporation or an offer to the public of debentures of a corporation for subscription or purchase, shall not be made by the corporation or by any other person unless—

(a) a copy of a prospectus in relation to the invitation or offer has been registered by the Commission under this Code or the corresponding law of a participating State or of a participating Territory;

(b) the prospectus contains an undertaking by the corporation that it will, within 2 months after the acceptance of any money as a deposit or loan from any person in response to the invitation or offer, issue to that person a document that acknowledges, evidences or constitutes an acknowledgement of the indebtedness of the corporation in respect of that deposit or loan;

and

(c) the document is, in accordance with this section, described or referred to in the prospectus and in any other document constituting or relating to the invitation or offer as—

(i) an unsecured note or an unsecured deposit note;

(ii) a mortgage debenture or certificate of mortgage debenture stock;

or

(iii) a debenture or certificate of debenture stock.

(2) Where, pursuant to an invitation or offer referred to in sub-section (1), a corporation has accepted from any person any money as a deposit or loan, the corporation shall, within 2 months after the acceptance of the money, issue to that person a document that—

(a) acknowledges, evidences or constitutes an acknowledgement of the indebtedness of the corporation in respect of that deposit or loan;

and

(b) complies with the other requirements of this section.

(3) The document shall be described or referred to in the prospectus, in any other document constituting or relating to the invitation or offer and in the document itself as an unsecured note or an unsecured deposit note, unless, pursuant to the provisions of either sub-section (4) or (5), it is, and may be, otherwise described.

(4) The document may be described or referred to in the prospectus, in any other document constituting or relating to the invitation or offer or in the document itself as a mortgage debenture or certificate of mortgage debenture stock if, and only if, there is included in the prospectus—

(a) a statement to the effect that—

(i) the repayment of all moneys that have been or may be deposited with or lent to the corporation in response to the invitation or offer is secured by a first mortgage given to the trustee for the holders of the debentures to be issued in relation to the deposit or loan over land vested in the corporation or in any of its guarantor corporations;

(ii) the mortgage has been duly registered, or is a registrable mortgage that has been lodged for registration, in accordance with the law relating to the registration of mortgages of land in the place where the land is situated;

and

(iii) the aggregate amount of those moneys and of all other liabilities (if any) secured by the mortgage of that land ranking *pari passu* with the liability to repay those moneys does not exceed 60% of the value of the corporation's interest in that land as shown in the valuation included in the prospectus;

and

(b) a copy of a written valuation of the corporation's interest in the land so mortgaged showing the nature and extent of the corporation's interest made not more than 6 months before the date of the prospectus by a person who is competent and qualified to make the valuation in the place where the land is situated and who is not an officer of the corporation, of any of its guarantor corporations or of any corporation that is related to either the first-mentioned corporation or any of its guarantor corporations.

(5) The document may be described or referred to in the prospectus, in any other document constituting or relating to the invitation or offer or in the document itself as a debenture or certificate of debenture stock if, and only if—

(a) pursuant to sub-section (4) it may be, but is not, described or referred to in that prospectus or document as a mortgage debenture or certificate of mortgage debenture stock;

or

(b) there is included in the prospectus—

(i) a statement to the effect that—

(A) the repayment of all moneys that have been or may be deposited with or lent to the corporation in response to the invitation or offer has been secured by a charge in favour of the trustee for the holders of the debentures over the whole or any part of the tangible property of the corporation and of its guarantor corporations or any of them;

and

(B) having regard to the particulars in the summary made in accordance with sub-paragraph (ii), the tangible property that constitutes the security for the charge is sufficient and is reasonably likely to be sufficient to meet the liability for the repayment of all such moneys and all other liabilities ranking in priority to, or *pari passu* with, that liability that have been or may be incurred;

and

(ii) a summary made by the registered company auditor who has made the report required to be included in the prospectus by paragraph 98 (1) (e) showing in tabular form the aggregate values (calculated as prescribed) of the tangible property of the borrowing corporation and of its guarantor corporations that has been charged to secure the repayment of all moneys and other liabilities referred to in sub-paragraph (i), after making such adjustments as are proper to give a true and fair view of the tangible property available as security for the charge and, in particular, after making adjustments—

(A) to exclude from those aggregate values such part of the value of any shares in or advances to a corporation as is reflected in or depends upon the tangible property of that corporation that is otherwise included in the summary;

(B) to exclude from those aggregate values such part of the value of any shares in a corporation that is related to the borrowing corporation or the guarantor corporation, as the case requires, as is properly attributable to intangible property of that first-mentioned corporation;

and

(C) to add to those aggregate values the amount to be raised under the prospectus including the maximum amount of over-subscriptions that the prospectus in accordance with section 102 specifies may be retained,

being a summary that—

- (D) shows the amounts outstanding of the aggregate amounts borrowed respectively by the borrowing corporation and by its guarantor corporations and distinguishes between the amounts that will rank for repayment in priority to the proposed issue and the amounts that will rank *pari passu* with that proposed issue;
- (E) states by way of note or otherwise the total amount of the values of intangible property excluded in making the adjustments required under this sub-paragraph;
- (F) where the corporation has given a charge over its assets to secure a liability the amount of which may vary from time to time, takes into account the actual amount of the liability as at the date at which the summary is made up but shows by way of note the further amount that may be advanced under that charge;
- (G) where necessary, explains or qualifies by way of note or otherwise any of the matters set out in the summary;
- (H) discloses by way of note or otherwise the amount of advances (distinguishing between advances that are secured and advances that are unsecured) by the borrowing corporation to any corporation that is related to the borrowing corporation other than a corporation that is a guarantor corporation in relation to that borrowing corporation that has secured the guarantee by a charge over its property in favour of the trustee for the holders of the debentures of the borrowing corporation;

and

- (I) discloses by way of note or otherwise the amount of advances (distinguishing between advances that are secured and advances that are unsecured) by a corporation that is a guarantor corporation, or each corporation that is a guarantor corporation, in relation to the borrowing corporation to any corporation that is related to the borrowing corporation (other than the amount of advances to any other corporation that is also a guarantor corporation in relation to the borrowing corporation).

(6) Nothing in this section applies to a prescribed corporation and nothing in this Code requires a prospectus to be issued in connection with—

- (a) an invitation issued by a prescribed corporation to the public to subscribe for or purchase debentures of a prescribed corporation;

or

- (b) an offer made by a prescribed corporation to the public of debentures of the prescribed corporation for subscription or purchase.

(7) In sub-section (6), "prescribed corporation" means—

- (a) a banking corporation;
- (b) a corporation that is declared by the Commission, by notice published in the *Gazette*, to be an authorized dealer in the short term money market;

or

(c) a corporation that—

- (i) is a pastoral company in respect of which an exemption granted under section 11 of the *Banking Act* 1959 is in force;
- (ii) is registered under the *Life Insurance Act* 1945 or is a corporation the whole of the issued shares in which are held beneficially by a corporation so registered;

or

- (iii) is a subsidiary of a banking corporation or of a pastoral company referred to in sub-paragraph (i), if the repayment of all existing and future deposits with and loans to the subsidiary are guaranteed by the banking corporation or pastoral company,

and is declared by the Commission by notice published in the *Gazette* to be a prescribed corporation for the purposes of this section.

(8) The Commission may, by notice published in the *Gazette*, vary or revoke a declaration made under paragraph (7) (b).

(9) The Commission may, by notice published in the *Gazette*—

- (a) specify terms and conditions subject to which sub-section (6) has effect in relation to a corporation specified in paragraph (7) (c);

or

- (b) vary or revoke any declaration or specification made under paragraph (7) (c) or under this sub-section.

(10) A corporation that, or another person who, contravenes or fails to comply with any of the provisions of this section and any officer of such a corporation who is in default are each guilty of an offence.

Penalty—

- (a) in the case of a contravention or failure to comply with sub-section (1) arising out of the issuing of an invitation or the making of an offer without a copy of a prospectus in relation to the invitation or the offer having been registered by the Commission as required by paragraph (1) (a)—\$20,000 or imprisonment for 5 years, or both;

or

- (b) in any other case—\$2,500 or imprisonment for 6 months, or both.

(11) The provisions of this section relating to the description of a document acknowledging or evidencing, or intended to acknowledge or evidence, the indebtedness of a corporation apply to and in relation to every

such document issued after the commencement of the Companies (Application of Laws) Act, 1982, notwithstanding anything in any debenture or trust deed issued or executed before that commencement and in force for the time being, and any such document issued after that commencement shall be described in accordance with the requirements of this section notwithstanding anything in any such debenture or trust deed.

(12) For the purposes of this section, a document issued by a borrowing corporation certifying that a person specified in the document is, in respect of any deposit with or loan to the corporation, the registered holder of a specified number or value—

- (a) of unsecured notes or unsecured deposit notes;
- (b) of mortgage debentures or certificates of mortgage debenture stock;
- or
- (c) of debentures or certificates of debenture stock,

issued by the corporation upon or subject to the terms and conditions contained in a trust deed referred to or identified in the certificate shall be deemed to be a document evidencing the indebtedness of that corporation in respect of that deposit or loan.

(13) The prospectus and a document issued in connection with or in relation to the prospectus shall describe or refer to the document mentioned in sub-section (12) in the manner required or authorized by the Commission and shall so describe or refer to the document without any addition to or qualification of the description or reference other than any addition that the Commission may approve or require in order to indicate the priority of the indebtedness that the document is to evidence.

98. (1) To comply with the requirements of this Code, a prospectus—

- (a) shall be printed in type of a size not less than the type known as eight point Times unless the Commission, before the issuing or advertising of the prospectus in the State, certifies in writing that the type and size of letter are legible and satisfactory;
- (b) shall be dated;
- (c) shall, as to one copy, be lodged with the Commission as required by this Code, shall state that a copy of the prospectus has been so lodged and shall also state, immediately after the statement that a copy has been so lodged, that the Commission takes no responsibility as to the contents of the prospectus;
- (d) where the prospectus relates to shares, shall set out particulars as to—
 - (i) the minimum amount that, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part of the sums is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of—
 - (A) the purchase price of any property purchased or to be purchased that is to be defrayed in whole or in part out of the proceeds of the issue;
 - (B) any preliminary expenses payable by the corporation, and any commission so payable to

Contents of prospectuses.

any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the corporation;

- (c) the repayment of any money borrowed by the corporation in respect of any of the foregoing matters;

and

- (D) working capital;

and

- (ii) the amounts to be provided in respect of the matters mentioned in sub-paragraph (i) otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided;

- (e) shall contain a report by a registered company auditor (to be headed 'Investigating Accountant's Report') containing the prescribed matters and such other matters as the Commission requires;

- (ea) shall set out the prescribed matters and contain the prescribed reports;

- (eb) shall set out such other matters as the Commission requires and contain such other reports as the Commission requires;

- (f) in the case of a prospectus pursuant to which the public is to be invited to deposit money with or lend money to a corporation that is a subsidiary of another corporation or a prospectus pursuant to which a corporation that is a subsidiary of another corporation is to make offers to the public to accept moneys deposited with, or moneys lent to, the corporation—

- (i) shall contain a statement as to whether or not that other corporation is under any liability to repay those moneys or to pay any interest on those moneys;

and

- (ii) where that other corporation is so stated to be under any such liability—shall also give full particulars of the nature and extent of that liability, of the circumstances under which that liability arose and of the manner in which that liability is to be discharged;

- (g) shall contain a statement that no shares or debentures, as the case requires, will be allotted or issued on the basis of the prospectus later than 6 months after the date of the issue of the prospectus;

- (h) shall, if it contains any statement that is made by an expert or is contained in what purports to be a copy of, or extract from, a report, memorandum or valuation of an expert, state the date on which the statement, report, memorandum or valuation was made and whether or not it was prepared by the expert for incorporation in the prospectus;

- (j) shall not contain the name of any person as—

- (i) a trustee for holders of debentures of the corporation;

(ii) an auditor, banker, solicitor, stockbroker or sharebroker of the corporation or for or in relation to the issue or proposed issue of shares or debentures;

or

(iii) a person performing any function in a professional, advisory or other capacity not mentioned in sub-paragraph (i) or (ii) for the corporation or for or in relation to the issue or proposed issue of shares or debentures,

unless that person has consented in writing before the issue of the prospectus to act in that capacity in relation to the prospectus and, in the case of a company, a copy, verified by a statement in writing, of the consent has been lodged with the Commission;

(k) shall set out the dates of, the parties to, and the general nature of, every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the corporation or a contract entered into more than 2 years before the date of issue of the prospectus;

(l) shall state whether or not application has been, or is proposed to be, made for permission for the shares or debentures to which the prospectus relates to be listed for quotation on the stock market of any stock exchange, and if such an application has been or is proposed to be made, shall specify the stock exchange or stock exchanges to which application has been or is proposed to be made;

(m) shall set out full particulars of the nature and extent of the interest (if any) of every director or proposed director and of every expert in the promotion of, or in the property proposed to be acquired by, the corporation, or, where the interest of such a director or proposed director or such an expert consists of being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any persons, in the case of a director or proposed director, either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the corporation or, in the case of an expert, for services rendered by him or the firm in connection with the promotion or formation of the corporation;

(n) shall, where the prospectus offers shares in or debentures of a foreign company, in addition contain particulars with respect to—

(i) the constituent documents of the foreign company;

(ii) the enactments or provisions having the force of an enactment by or under which the incorporation of the foreign company was effected;

(iii) an address in the State where the constituent documents, and the enactments or provisions, or certified copies of the constituent documents, enactments or provisions, may be inspected;

(iv) the date on which and the place where the foreign company was or is to be incorporated or formed;

and

(v) the address of the registered office of the foreign company in the State;

and

(o) shall specify each participating State or participating Territory (if any) in which it is proposed to issue the prospectus.

(2) The date inserted in a prospectus pursuant to paragraph (1) (b) shall, unless the contrary is proved, be taken to be the date of issue of the prospectus.

(3) Regulations made for the purposes of sub-section (1) may make different provision in relation to different classes of prospectuses or in relation to prospectuses to be issued in respect of different classes of shares or debentures or different classes of corporations.

(3A) A report contained in a prospectus in accordance with sub-section (1) or in accordance with a requirement made by the Commission under that sub-section shall either—

(a) indicate by way of note any adjustments as respects the figures of any profit or loss or assets and liabilities dealt with by the report that appear necessary to the person or persons making the report;

or

(b) make those adjustments and indicate by way of note that adjustments have been made and the nature of those adjustments.

(4) Without limiting the generality of sub-section (1), the Commission may require that a report that is required, pursuant to sub-section (1) or pursuant to a requirement made under that sub-section, to be contained in a prospectus shall contain accounts that comply with the requirements set out in the regulations in force for the time being under sub-section 269 (8) or with such of those requirements as are specified by the Commission.

(5) Paragraph (1) (m) and sub-paragraphs (1) (n) (i), (ii) and (iii) do not apply in the case of a prospectus issued more than 2 years after the day on which—

(a) in the case of a company—it is incorporated;

or

(b) in the case of a foreign company—it is registered as a foreign company in the State or in a participating State or a participating Territory under the provisions of the law of that State or Territory that correspond with Division 5 of Part XIII.

(6) A condition requiring or binding an applicant for shares in or debentures of a corporation to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus is void.

(7) Where a prospectus relating to any shares in or debentures of a corporation is issued and the prospectus does not comply with the requirements of this Code, the directors of the corporation and any other persons responsible for the prospectus are each guilty of an offence.

Penalty: \$2,500 or imprisonment for 6 months, or both.

(8) In the event of non-compliance with, or contravention of, any of the requirements set out in this section, a director or other person responsible for the prospectus does not incur any liability by reason of the non-compliance or contravention if—

- (a) as regards any matter not disclosed, he proves that he had no knowledge of that matter;
- (b) he proves that the non-compliance or contravention arose from an honest mistake on his part concerning the facts;

or

- (c) the non-compliance or contravention was—
 - (i) in respect of matter that, in the opinion of the court dealing with the case, was immaterial;
- or
- (ii) otherwise such as, in the opinion of that court, having regard to all the circumstances of the case, ought reasonably to be excused.

(9) In the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph (1) (m), no director or other person shall incur any liability in respect of the failure unless it is proved that he had knowledge of the matters not disclosed.

(10) Nothing in this section limits or diminishes any liability that a person may incur under any rule of law or any enactment or under this Code apart from sub-section (7).

99. (1) In this section—

“notice” includes a circular and an advertisement but does not include a registered prospectus or a report, statement, notice, circular or advertisement the publication of which is permitted under section 100;

“publish” includes issue;

“registered prospectus” includes a prospectus registered under the corresponding law of a participating State or of a participating Territory.

(2) A reference in this section to the publishing of a notice is a reference to the publishing of the notice by any means, including the publishing in a newspaper or periodical, by broadcasting or televising or in a film.

(3) Subject to sub-section (4), a person shall not publish a notice that—

- (a) offers to the public for subscription or purchase shares in, or debentures of, a corporation or proposed corporation;
- (b) invites the public to subscribe for or purchase shares in, or debentures of, a corporation or proposed corporation;

or

- (c) refers or calls attention, whether directly or indirectly, to—
 - (i) a prospectus;

Certain notices,
etc., not to be
published.

- (ii) an offer or intended offer to the public for subscription or purchase of shares in, or debentures of, a corporation;
 - (iii) an invitation or intended invitation to the public to subscribe for or purchase shares in, or debentures of, a corporation;
- or
- (iv) another notice that refers or calls attention, whether directly or indirectly, to a prospectus or such an offer, intended offer, invitation or intended invitation, not being a notice referred to in sub-section (4).
- (4) Sub-section (3) does not apply to or with respect to the publishing of a notice that refers to a registered prospectus and—
- (a) states that allotments or issues of, or contracts for the subscription for or purchase of, shares or debentures to which the prospectus relates will be made only on receipt of a form of application referred to in and attached to a copy of the prospectus but contains no other statements other than statements as to any or all of the following:
 - (i) particulars of the shares in, or debentures of, the corporation to which the prospectus relates;
 - (ii) the name of the corporation, the date of its incorporation and the amount of its paid-up capital;
 - (iii) the general nature of the main business of the corporation;
 - (iv) the names, addresses and occupations of the directors of the corporation;
 - (v) the name and address of each broker and underwriter to the issue and the name of the stock exchange of which each broker or underwriter is a member;
 - (vi) where the prospectus relates to debentures, the name and address of the trustee for the debenture holders;
 - (vii) the time and place at which copies of the prospectus and forms of application for the shares or debentures to which it relates may be obtained;
 - (viii) the period during which the offer or invitation contained in the prospectus is open;
 - (b) is published by the holder of a dealers licence or an investment advisers licence, by a recognized dealer or recognized investment adviser or by an exempt dealer within the meaning of the *Securities Industry (South Australia) Code* but contains no other statements other than statements as to any or all of the matters referred to in paragraph (a) and a statement as to—
 - (i) whether or not the person publishing the notice recommends acceptance of the offer or invitation to which the prospectus relates;
- and
- (ii) the interest (if any) that the person publishing the notice has in the success of the offer or invitation to which

the prospectus relates, being an interest that the person has as underwriter or sub-underwriter to the issue of the shares or debentures to which the prospectus relates or a relevant interest, within the meaning of the *Securities Industry (South Australia) Code*, in those shares or debentures;

or

- (c) is published by the holder of a dealers licence or an investment advisers licence, by a recognized dealer or recognized investment adviser or by an exempt dealer within the meaning of the *Securities Industry (South Australia) Code* and is accompanied by a copy of the prospectus.

(5) The inclusion in a notice of a statement required by this Code or any Act or law to be included in the notice does not affect the operation of sub-section (4).

(6) A person shall not contravene, or authorize or permit an act that constitutes a contravention of, this section.

(7) Where a notice relating to a corporation is published in contravention of this section by or with the authority or permission of an officer of the corporation, the corporation is guilty of an offence.

Penalty: \$2,500 or imprisonment for 6 months, or both.

100. (1) In this section, unless the contrary intention appears—

“publish” includes issue;

“registered prospectus” has the same meaning as in section 99;

“report” includes a statement, notice, circular and an advertisement, whether or not in writing, but does not include a notice, circular or advertisement the publication of which is permitted under section 99.

Certain reports referring to prospectuses not to be published.

(2) A reference in this section to the publishing of a report is a reference to the publishing of the report by any means, including the publishing in a newspaper or periodical, by broadcasting or televising or in a film.

(3) Subject to sub-section (4), a person who is aware that a prospectus relating to an issue of shares or debentures—

- (a) is in course of preparation by or on behalf of a corporation or in respect of a proposed corporation, for registration under the law of any State or Territory;

or

- (b) has been issued by or on behalf of a corporation,

shall not publish a report that is reasonably likely to induce persons to apply for those shares or debentures.

(4) Sub-section (3) does not apply to or with respect to the publishing of—

- (a) a report that relates to affairs of a corporation the name of which is included in the official list of a stock exchange and—

- (i) is published only to that stock exchange or an officer of that stock exchange on behalf of the corporation or

by or on behalf of one or more of the directors of the corporation;

or

(ii) has been so published;

(b) a report of the whole or part of the proceedings at a general meeting of a corporation the name of which is included in the official list of a stock exchange and which contains no other matter other than matters laid before that meeting;

(c) a report that relates to a corporation and is published by or on behalf of a corporation or by or on behalf of one or more of the directors of the corporation and—

(i) does not contain matter that materially affects affairs of the corporation other than matter previously made available in a registered prospectus, an annual report or a report referred to in paragraph (a) or (b);

(ii) does not contain a reference, whether directly or indirectly, to an offer to the public of shares or debentures for subscription or purchase or to an invitation to the public to subscribe for or purchase shares or debentures, being an offer or invitation that, when the report is published, is open or is intended to be made or issued, not being a reference to the principal business of the corporation in a case where the principal business of the corporation is the borrowing of money and the provision of finance;

and

(iii) is not accompanied by a registered prospectus or a notice described in sub-section 99 (3), and is a report that the corporation and its directors have taken all reasonable steps to ensure is not published in a form or manner in which it might be associated with a notice described in sub-section 99 (3);

(d) a report published on behalf of a corporation by or on behalf of the directors of a corporation with the consent of the Commission;

(e) a report that is a news report (whether or not with other comment), or is *bona fide* comment, published by a person in a newspaper or periodical or by broadcasting or televising relating to—

(i) a registered prospectus or information contained in a registered prospectus;

or

(ii) a report referred to in paragraph (a), (b), (c) or (d),

if none of the following:

(iii) that person;

(iv) an agent or employee of that person;

(v) where the report or comment is published in a newspaper or periodical—the publisher of the newspaper or periodical;

or

- (vi) where the report or comment is published by broadcasting or televising—the licensee of the broadcasting or television station by which it is published,

receives or is entitled to receive any consideration or other benefit from a person who has an interest in the success of the issue of shares or debentures to which the report or comment relates as an inducement to publish, or as the result of the publication of, the report or comment;

- (f) a report where the report is not published—

- (i) by or on behalf of a corporation to which the report relates or, whether directly or indirectly, at the instigation of, or by arrangement with, the corporation or the directors of the corporation;

- (ii) by or on behalf of the directors or promoters of a proposed corporation to which the report relates;

or

- (iii) by or on behalf of a person who has an interest in the success of the issue of shares or debentures to which the report relates,

and the person publishing the report does not receive and is not entitled to receive any consideration or other benefit from the corporation or any of the directors of the corporation or any of the directors or promoters of the proposed corporation, or from a person mentioned in sub-paragraph (iii), as an inducement to publish, or as the result of the publication of, the report;

or

- (g) a report containing only matter that is prescribed matter for the purposes of this sub-section or relating only to a corporation that is, or is included in a class that is, prescribed for the purposes of this sub-section.

(5) A person shall not contravene this section or authorize or permit an act that constitutes a contravention of this section.

(6) Where a report relating to a corporation is published in contravention of this section by or with the authority or permission of an officer of the corporation, the corporation is guilty of an offence.

Penalty: \$2,500 or imprisonment for 6 months, or both.

101. (1) In this section—

“notice” means a notice within the meaning of section 99 or a report within the meaning of section 100;

“publish” includes issue.

(2) A person who publishes a notice relating to a corporation or proposed corporation after he has received a certificate that—

- (a) specifies the names of 2 directors of the corporation or 2 proposed directors of the proposed corporation and is signed by those directors or proposed directors;

and

- (b) is to the effect that, by reason of sub-section 99 (4) or 100 (4), section 99 or 100, as the case may be, does not apply to the notice,

is not guilty of an offence under section 99 or 100, as the case may be.

(3) Where a notice to which a certificate under sub-section (2) relates is published, each director or proposed director who signed that certificate shall, for the purposes of sections 99 and 100, be deemed to have published the notice.

(4) A person who publishes a notice to which a certificate under sub-section (2) relates shall, if the Commission requires him to do so, forthwith deliver the certificate to the Commission.

Penalty: \$1,000 or imprisonment for 3 months, or both.

(5) In proceedings for an offence under section 99 or 100, a certificate relating to a notice that purports to be a certificate under this section is *prima facie* evidence that—

- (a) when the certificate was issued, the persons named in the certificate as directors of the corporation or proposed directors of the proposed corporation, as the case may be, were the directors or proposed directors;
- (b) the signatures in the certificate purporting to be the signatures of the directors or proposed directors, as the case may be, are those signatures;

and

- (c) the publication of the notice was authorized by those directors or proposed directors, as the case may be.

(6) Nothing in section 99, 100 or this section limits or diminishes the liability that a person may incur, otherwise than under section 99, 100 or this section, under any rule of law or under any other enactment.

Retention of
over-subscriptions
in debenture
issues.

102. (1) A corporation shall not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the corporation has specified in the prospectus—

- (a) that it expressly reserves the right to accept or retain over-subscriptions;

and

- (b) a limit on the amount of over-subscriptions that may be accepted or retained.

(2) Subject to section 98 and any regulations made for the purposes of paragraph 98 (1) (ea), where a corporation specifies in a prospectus relating to a debenture issue that it reserves the right to accept or retain over-subscriptions—

- (a) the corporation shall not make, authorize or permit any statement or reference as to the asset-backing for the issue to be made or contained in any prospectus relating to the issue, other than

a statement or reference to the total assets and the total liabilities of the corporation;

and

- (b) the corporation shall set out in the prospectus a statement or reference as to what the total assets and total liabilities of the corporation would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

Penalty: \$2,500.

103. (1) A prospectus shall not be issued by any person unless a copy of the prospectus has first been registered by the Commission under this Code or under the corresponding law of a participating State or a participating Territory.

Registration of prospectuses.

(2) The Commission shall not register a copy of a prospectus under this Code unless—

- (a) the prospectus relates to a company or a registered foreign company;
- (b) the copy, signed by every director and by every person who is named in the prospectus as a proposed director of the company or foreign company or by his agent authorized in writing, is lodged with the Commission on or before the date of issue of the prospectus;
- (c) the prospectus appears to comply with the requirements of this Code;
- (d) there are also lodged with the Commission copies, verified by statements in writing, of any consents required by section 106 to the issue of the prospectus and of all material contracts referred to in the prospectus or, in the case of such a contract not reduced to writing, a memorandum giving full particulars of the contract, verified by a statement in writing;

and

- (e) the Commission is of the opinion that the prospectus does not contain any statement or matter that is false in a material particular or is materially misleading in the form or context in which it appears.

(3) If a prospectus is issued without a copy of the prospectus having been registered as required by this section, the corporation and any person who is knowingly a party to the issue of the prospectus are each guilty of an offence.

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

(4) A company or foreign company in respect of which a copy of a prospectus has been registered under this section shall cause a true copy of every document referred to in paragraph (2) (d) to be deposited, within 7 days after registration of the copy of the prospectus at the registered office of the company or foreign company in the State and shall keep each such copy for a period of at least 6 months after the registration of the copy of the prospectus for the inspection of any person without charge.

104. (1) Where a corporation allots or issues or agrees to allot or issue to any person any shares in, or debentures of, the corporation with a view

Document containing offer of shares for sale deemed to be prospectus.

to all or any of them being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the corporation, and all enactments and rules of law—

- (a) relating to the contents of prospectuses and liability in respect of statements and non-disclosures in prospectuses, or otherwise relating to prospectuses;

and

- (b) relating to the offering or to an intended offering to the public of shares or debentures for subscription or purchase,

apply and have effect accordingly as if the shares or debentures had been offered to the public and as if persons accepting the offer in respect of any shares or debentures were subscribers for the shares or debentures, but without prejudice to the liability (if any) of the persons by whom the offer is made in respect of statements or non-disclosures in the document or otherwise.

(2) For the purposes of this Code, unless the contrary is proved, it is evidence that an allotment or issue of, or an agreement to allot or issue, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—

- (a) that an offer of the shares or debentures or of any of them for sale to the public was made within 6 months after the allotment or issue or agreement to allot or issue;

or

- (b) that an offer of the shares or debentures or of any of them for sale to the public was made, and that, at the date when the offer was made, the corporation had not received the whole of the consideration to be received in respect of the shares or debentures.

(3) The requirements of this Division as to prospectuses have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of a corporation.

(4) In addition to complying with the other requirements of this Division, the document making the offer shall state—

- (a) the net amount of the consideration received or to be received by the corporation in respect of shares or debentures to which the offer relates;

and

- (b) the place and time at which the contract under which the shares or debentures have been or are to be allotted or issued may be inspected.

(5) Where an offer to which this section relates is made by a corporation or a firm, it is sufficient for the purposes of paragraph 103 (2) (b) if the document referred to in sub-section (1) is signed on behalf of the corporation or firm by 2 directors of the corporation or by members of the firm who constitute not less than one-half of the number of members of the firm, as the case may be, and any such director or member may sign by his agent authorized in writing.

(6) For the purposes of this section, an invitation to the public to make offers to purchase shares or debentures shall be deemed to constitute an offer of the shares or debentures for sale to the public and a person who makes an offer pursuant to such an invitation shall be deemed to be a person who accepted an offer of the shares for sale to the public that is so deemed to be constituted by the invitation.

105. (1) Subject to this section, where a prospectus in relation to shares in, or debentures of, a corporation states that application has been or will be made to a stock exchange, whether in Australia or elsewhere, for permission for the shares or debentures to be listed for quotation on the stock market of that stock exchange and—

Allotment
or issue
of shares or
debentures where
prospectus
indicates
application for
quotation on
stock market.

(a) the permission is not applied for in the form for the time being required by that stock exchange before the third day on which that stock exchange is open after the date of issue of the prospectus;

or

(b) the permission is not granted before the expiration of a period of 6 weeks from the date of issue of the prospectus or such longer period, not exceeding 12 weeks, from the date of issue as is, within that period of 6 weeks, notified to the applicant by or on behalf of the stock exchange,

any allotment or issue, whenever made, on an application pursuant to the prospectus is void and the corporation shall repay, in accordance with the succeeding provisions of this section, any money received by it from any person pursuant to the prospectus.

(2) Where a corporation is liable under sub-section (1) to repay money received pursuant to a prospectus—

(a) the money shall be repaid forthwith without interest;

and

(b) if the money is not repaid—

(i) where the liability to repay the money arose by reason of paragraph (1) (a)—within 14 days after the third day referred to in that paragraph;

or

(ii) where the liability to repay the money arose by reason of paragraph (1) (b), within 14 days after—

(A) the period of 6 weeks first referred to in that paragraph;

or

(B) if a longer period has been notified under that paragraph—that longer period,

then, in addition to the liability of the corporation to repay the money, the directors of the corporation are jointly and severally liable to repay the money with interest at the rate of 8% per annum (or, if another rate is prescribed, that other rate) calculated from the expiration of the 14 days referred to in sub-paragraph (i) or (ii), as the case requires.

(3) Where, in relation to any shares in, or debentures of, a corporation—

(a) permission is not applied for as specified in paragraph (1) (a);

or

(b) permission is not granted as specified in paragraph (1) (b),

the Commission may, by notice published in the *Gazette*, on the application of the corporation made before any share or debenture is purported to be allotted or issued, exempt the allotment of the shares or the issue of the debentures from the operation of this section.

(4) A director is not liable under this section if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) Without limiting the application of any of the provisions of this section, this section has effect—

(a) in relation to any shares or debentures agreed to be taken by a person underwriting an offer of, or invitation in relation to, those shares or debentures contained in a prospectus as if he had applied for those shares or debentures pursuant to the prospectus;

and

(b) in relation to a prospectus offering shares for sale or inviting offers to purchase shares, as if—

(i) a reference to sale or purchase, as the case may be, were substituted for a reference to allotment;

(ii) the persons by whom the offer is made or the invitation is issued, and not the corporation, were liable under this section to repay money received from applicants, and references to the corporation's liability under this section were construed accordingly;

and

(iii) for the reference in sub-section (6) to the corporation and any officer of the corporation who is in default there were substituted a reference to any person by or through whom the offer is made or the invitation is issued who knowingly authorizes or permits the default.

(6) All money received by a corporation pursuant to a prospectus as mentioned in the preceding provisions of this section shall be kept in a separate bank account so long as the corporation may become liable to repay it under this section and, if default is made in complying with this sub-section, the corporation and any officer of the corporation who is in default are each guilty of an offence.

Penalty: \$2,500 or imprisonment for 6 months, or both.

(7) Where a stock exchange has, within the period applicable under paragraph (1) (b), granted permission subject to compliance with any requirements specified by the stock exchange, permission shall be deemed to have been granted by the stock exchange if the directors have given to the stock exchange an undertaking in writing to comply with the requirements of the

stock exchange, but if any such undertaking is not complied with, each director who is in default is guilty of an offence.

Penalty: \$2,500 or imprisonment for 6 months, or both.

(8) A person shall not issue a prospectus inviting persons to subscribe for, or offering to accept subscriptions for, shares in, or debentures of, a corporation if the prospectus includes—

- (a) an untrue statement that permission has been granted for those shares or debentures to be dealt in or quoted or listed for quotation on a stock market of a stock exchange;

or

- (b) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to dealing in or quoting or listing the shares or debentures on, or on a stock market of, a stock exchange, or to any requirements of a stock exchange, unless that statement is or is to the effect that permission has been granted or that application has been or will be made to the stock exchange within 3 days of the issue of the prospectus.

Penalty: \$5,000 or imprisonment for 1 year, or both.

(9) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to do so, is void.

106. (1) A prospectus in relation to a corporation that includes a statement purporting to be made by an expert or to be based on a statement made by an expert shall not be issued unless—

Expert's consent to issue of prospectus containing statement by him.

- (a) the expert has given, and has not, before delivery of a copy of the prospectus for registration, withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included;

and

- (b) there appears in the prospectus a statement that the expert has given, and has not withdrawn, his consent.

(2) If a prospectus is issued in contravention of this section, the corporation and any person who is knowingly a party to the issue of the prospectus are each guilty of an offence.

Penalty: \$2,500 or imprisonment for 6 months, or both.

107. (1) Subject to this section, where a prospectus is issued in relation to a corporation, a person who—

Civil liability for untrue statement or non-disclosure in prospectus.

- (a) is a director of the corporation at the time of the issue of the prospectus;
- (b) authorized or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;
- (c) is a promoter of the corporation;

or

(d) authorized or caused the issue of the prospectus,

is liable to pay compensation to all persons who subscribe for or purchase any shares or debentures or units of shares or debentures on the faith of the prospectus for any loss or damage sustained by reason of any untrue statement in the prospectus, or by reason of the non-disclosure in the prospectus of any matter of which he had knowledge and which he knew to be material.

(2) Notwithstanding anything in sub-section (1), an expert whose consent to the issue of a prospectus is required and who has given that consent is not, by reason only of having given that consent, liable under sub-section (1) as a person who has authorized or caused the issue of the prospectus except in respect of—

(a) an untrue statement in the prospectus purporting to be made by him as an expert;

and

(b) a non-disclosure in the prospectus of any material matter for which he is responsible in his capacity or purported capacity as an expert.

(3) For the purposes of sub-section (1), a person who is named in a prospectus as—

(a) a trustee for holders of debentures of the corporation;

(b) an auditor, banker, solicitor, stockbroker or share broker of the corporation or for or in relation to the issue or proposed issue of shares or debentures;

or

(c) a person performing any function in a professional, advisory or other capacity not mentioned in paragraph (a) or (b) for the corporation or for or in relation to the issue or proposed issue of shares or debentures,

shall not, for that reason alone, be taken to have authorized the issue of the prospectus.

(4) For the purposes of sub-section (1), a statement shall be deemed to be in a prospectus if it is contained in any report or memorandum that appears on the face of, or is issued with, the prospectus, or is incorporated by reference in the prospectus, whether the reference occurs in the prospectus or in any other document.

(5) Subject to sub-section (6), a person, other than a person to whom sub-section (7) applies, is not liable under sub-section (1) if he proves—

(a) that, having consented to become a director of the corporation, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent;

(b) that the prospectus was issued without his knowledge or consent and—

(i) when he became aware of the issue of the prospectus, he forthwith gave reasonable public notice that it was issued without his knowledge;

or

(ii) he gave reasonable public notice that the prospectus was issued without his consent forthwith after it was issued,

as the case may be;

(c) that, after the issue of the prospectus and before any allotment, issue or sale under the prospectus, he, on becoming aware of any untrue statement in the prospectus, withdrew his consent to the issue of the prospectus and gave reasonable public notice of the withdrawal and of the reason for the withdrawal;

or

(d) that—

(i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable grounds to believe, and did until the time of the allotment, issue or sale of the shares or debentures believe, that the statement was true;

(ii) as regards every untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert or contained in what purports to be a copy of, or extract from, a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of, or extract from, the report or valuation, and he had reasonable grounds to believe, and did until the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that that person had given the consent required by section 106 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration, or, to the defendant's knowledge, before any allotment, issue or sale under the prospectus;

and

(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of, or extract from, a public official document, it was a correct and fair representation of the statement or a correct and fair copy of, or extract from, the document.

(6) Sub-section (5) does not apply in the case of a person who is liable, by reason of his having given a consent required of him by section 106, as a person who has authorized or caused the issue of the prospectus in respect of an untrue statement purporting to have been made by him as an expert.

(7) A person who, apart from this sub-section, would under sub-section (1) be liable, by reason of his having given a consent required of him by section 106, as a person who has authorized the issue of a prospectus, in respect of an untrue statement purporting to be made by him as an expert is not so liable if he proves—

(a) that, having given his consent under section 106 to the issue of the prospectus, he withdrew it in writing before a copy of the prospectus was lodged with the Commission;

(b) that, after a copy of the prospectus was lodged with the Commission and before any allotment, issue or sale under the prospectus, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reasons for the withdrawal;

or

(c) that he was competent to make the statement and that he had reasonable grounds to believe, and did until the time of the allotment, issue or sale of the shares or debentures believe, that the statement was true.

(8) Where—

(a) a prospectus in relation to a corporation contains the name of a person as a director of the corporation, or as having agreed to become a director, and that person has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue of the prospectus;

or

(b) the consent of a person is required under section 106 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,

the directors of the corporation, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized or caused the issue of the prospectus are jointly and severally liable to indemnify the person so named or whose consent was so required against all damages, costs and expenses to which he may be liable by reason of his name having been so inserted in the prospectus or by reason of the inclusion in the prospectus of a statement purporting to be made by him as an expert, or in defending himself against any action or other legal proceeding brought against him by reason of his name having been so inserted in the prospectus or the inclusion in the prospectus of such a statement.

Criminal liability
for untrue
statement or non-
disclosure in
prospectus.

108. (1) Where in a prospectus there is any untrue statement or non-disclosure, any person who authorized or caused the issue of the prospectus is guilty of an offence unless he proves—

(a) that the statement or non-disclosure was immaterial;

(b) that he had reasonable grounds to believe, and did until the time of the issue of the prospectus believe, that the statement was true or the non-disclosure was immaterial;

or

(c) where there was in the prospectus a non-disclosure—that the non-disclosure was inadvertent.

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

(2) For the purposes of sub-section (1), a statement shall be deemed to be in a prospectus if it is contained in any report or memorandum that appears on the face of, or is issued with, the prospectus, or is incorporated

by reference in the prospectus, whether the reference occurs in the prospectus or in any other document.

(3) A person shall not be taken for the purposes of this section to have authorized or caused the issue of a prospectus by reason only of his having given the consent required by this Division to the inclusion in the prospectus of a statement purporting to be made by him as an expert.

109. (1) The Commission may, by instrument in writing, exempt a person, as specified in the instrument and subject to such conditions (if any) as are specified in the instrument, from compliance with all or any of the requirements of this Division.

Power to exempt from compliance with Division or to declare that Division applies as if modified.

(2) A person who is exempted by the Commission, subject to a condition, from compliance with a requirement of this Division shall not contravene or fail to comply with the condition.

(3) Where a person has contravened or failed to comply with a condition to which an exemption under sub-section (1) is subject, the Court may, on the application of the Commission, order the person to comply with the condition.

(4) The Commission may, by instrument in writing, declare that this Division shall have effect in its application to or in relation to a particular person or persons in a particular case as if a provision or provisions of this Division specified in the instrument were omitted, modified or varied in a manner specified in the instrument, and, where such a declaration is made, this Division has effect accordingly.

(5) A copy of an instrument executed under this section shall be published in the *Gazette*.

DIVISION 2—RESTRICTIONS ON ALLOTMENT AND VARIATION OF
CONTRACTS

DIVISION 2

110. (1) A company shall not make an allotment of shares in the company that have been offered to the public or in respect of which an invitation has been issued to the public unless—

Prohibition of allotment unless minimum subscription received.

(a) the minimum subscription has been subscribed;

and

(b) the sum payable on application for the shares so subscribed has been received by the company.

(2) For the purposes of sub-section (1) where a company has, whether before or after the commencement of the Companies (Application of Laws) Act, 1982, received a cheque for the sum payable on application for an allotment of shares in the company, the sum shall be deemed not to have been received by the company until the cheque is paid by the bank on which it is drawn.

(3) In ascertaining for the purposes of sub-section (1) whether the minimum subscription has been subscribed in relation to an allotment of shares, there shall, in respect of each share for the allotment of which an application has been made, be deemed to have been subscribed an amount equal to the sum of—

(a) the nominal value of that share;

and

(b) if the share is, or is to be, issued at a premium—the amount of the premium payable on the share,

less any amount payable otherwise than in cash.

(4) Except in the case of a no liability company, the amount payable on application for each share that has been offered to the public or in respect of which an invitation has been issued to the public shall be not less than 5% of the nominal amount of the share.

(5) If the conditions referred to in paragraphs (1) (a) and (b) have not been satisfied on the expiration of 4 months after the issue of the prospectus, the company shall repay, in accordance with the succeeding provisions of this section, all money received from applicants for shares.

(6) Where a company is liable, under sub-section (5), to repay money received from applicants for shares—

(a) the money shall be repaid without interest within 7 days after the company becomes so liable;

and

(b) if the money is not repaid within 7 days after the company becomes so liable—

(i) the directors of the company are, subject to sub-section (7), jointly and severally liable to repay the money with interest at the rate of 8% per annum (or if another rate is prescribed, that other rate) calculated from the expiration of the period of 7 days;

and

(ii) each director of the company is guilty of an offence.

Penalty: \$2,500 or imprisonment for 6 months, or both.

(7) A director of a company is not liable under sub-paragraph (6) (b) (i), and is not guilty of an offence under sub-paragraph (6) (b) (ii), if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(8) An allotment made by a company to an applicant in contravention of the provisions of this section is voidable at the option of the applicant and is so voidable notwithstanding that the company is in the course of being wound up.

(9) An option referred to in sub-section (8) is exercisable by notice in writing served on the company—

(a) in the case of an allotment made by a company that is not required to hold a statutory meeting—within one month after the date of the allotment;

and

(b) in the case of an allotment made by a company that is required to hold a statutory meeting—

(i) if the company holds the statutory meeting within the period specified in sub-section 239 (1)—within one

month after the date of the allotment or the holding of the statutory meeting, whichever is the later;

or

- (ii) if the company fails to hold the statutory meeting within that period—within one month after the expiration of that period or the date of the allotment, whichever is the later.

(10) A director of a company who knowingly contravenes, or permits or authorizes the contravention of, any of the provisions of this section is guilty of an offence and is liable, in addition to the penalty or punishment for the offence, to compensate the company and any person to whom an allotment has been made in contravention of this section respectively for any loss, damages or costs that the company or the person has sustained or incurred by reason of the allotment, but no proceedings for the recovery of any such compensation shall be commenced after the expiration of 2 years from the date of the allotment.

(11) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this section, or purporting to do so, is void.

(12) A company shall not allot or issue, and an officer or promoter of a company or a proposed company shall not authorize or permit to be allotted or issued, shares or debentures on the basis of a prospectus after the expiration of 6 months from the issue of the prospectus.

Penalty: \$2,500 or imprisonment for 6 months, or both.

(13) Where an allotment or issue of shares or debentures is made on the basis of a prospectus after the expiration of 6 months from the issue of the prospectus, the allotment is not, by reason only of that fact, voidable or void.

111. (1) Where, whether before or after the commencement of the Companies (Application of Laws) Act, 1982, shares or debentures have been offered to the public or invitations have been issued to the public in respect of shares or debentures, all application moneys and other moneys paid, whether before or after the commencement of the Companies (Application of Laws) Act, 1982, by an applicant on account of the shares or debentures before the allotment or issue of the shares or debentures shall, until the allotment or issue of the shares or debentures, be held by the company on trust for the applicant in a bank account, being a bank account established and kept by the company solely for the purpose of depositing application moneys and other moneys paid by applicants for those shares or debentures, but there is no obligation or duty on any bank with whom any such moneys have been deposited to inquire into or see to the proper application of those moneys so long as the bank acts in good faith.

Application moneys to be held in trust until allotment.

(2) If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

Penalty: \$2,500 or imprisonment for 6 months, or both.

112. A company shall not, before the statutory meeting, vary the terms of a contract referred to in the prospectus unless the variation is made subject to the approval of the statutory meeting.

Restriction on varying contracts referred to in prospectus.

Return as to
allotments.

113. (1) Where a company makes an allotment of its shares, or shares in a company are deemed to have been allotted under sub-section (6), the company shall, within one month after the allotment is made or deemed to have been made, lodge with the Commission a return of the allotment stating—

- (a) the number and nominal amounts of the shares comprised in the allotment;
- (b) the amount (if any) paid, deemed to be paid or due and payable on the allotment of each share;
- (c) where the capital of the company is divided into shares of different classes—the class of shares to which each share comprised in the allotment belongs;

and

- (d) subject to sub-section (2), the full name, or the surname and at least one Christian or given name and other initials, and the address of each of the allottees and the number and class of shares allotted to him.

(2) The particulars mentioned in paragraph (1) (d) need not be included in a return—

- (a) where shares have been allotted for cash by a no liability company;
- (b) where a company to which the provisions of sub-section 265 (1) apply has allotted shares for cash;

or

- (c) where a company to which the provisions of that sub-section apply has allotted shares for a consideration other than cash and the number of persons to whom the shares have been allotted exceeds 500.

(3) Where shares in a company are allotted, or deemed to have been allotted, as fully or partly paid up otherwise than in cash and the allotment is made pursuant to a contract in writing, the company shall lodge with the return the contract evidencing the entitlement of the allottee or a certified copy of any such contract.

(4) If a certified copy of a contract is lodged in accordance with sub-section (3), the original contract duly stamped shall be produced at the same time to the Commission.

(5) Where shares in a company are allotted, or are deemed to have been allotted, as fully or partly paid up otherwise than in cash and the allotment is made—

- (a) pursuant to a contract not reduced to writing;
- (b) pursuant to a provision in the memorandum or articles of the company;
- (c) in satisfaction of a dividend declared in favour of, but not payable in cash to, the shareholders;

or

- (d) pursuant to the application of moneys held by the company in an account or reserve in paying up or partly paying up unissued shares to which the shareholders have become entitled,

the company shall lodge with the return a statement containing such particulars as are prescribed.

(6) For the purposes of this section, any shares in a company that the subscribers to the memorandum have agreed in the memorandum to take shall be deemed to have been allotted to those subscribers on the date of the incorporation of the company.

(7) If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

114. (1) A company, if so authorized by its articles, may—

- (a) make arrangements on the issue of shares for varying the amounts and times of payment of calls as between shareholders;
- (b) accept from a member the whole or a part of the amount remaining unpaid on any shares although no part of that amount has been called up;
- and
- (c) except in the case of a no liability company, pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

Differences in calls and payments, reserve liability, etc.

(2) A limited company may, by special resolution, determine that any portion of its share capital that has not been already called up is not capable of being called up except in the event and for the purposes of the company being wound up, and thereupon that portion of the company's share capital is not capable of being called up except in the event and for the purposes of the company being wound up, but no such resolution prejudices any rights acquired by a person before the passing of the resolution.

115. A company shall not issue any share warrant.

Share warrants.

116. (1) Except as provided by section 117 or 118, a company shall not apply any of its shares or capital money either directly or indirectly in making a payment to a person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares are or the money is so applied by being added to the purchase price of property acquired by the company or to the contract price of work to be executed for the company or the money is paid out of the nominal purchase price or contract price or otherwise.

Restriction on application of capital of company.

(2) Without limiting the generality of sub-section (1), except as provided by section 117 or 118, a company shall not issue shares at a discount.

(3) If a company contravenes this section, the company is, notwithstanding section 570, not guilty of an offence against this Code but each officer of the company who is in default is guilty of an offence.

Penalty: \$1,000 or imprisonment for 3 months, or both.

(4) Where—

- (a) a person is convicted of an offence under this section in relation to a company;

and

- (b) the court by which he was convicted is satisfied that the company has suffered loss or damage as a result of the act that constituted the offence,

that court may, in addition to imposing a penalty, order the convicted person pay compensation to the company of such amount as that court specifies, and any such order may be enforced as if it were a judgement of that court.

(5) Where a contravention of this section takes place—

- (a) if a person other than the company concerned, being a person who was, at the time of the contravention, aware of the matters constituting the contravention, has made a profit as a result of the contravention, the company may, whether or not that person or any other person has been convicted of an offence under sub-section (3) in relation to that contravention, recover from the person as a debt due to the company by action in any court of competent jurisdiction an amount equal to the profit;

and

- (b) where the company concerned has suffered loss or damage as a result of the contravention—the company may recover an amount equal to the loss or damage from any person who is in default, whether or not that person or any other person has been convicted of an offence under sub-section (3) in relation to that contravention, as a debt due to the company by action in any court of competent jurisdiction.

Power to make
certain payments.

117. (1) A company may make a payment to a person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for shares in the company if—

- (a) the payment is not prohibited by the memorandum or articles;
- (b) the payment does not exceed—
- (i) 10% of the total of the amounts payable in respect of the shares upon their allotment;

or

- (ii) such amounts (if any), or an amount calculated in accordance with such rate (if any), as is authorized by the articles,

whichever is the less;

- (c) the amount or rate of the payment is disclosed in the prospectus in respect of the shares or, if there is no such prospectus, in a statement lodged with the Commission before the company becomes liable to make the payment;

and

- (d) the number of shares for which persons have agreed, for a payment, to subscribe absolutely is set out in that prospectus or statement.

(2) For the purposes of this section, the allowance of a discount by a company shall be taken to be the making of a payment by the company.

(3) A vendor to, promoter of, or person who receives payment in money or shares from, a company may apply any part of the money or shares so received in making any payment that would, if it were made directly by the company, be lawful under this section.

118. (1) A no liability company may issue shares at a discount.

Power to issue shares at a discount.

(2) Subject to this section, a company other than a no liability company may issue at a discount shares included in a class of shares already issued if—

(a) the issue of the shares at a discount—

(i) is authorized by resolution passed in general meeting of the company;

and

(ii) is confirmed by order of the Court;

(b) the resolution specifies the maximum rate of discount at which the shares are to be issued;

(c) the shares are issued within one month after the date on which the issue is confirmed by order of the Court or within such extended time as the Court allows;

and

(d) the shares are first offered to every holder of shares in the company of that class in proportion to the number of shares of that class held by him.

(3) The Court may, if having regard to all the circumstances of the case it thinks proper to do so, make an order confirming the issue on such terms and conditions as it thinks fit.

(4) A prospectus relating to the issue of the shares shall contain particulars of the discount allowed or of so much of that discount as has not been written off at the date of the issue of the prospectus.

(5) If default is made in complying with sub-section (4), the company and any officer of the company who is in default are each guilty of an offence.

Penalty: \$1,000 or imprisonment for 3 months, or both.

(6) An offer made for the purposes of paragraph (2) (d) shall be made by notice specifying the number of shares to which the member is entitled, and specifying a period, being not less than 21 days from the date of the notice, within which the offer may be accepted.

(7) If an offer in respect of shares made in accordance with sub-section (6) is not accepted within the period specified by the notice, the shares may be issued on terms not more favourable than those offered to the shareholders.

119. (1) Where a company issues shares for which a premium is received by the company, whether in cash or in the form of other valuable consideration, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account to be called the "share premium account", and the provisions of this Code relating to the reduction of the share capital of a company, other than sub-section 123 (6) apply,

Issue of shares at premium.

subject to this section, as if the share premium account were paid-up share capital of the company.

- (2) The share premium account may be applied—
- (a) in paying up unissued shares to be issued to members of the company as fully paid bonus shares;
 - (b) in paying up in whole or in part the balance unpaid on shares previously issued to members of the company;
 - (c) in the payment of dividends, if those dividends are satisfied by the issue of shares to members of the company;
 - (d) in the case of a company that carries on life insurance business in Australia—by appropriation or transfer to any statutory fund established and maintained pursuant to the *Life Insurance Act 1945*;
 - (e) in writing off—
 - (i) the preliminary expenses of the company;
 - or
 - (ii) the expenses of, or the payment made in respect of or discount allowed on, any issue of shares in, or debentures of, the company;
 - or
 - (f) in providing for the premium payable on redemption of debentures or redeemable preference shares.

Redeemable
preference shares.

120. (1) Subject to this section, a company having a share capital may, if so authorized by its articles, issue preference shares that are, or at the option of the company are to be, liable to be redeemed.

(2) The redemption shall not be taken to reduce the authorized share capital of the company.

(3) The shares shall not be redeemed—

- (a) except on such terms and in such manner as are provided by the articles;
- (b) except out of profits that would otherwise be available for dividends or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;

and

(c) unless they are fully paid-up.

(4) The premium (if any) payable on redemption shall be provided for out of profits or out of the share premium account.

(5) Where redeemable preference shares are redeemed otherwise than out of the proceeds of a fresh issue of shares, there shall, out of profits that would otherwise have been available for dividends, be transferred to a reserve called the “capital redemption reserve” a sum equal to the nominal amount of the shares redeemed, and the provisions of this Code relating to the reduction of the share capital of a company, other than sub-section 123

(6), apply, except as provided by this section, as if the capital redemption reserve were paid-up share capital of the company.

(6) Where, pursuant to this section, a company has redeemed or is about to redeem any preference shares, it may issue shares up to the sum of the nominal values of the shares redeemed or to be redeemed as if those preference shares had never been issued.

(7) The capital redemption reserve may be applied in paying up unissued shares of the company to be issued to members of the company as fully-paid bonus shares.

(8) Where a company redeems any redeemable preference shares, it shall, within 14 days after so doing, lodge with the Commission a notice in the prescribed form relating to the shares redeemed.

(9) Shares shall be taken to have been redeemed notwithstanding that a cheque given in payment of the amount payable upon redemption of the shares has not been presented for payment.

(10) If a company fails to comply with this section, the company and any officer of the company who is in default are each guilty of an offence.

121. (1) A company may, if so authorized by its articles, by resolution passed in general meeting alter the provisions of its memorandum in any one or more of the following ways:

Power of
company to alter
its share capital.

- (a) by increasing its share capital by the creation of new shares of such amount as it thinks expedient;
- (b) by consolidating and dividing all or any of its share capital into shares of larger amount than its existing shares;
- (c) by converting, or providing for the conversion of, all or any of its paid-up shares into stock or re-converting, or providing for the re-conversion of, that stock into paid-up shares of any denomination;
- (d) by subdividing its shares or any of them into shares of smaller amount than is fixed by the memorandum, but so that, in the subdivision, the proportion between the amount paid and the amount (if any) unpaid on each share of a smaller amount is the same as it was in the case of the share from which the share of a smaller amount is derived;
- (e) by cancelling shares that, at the date of the passing of the resolution to that effect, have not been taken or agreed to be taken by any person or that have been forfeited and by reducing the amount of the company's share capital by the amount of the shares so cancelled.

(2) A cancellation of shares under this section shall be deemed not to be a reduction of share capital within the meaning of this Code.

(3) An unlimited company having a share capital may, by any resolution passed for the purposes of sub-section 69 (1), do either or both of the following:

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital may be called up except in the event and for the purposes of the company being wound up;

- (b) provide that a specified portion of its uncalled share capital may not be called up except in the event and for the purposes of the company being wound up;

Validation of
shares improperly
issued.

122. (1) Where a company has purported to issue or allot shares and—

- (a) the creation, issue or allotment of those shares is invalid by reason of any provision of this Code or of any Act or of the memorandum or articles of the company or for any other reason;

or

- (b) the terms of the purported issue or allotment are inconsistent with or are not authorized by any such provision,

the Court may, upon application made by the company, by a holder or mortgagee of any of those shares or by a creditor of the company and upon being satisfied that in all the circumstances it is just and equitable so to do, make an order—

- (c) validating the purported issue or allotment of those shares;

or

- (d) confirming the terms of the purported issue or allotment of the shares,

or both.

(2) Upon an office copy of an order made under sub-section (1) being lodged with the Commission, the shares to which the order relates shall be deemed to have been validly issued or allotted upon the terms of the issue or allotment of the shares.

Special resolution
for reduction of
share capital.

123. (1) Subject to confirmation by the Court, a company may, if so authorized by its articles, by special resolution reduce its share capital in any way and in particular, without limiting the generality of the foregoing, may do all or any of the following:

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;

- (b) cancel any paid-up share capital that is lost or is not represented by available assets;

or

- (c) pay off any paid-up share capital that is in excess of the needs of the company,

and may, so far as necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A reduction in the paid-up share capital of a company does not of itself operate to reduce the nominal share capital of the company.

(3) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs—

- (a) every creditor of the company who, at the date fixed by the Court, is entitled to any debt or claim that, if that date were the date of commencement of the winding up of the company, would

be admissible in proof against the company, is entitled to object to the reduction;

- (b) the Court, unless satisfied on affidavit that there are no such creditors, shall settle a list of the names of creditors entitled to object and, for that purpose, shall ascertain as far as possible, without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a final day on or before which creditors whose names are not entered on the list may claim to be so entered;

and

- (c) where a creditor whose name is entered on the list, and whose debt has not been discharged or whose claim has not determined, does not consent to the reduction, the Court may dispense with the consent of that creditor on the company securing payment of his debt or claim by appropriating as the Court directs—

- (i) if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it—the full amount of the debt or claim;

or

- (ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim or if the amount is contingent or not ascertained—an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

(4) The Court may, having regard to any special circumstances of any case, direct that all or any of the provisions of sub-section (3) shall not apply in respect of creditors included in a class of creditors.

(5) The Court may, if satisfied with respect to each creditor who under sub-section (3) is entitled to object, that—

- (a) his consent to the reduction has been obtained;
- (b) his debt has been discharged or secured;
- or
- (c) his claim has determined or has been secured,

make an order confirming the reduction on such terms and conditions as it thinks fit.

(6) An order made under sub-section (5) shall show—

- (a) the amount of the share capital of the company as altered by the order;
- (b) the number of shares into which the share capital is to be divided;
- (c) the amount of each share;

and

- (d) the amount (if any) that at the date of the order is deemed to be paid up on each share.

(7) A company shall not act upon a resolution for the reduction of share capital before the date on which a certified copy of the resolution and an office copy of the order of the Court have been lodged with the Commission but such a resolution may specify a date, earlier than the first-mentioned date but not earlier than the date of the resolution, as the date from which the reduction of capital is to have retrospective effect.

(8) A certificate of the Commission stating that a certified copy of the resolution and an office copy of the order made under sub-section (5) have been registered by the Commission is conclusive evidence that all the requirements of this Code with respect to reduction of share capital have been complied with in respect of the company and that the share capital of the company is such amount as is stated in the order.

(9) Upon lodgment of a copy of an order as mentioned in sub-section (7), the particulars shown in the order pursuant to sub-section (6) shall be deemed to be substituted for the corresponding particulars in the memorandum and the substitution shall be deemed to be an alteration of the memorandum for the purposes of this Code.

(10) A member of a company, past or present, is not liable in respect of any share in the company to any call or contribution exceeding in amount the difference (if any) between the amount of the share as fixed by an order made under sub-section (5) and the amount paid, or the reduced amount (if any) that is deemed to have been paid, on the share (as the case may be) but, where the name of a creditor who is entitled under sub-section (3) to object to a reduction is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, not entered on the list of creditors, and after the reduction the company is unable, within the meaning of the provisions of this Code with respect to winding up by the Court, to pay the amount of his debt or claim—

- (a) every person who was a member of the company at the date of the registration of the copy of the order for reduction is liable to contribute for the payment of that debt or claim an amount not exceeding the amount that he would have been liable to contribute if the company had commenced to be wound up on the day before that date;

and

- (b) if the company is wound up, the Court, on the application of any such creditor and proof of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, may, if it thinks fit, settle accordingly a list of the names of persons liable to contribute by reason of paragraph (a) and make and enforce calls and orders on the contributories whose names are included in the list as if they were ordinary contributories in a winding up,

but nothing in this sub-section affects the rights of the contributories among themselves.

(11) An officer of a company who—

- (a) knowingly conceals the name of a creditor entitled to object to a reduction in the share capital of the company;

or

- (b) knowingly misrepresents the nature or amount of the debt or claim of any creditor of the company,

is guilty of an offence.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(12) This section does not apply to an unlimited company, but nothing in this Code precludes an unlimited company from reducing in any way its share capital, including any amount in its share premium account.

(13) The granting by a company to a member of the company of a right to occupy or use land, or a building or part of a building, owned or held under lease by the company, whether for consideration or not, shall not be regarded as being a reduction of the share capital of the company if it is made pursuant to a provision of the memorandum or articles of the company under which a member of the company may, by virtue of his being such a member, be granted such a right, whether the provision provides for consideration to be given for it or not.

(14) Sub-section (13) applies whether the grant is by way of lease, underlease, licence or otherwise, and whether or not, in the case of a grant in respect of a building or part of a building, the grant also entitles the member to a right of use of a garage, outbuilding or other structure or of a passage, stairway or convenience of a building or of land appurtenant to the building or part of the building.

(15) This section does not apply in relation to a reduction of capital, or to a cancellation of shares that have been allotted, where the reduction or cancellation results from, or is necessary by reason of, the operation of the *Companies (Acquisition of Shares) (South Australia) Code* or a corresponding law in force in a participating State or participating Territory, or of regulations applying under that Code or applying or made under such a corresponding law, and nothing in this Code operates to invalidate any such reduction of capital or cancellation of shares.

(16) Where land under the operation of the Real Property Act, 1886-1980, is comprised in a plan of strata subdivision registered under Part XIXB of that Act and at the time of registration of the plan the proprietor of that land was a company, the transfer by the company of any unit on the plan of strata subdivision in exchange for or in satisfaction of a right of a kind referred to in sub-section (13) shall not of itself constitute, and shall be deemed never to have constituted, a reduction of the share capital of the company.

124. (1) Where a company allots shares to which are attached rights that are not provided for in the memorandum or articles of the company or in a resolution or document to which section 251 applies, the company shall, unless the rights attached to the shares are in all respects the same as the rights attached to shares previously allotted, lodge with the Commission, within one month after the allotment of the shares, a statement in the prescribed form relating to those rights.

Commission to be informed of special rights carried by, or division or conversion of, shares.

(2) Where—

- (a) shares in a company that were not previously divided into classes are so divided;

or

- (b) shares in a company that are of one class are converted into shares of another class,

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DIVISION 3

the company shall, within one month after the division or conversion, lodge with the Commission a return in the prescribed form showing particulars of the division or conversion.

(3) If a company contravenes this section, the company and any officer of the company who is in default are each guilty of an offence.

Rights of holders
of classes of
shares.

125. (1) This section applies to a company having a share capital that is divided into classes of shares.

(2) Where—

- (a) rights are attached to shares included in a class of shares;
- (b) no provision is made by the memorandum or articles for the variation or abrogation of those rights;

and

- (c) neither the memorandum nor the articles declares or declare those rights to be unalterable,

the company may, with the consent in writing of the holders of three-quarters of the issued shares included in that class or with the sanction of a special resolution passed at a meeting of the holders of those shares, vary or abrogate those rights or alter the memorandum or articles so as to authorize the variation or abrogation of those rights.

(3) Where—

- (a) rights are attached to shares included in a class of shares;

and

- (b) provision is made by the memorandum or articles authorizing the variation or abrogation of those rights with the consent of a specified proportion of the holders of the issued shares included in that class or with the sanction of a resolution of a kind specified in the memorandum or articles passed at a meeting of the holders of those shares,

the memorandum or articles shall not be altered so as to vary or abrogate, or to authorize the variation or abrogation of, those rights, except with the consent of that proportion of the holders of those shares or with the sanction of such a resolution passed at a meeting of the holders of those shares.

(4) Where rights are attached to shares included in a class of shares and—

- (a) those rights are at any time varied or abrogated;

or

- (b) the memorandum or articles is or are altered so as to authorize the variation or abrogation of those rights,

the holders of not less in the aggregate than 10% of the issued shares included in that class may apply to the Court to have the variation or abrogation of the rights, or the alteration of the memorandum or articles, as the case may be, set aside and, if such an application is made, the variation or abrogation, or the alteration, does not have effect until confirmed by the Court.

(5) An application under sub-section (4) shall be made within 28 days after the variation, abrogation or alteration referred to in that sub-section was made and may be made, on behalf of the shareholders entitled to make

the application, by such one or more of their number as they appoint in writing.

(6) On the application, the Court may, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested, if it is satisfied that the variation, abrogation or alteration would unfairly prejudice the members of the class represented by the applicant, set aside the variation, abrogation or alteration, as the case may be, and shall, if not so satisfied, confirm it.

(7) A company shall, within 14 days after the making of an order by the Court on an application under this section, lodge an office copy of the order with the Commission and, if the company fails to comply with this provision, the company and any officer of the company who is in default are each guilty of an offence.

(8) For the purposes of this section, the allotment by a company of preference shares ranking equally with existing preference shares shall be deemed to be a variation of the rights attached to those existing preference shares unless the allotment of the first-mentioned shares was authorized by the terms of allotment of the existing preference shares or by the memorandum or articles in force at the time when the existing preference shares were allotted.

(9) Nothing in section 73 or 76 affects the operation of this section.

126. (1) This section applies to a company having a share capital that is not divided into classes of shares. Rights of holders of shares.

(2) Where—

- (a) rights are attached to shares in a company;
- (b) no provision is made by the memorandum or articles for the variation or abrogation of those rights;

and

- (c) neither the memorandum nor the articles declares or declare those rights to be unalterable,

the company may, with the consent in writing of the holders of three-quarters of the issued shares in the company or with the sanction of a special resolution passed at a meeting of the holders of those shares, vary or abrogate those rights or alter the memorandum or articles so as to authorize the variation or abrogation of those rights.

(3) Where—

- (a) rights are attached to shares in a company;

and

- (b) provision is made by the memorandum or articles authorizing the variation or abrogation of those rights with the consent of a specified proportion of the holders of the issued shares in the company or with the sanction of a resolution of a kind specified in the memorandum or articles passed at a meeting of the holders of those shares,

the memorandum or articles shall not be altered so as to vary or abrogate, or to authorize the variation or abrogation of, those rights, except with the consent of that proportion of the holders of those shares or with the sanction of such a resolution passed at a meeting of the holders of those shares.

(4) Where rights are attached to shares in a company and—

(a) those rights are at any time varied or abrogated;

or

(b) the memorandum or articles is or are altered so as to authorize the variation or abrogation of those rights,

the holders of not less in the aggregate than 10% of the issued shares in the company may apply to the Court to have the variation or abrogation of the rights, or the alteration of the memorandum or articles, as the case may be, set aside and, if such an application is made, the variation or abrogation, or the alteration, does not have effect until confirmed by the Court.

(5) An application under sub-section (4) shall be made within 28 days after the variation, abrogation or alteration referred to in that sub-section was made and may be made, on behalf of the shareholders entitled to make the application, by such one or more of their number as they appoint in writing.

(6) On the application, the Court may, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested, if it is satisfied that the variation, abrogation or alteration would unfairly prejudice the shareholders of the company, set aside the variation, abrogation or alteration, as the case may be, and shall, if not so satisfied, confirm it.

(7) A company shall, within 14 days after the making of an order by the Court on an application under this section, lodge an office copy of the order with the Commission and, if the company fails to comply with this provision, the company and any officer of the company who is in default are each guilty of an offence.

(8) For the purposes of this section—

(a) the allotment by a company of shares to which are attached rights that are not provided for in the memorandum or articles of the company or in a resolution or document to which section 251 applies shall be deemed to be a variation of the rights attached to shares previously issued unless the rights attached to the first-mentioned shares are in all respects the same as the rights attached to shares previously issued;

and

(b) the division of shares in a company into classes of shares shall be deemed to be a variation of the rights attached to those shares unless, in relation to each share in the company, the rights attached to that share are in all respects the same after the division as they were before the division.

(9) Nothing in section 73 or 76 affects the operation of this section.

127. (1) This section applies to a company not having a share capital.

(2) Where—

(a) members of the company included in a class of members have special rights;

(b) no provision is made by the memorandum or articles for the variation or abrogation of those rights;

and

- (c) neither the memorandum nor the articles declares or declare those rights to be unalterable,

the company may, with the consent in writing of three-quarters of the members included in that class or with the sanction of a special resolution passed at a meeting of members included in that class, vary or abrogate those rights or alter the memorandum or articles so as to authorize the variation or abrogation of those rights.

(3) Where—

- (a) members of the company included in a class of members have special rights;

and

- (b) provision is made by the memorandum or articles authorizing the variation or abrogation of those rights with the consent of a specified proportion of the members included in that class or with the sanction of a resolution of a kind specified in the memorandum or articles passed at a meeting of the members included in that class,

the memorandum or articles shall not be altered so as to vary or abrogate, or to authorize the variation or abrogation of, those rights, except with the consent of that proportion of the members included in that class or with the sanction of such a resolution passed at a meeting of those members.

(4) Where members of the company included in a class of members have special rights and—

- (a) those rights are at any time varied or abrogated;

or

- (b) the memorandum or articles is or are altered so as to authorize the variation or abrogation of those rights,

members included in that class who constitute not less than 10% of the members included in that class may apply to the Court to have the variation or abrogation of the rights, or the alteration of the memorandum or articles, as the case may be, set aside and, if such an application is made, the variation or abrogation, or the alteration, does not have effect until confirmed by the Court.

(5) An application under sub-section (4) shall be made within 28 days after the variation, abrogation or alteration referred to in that sub-section was made and may be made, on behalf of the members entitled to make the application, by such one or more of their number as they appoint in writing.

(6) On the application, the Court may, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested, if it is satisfied that the variation, abrogation or alteration would unfairly prejudice the members of the class represented by the applicant, set aside the variation, abrogation or alteration, as the case may be, and shall, if not so satisfied, confirm it.

(7) A company shall, within 14 days after the making of an order by the Court on an application under this section, lodge an office copy of the order with the Commission and, if the company fails to comply with this

provision, the company and any officer of the company who is in default are each guilty of an offence.

(8) Nothing in section 73 or 76 affects the operation of this section.

Rights of holders of preference shares to be set out in memorandum or articles.

128. (1) A company shall not allot any preference shares or convert any issued shares into preference shares unless there are set out in the memorandum or articles of the company the rights of the holders of those shares with respect to repayment of capital, participation in surplus assets and profits, cumulative or non-cumulative dividends, voting, and priority of payment of capital and dividend in relation to other shares or other classes of preference shares.

(2) If a company contravenes this section, the company and any officer of the company who is in default are each guilty of an offence.

Company financing dealings in its shares, &c.

129. (1) Except as otherwise expressly provided by this Code, a company shall not—

(a) whether directly or indirectly, give any financial assistance for the purpose of, or in connection with—

(i) the acquisition by any person, whether before, or at the same time as, the giving of financial assistance, of—

(A) shares or units of shares in the company;

or

(B) shares or units of shares in a holding company of the company;

or

(ii) the proposed acquisition by any person of—

(A) shares or units of shares in the company;

or

(B) shares or units of shares in a holding company of the company;

or

(b) whether directly or indirectly, in any way—

(i) acquire shares or units of shares in the company;

or

(ii) purport to acquire shares or units of shares in a holding company of the company;

or

(c) whether directly or indirectly, in any way, lend money on the security of—

(i) shares or units of shares in the company;

or

(ii) shares or units of shares in a holding company of the company.

(2) A reference in this section to the giving of financial assistance includes a reference to the giving of financial assistance by means of the

making of a loan, the giving of a guarantee, the provision of security, the release of an obligation or the forgiving of a debt or otherwise.

(3) For the purposes of this section, a company shall be taken to have given financial assistance for the purpose of an acquisition or proposed acquisition referred to in paragraph (1) (a) (in this sub-section referred to as the "relevant purpose") if—

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

and

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

(4) For the purposes of this section, a company shall be taken to have given financial assistance in connection with an acquisition or proposed acquisition referred to in paragraph (1) (a) if, when the financial assistance was given to a person, the company was aware that the financial assistance would financially assist—

(a) the acquisition by a person of shares or units of shares in the company;

or

(b) where shares in the company had already been acquired—the payment by a person of any unpaid amount of the subscription payable for the shares or of any premium payable in respect of the shares, or the payment of any calls on the shares.

(5) If a company contravenes sub-section (1), the company is, notwithstanding section 570, not guilty of an offence but each officer of the company who is in default is guilty of an offence.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(6) Where—

(a) a person is convicted of an offence under sub-section (5) (including an offence under that sub-section that is deemed to have been committed by reason of sub-section 38 (1) of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (South Australia) Code*);

and

(b) the court by which he is convicted is satisfied that the company or another person has suffered loss or damage as a result of the contravention that constituted the offence,

that court may, in addition to imposing a penalty under that sub-section, order the convicted person to pay compensation to the company or other person, as the case may be, of such amount as the court specifies, and any such order may be enforced as if it were a judgment of the court.

(7) The power of a court under section 535 to relieve a person to whom that section applies, wholly or partly and on such terms as the court thinks fit, from a liability referred to in that section extends to relieving a person against whom an order may be made under sub-section (6) of this section from the liability to have such an order made against him.

(8) Nothing in sub-section (1) prohibits—

- (a) the payment of a dividend by a company in good faith and in the ordinary course of commercial dealing;
- (b) a payment made by a company pursuant to a reduction of capital in accordance with section 123;
- (c) the discharge by a company of a liability of the company that was incurred in good faith as a result of a transaction entered into on ordinary commercial terms;
- (d) where a corporation is a borrowing corporation by reason that it is or will be under a liability to repay moneys received or to be received by it—
 - (i) the giving, in good faith and in the ordinary course of commercial dealing, by a company that is a subsidiary of the borrowing corporation, of a guarantee in relation to the repayment of those moneys, whether or not the guarantee is secured by any charge over the property of that company;
 - or
 - (ii) the provision, in good faith and in the ordinary course of commercial dealing, by a company that is a subsidiary of the borrowing corporation, of security in relation to the repayment of those moneys;
- (e) an acquisition by a company of an interest (other than a legal interest) in fully-paid shares in the company where no consideration is provided by the company, or by any corporation that is related to the company, for the acquisition;
- (f) the purchase by a company of shares in the company pursuant to an order of a court;
- (g) the creation or acquisition, in good faith and in the ordinary course of commercial dealing, by a company of a lien on shares in the company (other than fully-paid shares) for any amount payable to the company in respect of the shares;
- or
- (h) the entering into, in good faith and in the ordinary course of commercial dealing, of an agreement by a company with a subscriber for shares in the company permitting the subscriber to make payments for the shares (including payments in respect of any premium) by instalments,

but nothing in this sub-section—

- (j) shall be construed as implying that a particular act of a company would, but for this sub-section, be prohibited by sub-section (1);

or

- (k) shall be construed as limiting the operation of any rule of law permitting the giving of financial assistance by a company, the acquisition of shares or units of shares by a company or the lending of money by a company on the security of shares.

(9) Nothing in sub-section (1) prohibits—

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

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

and

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

or

(b) the giving by a company of financial assistance for the purpose of, or in connection with, the acquisition or proposed acquisition of fully-paid shares or units of fully-paid shares in the company or in a holding company of the company to be held by or for the benefit of employees of the company or of a corporation that is related to the company, including any director holding a salaried employment or office in the company or in the corporation, as the case may be, where—

(i) in the case where neither sub-paragraph (ii) nor sub-paragraph (iii) applies—the company has at a general meeting;

(ii) in a case where the company is a subsidiary of a listed corporation or listed corporations—the company and the listed corporation or listed corporations have at general meetings;

or

(iii) in the case where the company is not a subsidiary of a listed corporation but is a subsidiary whose ultimate holding company is incorporated in Australia or an external Territory—the company and the ultimate holding company have at general meetings,

approved a scheme for the provision of money for such acquisitions and the financial assistance is given in accordance with the scheme.

(10) Nothing in sub-section (1) prohibits the giving by a company of financial assistance for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of shares or units of shares in the company or in a holding company of the company if—

(a) the company, by special resolution, resolves to give financial assistance for the purpose of or in connection with, that acquisition;

(b) where—

(i) the company is a subsidiary of a listed corporation;

or

- (ii) the company is not a subsidiary of a listed corporation but is a subsidiary whose ultimate holding company is incorporated in Australia or an external Territory, the listed corporation or the ultimate holding company, as the case may be, has, by special resolution, approved the giving of the financial assistance;
- (c) the notice specifying the intention to propose the resolution referred to in paragraph (a) as a special resolution sets out—
 - (i) particulars of the financial assistance proposed to be given and the reasons for the proposal to give that assistance;and
 - (ii) the effect that the giving of the financial assistance would have on the financial position of the company and, where the company is included in a group of corporations consisting of a holding company and a subsidiary or subsidiaries, the effect that the giving of the financial assistance would have on the financial position of the group of corporations,and is accompanied by a copy of a statement made in accordance with a resolution of the directors, setting out the names of any directors who voted against the resolution and the reasons why they so voted, and signed by not less than 2 directors, stating whether, in the opinion of the directors who voted in favour of the resolution, after taking into account the financial position of the company (including future liabilities and contingent liabilities of the company), the giving of the financial assistance would be likely to prejudice materially the interests of the creditors or members of the company or any class of those creditors or members;
- (d) the notice specifying the intention to propose the resolution referred to in paragraph (b) as a special resolution is accompanied by a copy of the notice, and a copy of the statement, referred to in paragraph (c);
- (e) not later than the day next following the day when the notice referred to in paragraph (c) is dispatched to members of the company there is lodged with the Commission a copy of that notice and a copy of the statement that accompanied that notice;
- (f) the notice referred to in paragraph (c) and a copy of the statement referred to in that paragraph are given to—
 - (i) all members of the company;
 - (ii) all trustees for debenture holders of the company;and
 - (iii) if there are no trustees for, or for a particular class of, debenture holders of the company—all debenture holders, or all debenture holders of that class, as the case may be, of the company whose names are, at the time when the notice is dispatched, known to the company;

(g) the notice referred to in paragraph (d) and the accompanying documents are given to—

- (i) all members of the listed corporation or of the ultimate holding company;
- (ii) all trustees for debenture holders of the listed corporation or of the ultimate holding company;

and

- (iii) if there are no trustees for, or for a particular class of, debenture holders of the listed corporation or of the ultimate holding company—all debenture holders or debenture holders of that class, as the case may be, of the listed corporation or of the ultimate holding company whose names are, at the time when the notice is dispatched, known to the listed corporation or the ultimate holding company;

(h) within 21 days after the general meeting of the company at which the resolution referred to in paragraph (a) is passed or, in a case to which paragraph (b) applies, the general meeting of the listed corporation or ultimate holding company at which the resolution referred to in that paragraph is passed, whichever is the later, a notice—

- (i) setting out the terms of the resolution referred to in paragraph (a);

and

- (ii) stating that any of the persons referred to in sub-section (12) may, within the period referred to in that sub-section, make an application to the Court opposing the giving of the financial assistance,

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

(j) no application opposing the giving of the financial assistance is made within the period referred to in sub-section (12) or, if such an application or applications has or have been made, the application or each of the applications has been withdrawn or the Court has approved the giving of the financial assistance;

and

(k) the financial assistance is given in accordance with the terms of the resolution referred to in paragraph (a) and not earlier than—

- (i) in a case to which sub-paragraph (ii) does not apply—the expiration of the period referred to in sub-section (12);

or

- (ii) if an application or applications has or have been made to the Court within that period—

- (A) where the application or each of the applications has been withdrawn—the withdrawal of the

application or of the last of the applications to be withdrawn;

or

(B) in any other case—the decision of the Court on the application or applications.

(11) Where, on application to the Court by a company, the Court is satisfied that the provisions of sub-section (10) have been substantially complied with in relation to a proposed giving by the company of financial assistance of a kind mentioned in that sub-section, the Court may, by order, declare that the provisions of that sub-section have been complied with in relation to the proposed giving by the company of financial assistance.

(12) Where a special resolution referred to in paragraph (10) (a) is passed by a company, an application to the Court opposing the giving of the financial assistance to which the special resolution relates may be made, within the period of 21 days after the publication of the notice referred to in paragraph (10) (h), by—

- (a) a member of the company;
 - (b) a trustee for debenture holders of the company;
 - (c) a debenture holder of the company;
 - (d) a creditor of the company;
 - (da) if the company is included in a group of corporations consisting of a holding company and a subsidiary or subsidiaries—
 - (i) a member of that subsidiary or of any of those subsidiaries;
 - (ii) a trustee for debenture holders of that subsidiary or of any of those subsidiaries;
 - (iii) a debenture holder of that subsidiary or of any of those subsidiaries;
- or
- (iv) a creditor of that subsidiary or of any of those subsidiaries;
- (e) if paragraph (10) (b) applies—
- (i) a member of the listed corporation or ultimate holding company that passed a special resolution referred to in that paragraph;
 - (ii) a trustee for debenture holders of that listed corporation or ultimate holding company;
 - (iii) a debenture holder of that listed corporation or ultimate holding company;
- or
- (iv) a creditor of that listed corporation or ultimate holding company;

or

(f) the Commission.

(13) Where an application or applications opposing the giving of financial assistance by a company in accordance with a special resolution passed by the company is or are made to the Court under sub-section (12), the Court—

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

and

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

(i) the company has disclosed to the members of the company all material matters relating to the proposed financial assistance;

and

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

and may do all or any of the following:

(c) if it thinks fit, make an order for the purchase by the company of the interests of dissentient members of the company and for the reduction accordingly of the capital of the company;

(d) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase (otherwise than by the company or by a subsidiary of the company) of the interests of dissentient members;

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

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

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

(15) The passing of a special resolution by a company for the giving of financial assistance by the company for the purpose of, or in connection with, an acquisition or proposed acquisition of shares or units of shares in the company, and the approval by the Court of the giving of the financial assistance, do not relieve a director of the company of any duty to the company under section 229 or otherwise, and whether of a fiduciary nature or not, in connection with the giving of the financial assistance.

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

(17) This section does not apply in relation to the doing of any act or thing pursuant to a contract entered into before the commencement of the Companies (Application of Laws) Act, 1982 if the doing of that act or thing would have been lawful if that Act had not been enacted.

130. (1) Except as provided by this section—

(a) the validity of a contract or transaction is not affected by a contravention of paragraph 129 (1) (a);

(b) the validity of a contract or transaction is not affected by a contravention of paragraph 129 (1) (b) unless the contract or transaction effects the acquisition that constitutes the contravention;

and

(c) the validity of a contract or transaction is not affected by a contravention of paragraph 129 (1) (c) unless the contract or transaction effects the loan that constitutes the contravention.

(2) Where a company makes or performs a contract, or engages in a transaction, that would, but for sub-section (1), be invalid by reason that—

(a) the contract was made or performed, or the transaction was engaged in, in contravention of section 129;

or

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

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

(3) The Court may, on the application of a member of a company, a holder of debentures of a company, a trustee for the holders of debentures of a company or a director of a company, by order, authorize the member, holder of debentures, trustee or director to give a notice or notices under sub-section (2) in the name of the company.

(4) Where—

(a) a company makes or performs a contract, or engages in a transaction;

(b) the contract is made or performed, or the transaction is engaged in, in contravention of section 129 or the contract or transaction is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section;

and

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

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

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

(iii) the contract or transaction being void by reason of section 129 or having become void, or becoming void, under this section;

or

- (iv) a related contract or transaction being void by reason of section 129 or having become void, or becoming void, under this section,

the Court may make such order or orders as it thinks just and equitable (including, without limited the generality of the foregoing, all or any of the orders mentioned in sub-section (5)) against any party to the contract or transaction or to the related contract or transaction, or against the company or against any person who aided, abetted, counselled or procured, or was, by act or omission, in any way, directly or indirectly, knowingly concerned in or party to the contravention.

(5) The orders that may be made under sub-section (4) include—

- (a) an order directing a person to refund money or return property to the company or to another person;
- (b) an order directing a person to pay to the company or to another person a specified amount not exceeding the amount of the loss or damage suffered by the company or other person;

and

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

(6) If a certificate signed by not less than 2 directors, or by a director and a secretary, of a company stating that the requirements of paragraphs 129 (10) (a) to (j), inclusive, have been complied with in relation to the proposed giving by the company of financial assistance for the purposes of an acquisition or proposed acquisition by a person of shares or units of shares in the company or in a holding company of the company is given to a person—

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

and

- (b) any such contract or transaction is not invalid, and is not voidable under sub-section (2), by reason that the contract is made or performed, or the transaction is engaged in, in contravention of section 129 or is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section.

(7) Sub-section (6) does not apply in relation to a person to whom a certificate is given under that sub-section in relation to a contract or transaction if the Court, on application by the company concerned or any other person who has suffered, or is likely to suffer, loss or damage as a result of the making or performance of the contract or the engaging in of the transaction, or the making or performance of a related contract or the engaging in of a related transaction, by order, declares that it is satisfied that the person to whom the certificate was given became aware before the contract was made or the transaction was engaged in that the requirements of sub-

section 129 (10) had not been complied with in relation to the financial assistance to which the certificate related.

(8) For the purposes of sub-section (7), a person shall, in the absence of proof to the contrary, be deemed to have been aware at a particular time of any matter of which a servant or agent of the person having duties or acting on behalf of the person in relation to the relevant contract or transaction was aware at the time.

(9) In any proceeding, a document purporting to be a certificate given under sub-section (6) shall, in the absence of proof to the contrary, be deemed to be such a certificate and to have been duly given.

(10) A person who has possession of a certificate given under sub-section (6) shall, in the absence of proof to the contrary, be deemed to be the person to whom the certificate was given.

(11) If a person signs a certificate stating that the requirements of sub-section 129 (10) have been complied with in relation to the proposed giving by a company of financial assistance and any of those requirements had not been complied with in respect of the proposed giving of that assistance at the time when the certificate was signed by that person, the person is guilty of an offence.

Penalty: \$2,500 or imprisonment for 6 months, or both.

(12) It is a defence to a prosecution for an offence against sub-section (11) if the defendant proves that at the time when he signed the certificate he believed on reasonable grounds that all the requirements of sub-section 129 (10) had been complied with in respect of the proposed giving of financial assistance to which the certificate related.

(13) The power of a court under section 535 to relieve a person to whom that section applies, wholly or partly and on such terms as the court thinks fit, from a liability referred to in that section extends to relieving a person against whom an order may be made under sub-section (4) of this section from the liability to have such an order made against him.

(14) If a company makes a contract or engages in a transaction under which it gives financial assistance as mentioned in paragraph 129 (1) (a) or lends money as mentioned in paragraph 129 (1) (c), any contract or transaction made or engaged in as a result of or by means of, or in relation to, that financial assistance or money shall be deemed for the purposes of this section to be related to the first-mentioned contract or transaction.

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

131. (1) A company shall keep a register of options granted to persons to take up unissued shares in the company.

(2) The company shall, within 14 days after the grant of an option to take up unissued shares in the company, enter in the register the following particulars:

- (a) the name and address of the holder of the option;
 - (b) the date on which the option was granted;
 - (c) the number and description of the shares in respect of which the option was granted;
 - (d) the period during which, the time at which or the occurrence upon the happening of which the option may be exercised;
 - (e) the consideration (if any) for the grant of the option;
 - (f) the consideration (if any) for the exercise of the option or the manner in which that consideration is to be ascertained or determined;
 - (g) such other particulars as are prescribed.
- (3) The register is *prima facie* evidence of any matters inserted in the register as required or authorized by this Code.
- (4) The register shall be open for inspection—
- (a) by any member of the company—without charge;
- and
- (b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.
- (5) A person may request a company to furnish him with a copy of the register or any part of the register and, where such a request is made, the company shall send the copy to that person—
- (a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves;
- or
- (b) in a case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Commission approves.
- (5A) A company shall keep, at the place where the register referred to in sub-section (1) is kept, a copy of every instrument by which an option to take up unissued shares in the company is granted and, for the purposes of sub-sections (4) and (5), those copies shall be deemed to be part of the register referred to in sub-section (1).
- (5B) Notwithstanding sub-section (5A), a company is not required to keep a copy of any instrument by which an option has been granted if the option has been granted official quotation by a stock exchange.
- (6) Failure by a company to comply with any of the provisions of this section in relation to an option does not affect any rights in respect of the option.
- (7) If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.
132. (1) An option granted after the commencement of the Companies Act, 1962-1981 by a public company that enables any person to take up

unissued shares in the company after a period of 5 years has elapsed from the date on which the option was granted is void.

(2) Sub-section (1) does not apply in a case where the holders of debentures of a company have an option to take up shares in the company by way of redemption of the debentures.

Power of company to pay interest out of capital in certain cases.

133. Where any shares in a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant that cannot be made profitable for a long period, the company may pay interest on so much of that share capital as is for the time being paid up and charge the interest so paid to capital as part of the cost of the construction or provision but—

- (a) no such payment shall be made unless it is—
 - (i) authorized by the articles of the company or by special resolution;
 - and
 - (ii) approved by the Court;
- (b) before approving any such payment, the Court may, at the expense of the company, appoint a person to inquire and report as to the circumstances of the case, and may require the company to give security for the payment of the costs of the inquiry;
- (c) the payment shall be made for such period only as is determined by the Court, but that period shall not in any case extend beyond a period of 12 months after the works or buildings have been completed or the plant has been provided;
- (d) the rate of interest shall not exceed 8% per annum or, if another rate is prescribed, that other rate;
- and
- (e) the payment of the interest does not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

DIVISION 4

Application and interpretation.

DIVISION 4—SUBSTANTIAL SHAREHOLDINGS

134. (1) This section has effect for the purposes of this Division.
- (2) A reference to a company is a reference—
- (a) to a company that has been admitted to the official list of a stock exchange in Australia and has not been removed from that official list;
 - (b) to a body corporate, being a body incorporated in the State, that is for the time being declared by the Ministerial Council, by order published in the *Gazette*, to be a company for the purposes of this Division;
 - or
 - (c) to a body, not being a body corporate, formed in the State, that is for the time being declared by the Ministerial Council, by

order published in the *Gazette*, to be a company for the purposes of this Division.

(3) The Ministerial Council may, by order published in the *Gazette*, revoke or vary an order published under sub-section (2).

(4) In relation to a company the whole or a portion of the share capital of which consists of stock, a reference in this Division to a number of shares expressed as a percentage shall, in relation to an amount of stock, be construed as a reference to the amount of stock that represents that number of shares.

(5) A reference in the definition of "voting share" in sub-section 5 (1) to a body corporate includes a reference to a body referred to in paragraph (2) (c) of this section.

135. (1) The obligation to comply with this Division extends to all natural persons, whether resident in the State or in Australia or not and whether Australian citizens or not, and to all bodies corporate or unincorporate, whether incorporated or carrying on business in the State or in Australia or not.

Persons obliged to comply with Division.

(2) This Division extends to acts done or omitted to be done outside the State, whether in Australia or not.

136. (1) For the purposes of this Division, a person has a substantial shareholding in a company if—

Substantial shareholdings and substantial shareholders.

(a) in the case of a company the voting shares in which are not divided into classes of shares—he is entitled to not less than the prescribed percentage of those shares;

or

(b) in the case of a company the voting shares in which are divided into 2 or more classes of shares—he is entitled to not less than the prescribed percentage of the shares in one of those classes.

(2) For the purposes of this Division, the voting shares in a company to which a person is entitled include—

(a) voting shares in which that person has a relevant interest;

and

(b) except in the case of a person being a nominee corporation in respect of which a certificate by the Commission is in force under sub-section (6)—voting shares in which an associate of that person has a relevant interest,

but do not include voting shares in which an associate of that person has a relevant interest and in respect of which that associate has obtained a certificate from the Commission under sub-section (7).

(3) A reference in this Division to an associate of a person shall be construed as a reference to—

(a) if the person is a corporation—

(i) a director or secretary of the corporation;

(ii) a corporation that is related to that person;

or

- (iii) a director or secretary of such a related corporation;
- (b) where the matter to which the reference relates is shares in a company—a person with whom the first-mentioned person has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied—
 - (i) by reason of which he or the first-mentioned person may exercise, directly or indirectly control the exercise of, or substantially influence the exercise of, any voting power attached to shares in that company;
 - (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of that company;

or

- (iii) under which he or the first-mentioned person may acquire from the other of them shares in that company or may be required to dispose of such shares in accordance with the directions of the other of them;
- (c) a person in concert with whom the first-mentioned person is acting, or proposes to act, in respect of the matter to which the reference relates;
- (d) a person with whom the first-mentioned person is, by virtue of the regulations, to be regarded as associated in respect of the matter to which the reference relates;
- (e) a person with whom the first-mentioned person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates;

or

- (f) if the first-mentioned person has entered into, or proposes to enter into, a transaction, or has done or proposes to do, any other act or thing, with a view to becoming associated with a person as mentioned in paragraph (b), (c), (d) or (e)—that last-mentioned person.

(4) A person shall not be taken to be an associate of another person by virtue of paragraph (3) (b), (c), (d), (e) or (f) by reason only that—

- (a) one of those persons furnishes advice to, or acts on behalf of, the other person in the proper performance of the functions attaching to his professional capacity or to his business relationship with the other person;
- (b) without limiting the generality of paragraph (a), where the ordinary business of one of those persons includes dealing in securities—specific instructions are given to the person by or on behalf of the other person to acquire shares on behalf of the other person in the ordinary course of that business;

or

- (c) the other person has been appointed by the first-mentioned person as a proxy or representative to exercise, at a meeting of members or of a class of members of a company, votes attached to shares of which the first-mentioned person is the holder, where the relevant interest of that other person in those shares that arises by reason of his appointment as a proxy or representative would be disregarded under sub-section 8 (8) by reason of paragraph (b) of that sub-section.

(5) For the purposes of paragraph (3) (b), it is immaterial that the power of a person to exercise, control the exercise of, or influence the exercise of, voting power is in any way qualified.

(6) The Commission may, in its discretion, issue to a nominee corporation a certificate declaring the nominee corporation to be an approved nominee corporation for the purposes of this section and may at any time, in its discretion, by notice in writing to the nominee corporation, revoke the certificate.

(7) The Commission may, in its discretion, issue to any person a certificate declaring that specified shares in which that person has a relevant interest are to be disregarded for the purposes of ascertaining the voting shares to which another person specified in the certificate is entitled, and may at any time, in its discretion, by notice in writing to the first-mentioned person, revoke the certificate.

(8) For the purposes of this Division, a person who has a substantial shareholding in a company is a substantial shareholder in that company.

(9) A reference in this section to the prescribed percentage is a reference to 10% or, where a lesser percentage is prescribed by regulations in force for the time being for the purposes of this section, a reference to that lesser percentage.

137. (1) A person who is a substantial shareholder in a company shall give to the company a notice in the prescribed form that—

Substantial shareholder to notify company of his interests.

(a) states—

- (i) his name and address;
 - (ii) the prescribed particulars of the voting shares in the company in which the person or an associate of the person has a relevant interest or relevant interests (including, unless the interest or interests cannot be related to a particular share or shares, the name of the person who is registered as the holder);
 - (iii) the prescribed particulars of each such interest;
- and
- (iv) the prescribed particulars of any contract, scheme or arrangement, or any other circumstances, by reason of which the person or the associate acquired that interest or has that interest;

and

(b) is accompanied by the prescribed documents.

(2) A person required to give a notice under sub-section (1) shall give the notice within 2 business days after that person becomes aware of the relevant interest or interests by virtue of which he is a substantial shareholder.

(3) The notice shall be so given notwithstanding that the person has ceased to be a substantial shareholder before the expiration of the period referred to in sub-section (2).

Substantial shareholder to notify company of change in his interests.

138. (1) Where there is a change (not being a prescribed change) in the relevant interest or relevant interests of a substantial shareholder in a company, or in the relevant interest or relevant interests of an associate of a substantial shareholder in a company, in voting shares in the company, the substantial shareholder shall give to the company a notice in the prescribed form that—

(a) states—

- (i) his name;
- (ii) whether the change is a change in a relevant interest of an associate, and if so, the name of the associate;
- (iii) the date of the change and the prescribed particulars of the change;
- and
- (iv) the prescribed particulars of any contract, scheme or arrangement, or any other circumstances, by reason of which the change has occurred;

and

(b) is accompanied by the prescribed documents.

(2) A person required to give a notice under sub-section (1) shall give the notice within 2 business days after that person becomes aware of the change.

(3) For the purposes of sub-section (1), where a person acquires or disposes of voting shares in a company, there shall be deemed to be a change in the relevant interest or relevant interests of the person in voting shares in that company.

Person who ceases to be substantial shareholder to notify company.

139. (1) A person who ceases to be a substantial shareholder in a company shall give to the company a notice in the prescribed form that—

(a) states—

- (i) his name;
- (ii) the date on which he ceased to be a substantial shareholder;
- and
- (iii) the prescribed particulars of any contract, scheme or arrangement, or any other circumstances, by reason of which the person ceased to be a substantial shareholder;

and

(b) is accompanied by the prescribed documents.

(2) A person required to give a notice under sub-section (1) shall give the notice within 2 business days after he becomes aware that he or an associate has ceased to have a relevant interest or relevant interests in a share or shares in a company to the extent necessary to make him a substantial shareholder in the company.

140. The circumstances required to be stated in a notice under section 137, 138 or 139 include circumstances by reason of which, having regard to the provisions of section 8—

References to operation of section 8.

- (a) a person has a relevant interest in voting shares;
- (b) a change has occurred in a relevant interest in voting shares;
- or
- (c) a person has ceased to be a substantial shareholder in a company,

respectively.

141. A person who gives a notice under section 137, 138 or 139 to a company referred to in paragraph 134 (2) (a), shall, on the day on which he gives that notice, serve a copy of the notice on the stock exchange that is the home exchange in relation to the company.

Copy of notice to be served on stock exchange.

142. (1) The Commission may, on the application of a person who is required to give a notice under this Division, in its discretion, extend, or further extend, the period for giving the notice.

Commission may extend period for giving notice under this Division.

(2) An application for an extension under sub-section (1) may be made, and the power of the Commission under that sub-section may be exercised, notwithstanding that the period referred to in that sub-section has expired.

143. (1) A company shall keep a register in which it shall forthwith enter—

Company to keep register of substantial shareholders.

- (a) in alphabetical order the names of persons from whom it has received notices under section 137;

and

- (b) against each name so entered, the information given in the notice and, where it receives a notice under section 138 or 139, the information given in that notice.

(2) The register shall be open for inspection—

- (a) by any member of the company—without charge;

and

- (b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

(3) A person may request a company to furnish him with a copy of the register or any part of the register and, where such a request is made, the company shall send the copy to that person—

- (a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves;

or

- (b) in a case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Commission approves.

(4) If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

PART IV
DIVISION 4

(5) A company is not, by reason of anything done under this Division—

(a) to be taken for any purpose to have notice of;

or

(b) put upon inquiry as to,

a right of a person to or in relation to a share in the company.

Offences against
certain sections.

144. A person who fails to comply with section 137, 138 or 139 is guilty of an offence.

Penalty: \$1,000 or imprisonment for 3 months, or both.

Knowledge of
servant or agent
imputed to
master or
principal.

145. In any proceedings under section 144 or 146, a person shall, in the absence of proof to the contrary, be presumed to have been aware at a particular time of a fact or occurrence of which a servant or agent of the person having duties or acting in relation to a relevant interest or relevant interests of his master or principal in a share or shares in the company concerned was aware at the time.

Powers of court
with respect to
defaulting
substantial
shareholder.

146. (1) Where a person (in this section referred to as the “substantial shareholder”) is, or at any time after the commencement of the Companies (Application of Laws) Act, 1982 has been, a substantial shareholder in a company and has failed to comply with section 137, 138 or 139, the Court may, on the application of the Commission, whether or not that failure still continues, make one or more of the following orders:

- (a) an order restraining the substantial shareholder, or a person who is an associate of the substantial shareholder, from disposing of, or of any interest in, shares in the company, being shares to which the substantial shareholder is entitled;
- (b) an order restraining a person who is, or is entitled to be registered as, the holder of shares in the company to which the substantial shareholder is or has been entitled from disposing of, or of any interest in, those shares;
- (c) an order restraining the exercise of any voting or other rights attached to any shares in the company to which the substantial shareholder is or has been entitled;
- (d) an order directing the company not to make payment, or to defer making payment, of any sum or sums due from the company in respect of any shares to which the substantial shareholder is or has been entitled;
- (e) an order directing the disposal of, or of any interest in, shares in the company to which the substantial shareholder is or has been entitled;
- (f) an order directing the company not to register the transfer or transmission of specified shares;
- (g) an order that any exercise of the voting or other rights attached to specified shares in the company to which the substantial shareholder is or has been entitled be disregarded;
- (h) for the purposes of securing compliance with any other order made under this section, an order directing the company or any other person to do or refrain from doing a specified act.

(1A) Where an application is made to the Court for an order under sub-section (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

(1B) Where the Commission makes an application to the Court for the making of an order under sub-section (1), the Court shall not require the Commission or any other person, as a condition of granting an interim order under sub-section (1A), to give any undertakings as to damages.

(2) Where, at the hearing of an application under this section, it is proved to the satisfaction of the Court that—

(a) a person is entitled to shares in a company by reason that another person who is, by virtue of sub-section 136 (3), an associate of the first-mentioned person has a relevant interest in those shares;

and

(b) that other person became entitled to that relevant interest within the period of 6 months immediately preceding the filing of the application with the Court,

then, in determining for the purposes of the application whether the first mentioned person failed to comply with section 137, 138 or 139, the proof to the satisfaction of the Court of the matters mentioned in paragraphs (a) and (b) of this sub-section constitutes *prima facie* evidence that the other person was, for the purposes of sub-section 136 (3), an associate of the first-mentioned person from the time when that other person became entitled to that relevant interest until the date of the hearing.

(3) Any order under this section may include such ancillary or consequential provisions as the Court thinks just.

(4) An order under sub-section (1) directing the disposal of, or of an interest in, a share may provide that the disposal shall be made within such time and subject to such conditions (if any) as the Court thinks fit, including, if the Court thinks fit, a condition that the disposal shall not be made to a person who is, or, as a result of the disposal, would become, a substantial shareholder in the company.

(5) The Court may direct that, where a share is not disposed of in accordance with an order of the Court under sub-section (1), the share shall vest in the Commission.

(6) The Court shall, before making an order under sub-section (1) and in determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

(7) The Court shall not make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied—

(a) that the failure of the substantial shareholder to comply as mentioned in sub-section (1) was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence;

and

(b) that, in all the circumstances, the failure ought to be excused.

PART IV
DIVISION 4

(8) The Court may, before making an order under sub-section (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(9) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(10) A person who contravenes or fails to comply with an order under this section that is applicable to him is guilty of an offence.

Penalty: \$1,000 or imprisonment for 3 months, or both.

(11) Where an offence under sub-section (10) is committed by a corporation, each officer of the corporation who is in default is guilty of an offence.

Penalty: \$1,000 or imprisonment for 3 months, or both.

(12) Section 462 applies in relation to a share that vests in the Commission under this section in like manner as it applies in relation to an estate or interest in property referred to in the first-mentioned section.

DIVISION 5

DIVISION 5—DEBENTURES

Register of
debenture holders
and copies of
trust deed.

147. (1) A company that issues debentures shall keep a register of holders of debentures.

(2) A foreign company formed outside Australia and the external Territories that is registered as a foreign company under Division 5 of Part XIII shall, if it issues debentures, keep a register of holders of debentures, being—

(a) debentures issued pursuant to an application in which an address in Australia or an external Territory was specified as the address of the applicant for debentures;

or

(b) debentures issued pursuant to an application made on a form of application attached to a prospectus a copy of which was registered under this Code.

(3) A registered foreign company (other than a registered foreign company to which sub-section (2) applies) shall, if it issues debentures, keep a register of holders of debentures, being—

(a) debentures issued in the State;

or

(b) debentures issued pursuant to an application in which an address in the State was specified as the address of the applicant for debentures.

(4) A register kept pursuant to this section shall—

(a) contain particulars of the names and addresses of debenture holders and the respective amounts of debentures held by them;

and

- (b) except when duly closed, be open for inspection at the place where it is kept in accordance with section 547—
- (i) by the registered holder of any debentures of, or by any holder of shares in, the company or foreign company—without charge;
- and
- (ii) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the company or foreign company requires or, where the company or foreign company does not require the payment of an amount, without charge.
- (5) For the purposes of this section, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles, in the debentures or debenture stock certificates, or in the trust deed or other document relating to or securing the debentures, during such periods (not exceeding in the aggregate 30 days in any calendar year) as are specified in those provisions.
- (6) A registered holder of debentures of, or a holder of shares in, a company or a registered foreign company may request the company or foreign company to furnish him with a copy of its register of the holders of debentures kept pursuant to this section or any part of that register.
- (7) A registered holder of debentures of a company or of a registered foreign company may request the company or foreign company to furnish him with a copy of any trust deed relating to or securing the issue of those debentures.
- (8) Where a company or registered foreign company receives a request under sub-section (6) or (7), the company shall send the copy that was requested to the person who made the request—
- (a) if the company or registered foreign company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or registered foreign company or within such longer period as the Commission approves;
- or
- (b) in a case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Commission approves.
- (9) The Commission may at any time by notice in writing require a company or a registered foreign company to furnish the Commission with a copy of any trust deed relating to or securing the issue of debentures of the company or foreign company and, where a company or foreign company receives a notice under this sub-section, the company or foreign company shall furnish the copy within 21 days after the day on which it receives the notice.
- (10) If default is made in complying with this section, the company or registered foreign company and any officer of the company or foreign company, as the case may be, who is in default are each guilty of an offence.
- (11) In this section, “debenture” means a debenture, debenture stock, bonds, notes and any other security given by a corporation, whether constituting a charge on property of the corporation or not, but does not include—

- (a) a cheque, order for the payment of money or bill of exchange;
- (b) a promissory note having a face value of not less than \$50,000;
- or
- (c) an acknowledgement, issued by a banking corporation, of the receipt of money deposited with the banking corporation.

Branch registers.

148. (1) A company, or a registered foreign company to which subsection 147 (2) applies (in this section referred to as a “relevant foreign company”), may cause to be kept in any place outside the State a branch register of holders of debentures.

(2) Where a person who is a holder of debentures issued by a company or by a relevant foreign company and is resident in a participating State or participating Territory requests the company or relevant foreign company, as the case may be, in writing to register in a branch register of the company or relevant foreign company in that State or Territory debentures held by that person—

- (a) if the company or relevant foreign company keeps a branch register of holders of debentures in that State or Territory—the company or relevant foreign company shall register in that branch register the debentures issued by the company or relevant foreign company that are held by that person;

or

- (b) if the company or relevant foreign company—

- (i) does not keep a branch register of holders of debentures in that State or Territory;

and

- (ii) is carrying on business in that State or Territory,

the company or relevant foreign company shall, within one month after receipt by it of the application, cause a branch register of holders of debentures to be kept in that State or Territory and shall register in that branch register the debentures issued by the company or relevant foreign company that are held by that person.

(3) A branch register kept by a company or a relevant foreign company shall be deemed to be part of the register of holders of debentures kept by that company or relevant foreign company, as the case may be.

(4) A branch register shall be kept in the same manner as that in which the principal register is by this Code required to be kept.

(5) A company or relevant foreign company shall transmit to the place at which its principal register is kept a copy of every entry in its branch register within 28 days after the entry is made, and shall cause to be kept at that place, duly entered up from time to time, a duplicate of its branch register, and the duplicate branch register shall, for the purposes of this Code, be deemed to be part of the principal register.

(6) Subject to the provisions of this section with respect to the duplicate branch register, the debentures registered in a branch register shall be distinguished from the debentures registered in the principal register, and no transaction with respect to any debentures registered in a branch register shall, during the continuance of that registration, be registered in any other register.

(7) Subject to sub-section (8), a company or a relevant foreign company may discontinue a branch register and thereupon the company or relevant foreign company shall transfer all entries in that register to some other branch register kept by the company or relevant foreign company in the same State or Territory or, if there is no other branch register kept by the company or relevant foreign company in that State or Territory, to the principal register.

(8) Where a company or relevant foreign company keeps in a participating State or participating Territory a branch register in which are registered debentures held by a person or persons resident in that State or Territory, the company or relevant foreign company is not entitled to discontinue that branch register unless—

- (a) the company or relevant foreign company keeps another branch register in that State or Territory to which the entries in the first-mentioned branch register will be transferred;
- (b) the person or persons resident in that State or Territory whose debentures are registered in the first-mentioned branch register consents or consent in writing to the discontinuance of that branch register;

or

- (c) the company or relevant foreign company ceases to carry on business in that State or Territory.

(9) A branch register is *prima facie* evidence of any matters that are by this section directed or authorized to be inserted in that register.

(10) If default is made in complying with this section, the company or relevant foreign company, any officer of the company or relevant foreign company who is in default, and any person who has arranged with the company or relevant foreign company to make up a branch register on behalf of the company or relevant foreign company and is in default, are each guilty of an offence.

(11) In this section—

“branch register”, in relation to a company or relevant foreign company, means a branch register of holders of debentures issued by the company or relevant foreign company that is kept pursuant to this section;

“debenture” means a debenture, debenture stock, bonds, notes and any other security given by a corporation, whether constituting a charge on property of the corporation or not, but does not include—

- (a) a cheque, order for the payment of money or bill of exchange;
- (b) a promissory note having a face value of not less than \$50,000;

or

- (c) an acknowledgement, issued by a banking corporation, of the receipt of money deposited with the banking corporation;

“principal register”, in relation to a company or relevant foreign company, means the register of holders of debentures issued by

the company or relevant foreign company that is kept pursuant to section 147.

Specific performance of contracts.

149. A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

Perpetual debentures.

150. A condition contained in any debenture or in any deed for securing any debentures, whether the debenture or deed is issued or made before or after the commencement of the Companies (Application of Laws) Act, 1982, is not invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency however remote or on the expiration of a period however long, any rule of law or equity to the contrary notwithstanding.

Re-issue of redeemed debentures.

151. (1) Where a company has redeemed any debentures, whether before or after the commencement of the Companies (Application of Laws) Act, 1982—

(a) unless any provision to the contrary, whether express or implied, is contained in the articles or in any contract entered into by the company;

or

(b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

the company has, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place, but the re-issue of a debenture or the issue of one debenture in place of another under this sub-section, whether re-issue or issue was made before or after the commencement of the Companies (Application of Laws) Act, 1982, shall not be regarded as the issue of a new debenture for the purpose of any provision limiting the amount or number of debentures that may be issued by the company.

(2) After the re-issue of any debentures the person entitled to the debentures has, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

(3) Where a company has, either before or after the commencement of the Companies (Application of Laws) Act, 1982, deposited any of its debentures to secure advances on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit while the debentures remain so deposited.

Qualifications of trustee for debenture holders.

152. (1) Subject to this section, a corporation that—

(a) in the State, invites the public to subscribe for or purchase debentures or offers debentures to the public for subscription or purchase;

or

(b) offers debentures as consideration for the acquisition, pursuant to a takeover scheme within the meaning of the *Companies (Acquisition of Shares) (South Australia) Code*, of shares in a company,

shall make provision in a trust deed relating to those debentures for the appointment as a trustee for the holders of those debentures of a corporation (in this section referred to as a "trustee corporation"), being—

- (c) a person constituted as the Public Trustee in any State or Territory;
- (d) a corporation authorized by a law of a State or Territory to take in its own name a grant of probate of the will, or of letters of administration of the estate, of a deceased person;
- (e) a corporation registered under the *Life Insurance Act 1945*;
- (f) a banking corporation;
- (g) a corporation (in this paragraph referred to as the "subsidiary") the whole of the issued shares of which are held beneficially by a corporation or corporations of a kind referred to in paragraph (d), (e) or (f) (in this paragraph referred to as the "holding company") if—
 - (i) the holding company is liable for all liabilities incurred or to be incurred by the subsidiary as trustee for the holders of the debentures;

or

- (ii) the holding company has subscribed for and beneficially holds shares in the subsidiary, being shares in respect of which there is a liability of not less than \$500,000 that has not been called up and that, by reason of a special resolution of the members of the subsidiary, is not capable of being called up except in the event, and for the purposes, of the winding up of the subsidiary;

or

- (h) a corporation approved by the Commission for the purposes of this sub-section.

(2) The approval of a corporation by the Commission pursuant to paragraph (1) (h) shall be given by notice published in the *Gazette* and—

- (a) may be given generally or in relation to a particular borrowing corporation, a particular class of borrowing corporations or a particular trust deed;
- (b) may be given subject to such terms and conditions (if any) as the Commission thinks fit and as are specified in the notice;

and

- (c) may be varied or revoked by the Commission by notice published in the *Gazette*.

(3) Where the approval of a corporation has been revoked under sub-section (2), the borrowing corporation shall appoint a trustee corporation qualified pursuant to this section in place of the trustee corporation that by reason of the revocation has ceased to be qualified.

(4) Where a borrowing corporation is required by sub-section (1) to make provision in a trust deed for the appointment of a trustee corporation as trustee for the holders of debentures, the borrowing corporation shall not issue any of those debentures until the trustee corporation has consented to act as trustee and the appointment has been made.

(5) Except by leave of the Court, a trustee corporation shall not be appointed, hold office or act as trustee for the holders of debentures of a borrowing corporation if that trustee corporation is—

- (a) a director of the borrowing corporation;
- (b) a shareholder that beneficially holds shares in the borrowing corporation;
- (c) beneficially entitled to moneys owed by the borrowing corporation to it;
- (d) indebted (otherwise than in its capacity as a trustee) in an amount exceeding \$5,000 to the borrowing corporation;
- (e) a corporation that has entered into a guarantee in respect of the principal debt secured by those debentures or in respect of interest on that debt;

or

- (f) a corporation that is related to—
 - (i) a corporation of a kind referred to in any of the preceding paragraphs;
 or
 - (ii) the borrowing corporation.

(6) Sub-section (5) does not prevent a trustee corporation from being appointed, holding office or acting as trustee for the holders of debentures of a borrowing corporation by reason only that—

- (a) the borrowing corporation owes to the trustee corporation or to a corporation that is related to the trustee corporation—

- (i) moneys that (not taking into account any moneys referred to in sub-paragraphs (ii) and (iii)) do not—

- (A) at the time of the appointment or at any time within a period of 3 months after the debentures are first offered to the public—exceed 10% of the amount of the debentures in respect of which invitations or offers to the public are proposed to be issued or made within that period;

and

- (B) at any time after the expiration of that period—exceed 10% of the amount owed by the borrowing corporation to the holders of the debentures;

- (ii) moneys that are secured by, and only by—

- (A) a first mortgage over land of the borrowing corporation;
- (B) debentures issued by the borrowing corporation to the public;
- (C) debentures not issued to the public that are issued pursuant to the same trust deed as that creating other debentures issued at any

time by the borrowing corporation to the public;

or

(D) debentures to which the trustee corporation, or a corporation that is related to the trustee corporation, is not beneficially entitled;

or

(iii) moneys to which the trustee corporation, or a corporation that is related to the trustee corporation, is entitled as trustee for holders of any debentures of the borrowing corporation in accordance with the terms of the debentures or of the relevant trust deed;

or

(b) the trustee corporation, or a corporation that is related to the trustee corporation, is a shareholder of the borrowing corporation in respect of shares that it beneficially holds, if the voting shares in the borrowing corporation beneficially held by the trustee corporation, and by all other corporations that are related to it, do not exceed 10% of the voting shares in the borrowing corporation.

(7) Nothing in sub-section (5)—

(a) affects the operation of any debentures or trust deed issued or executed before 1 January 1965;

or

(b) applies to or in relation to the trustee for the holders of any such debentures,

unless, pursuant to any such debentures or trust deed, a further offer of debentures was or is made to the public on or after that date.

(8) The reference in sub-section (1) to a corporation that offers debentures as consideration for the acquisition of shares in a company includes a reference to a corporation that offers a cash sum as consideration for the acquisition of shares where it is to be a term of the contract for the acquisition of those shares that the offeree make, or that the sum be applied in whole or in part in making, a payment by way of deposit with, or loan to, the corporation.

(9) If default is made in complying with any provision of this section, the corporation and any officer of the corporation who is in default are each guilty of an offence.

Penalty: \$2,500 or imprisonment for 6 months, or both.

153. (1) Notwithstanding anything contained in any law in force in the State or in the relevant debentures or trust deed, a trustee for the holders of debentures does not cease to be the trustee until a corporation qualified pursuant to section 152 for appointment as trustee for the holders of the debentures has been appointed to be the trustee for the holders of the debentures and has taken office as such.

Retirement of trustees.

(2) Where provision has been made in the relevant trust deed for the appointment of a successor to a trustee for the holders of the debentures

upon retirement or otherwise, the successor may, subject to section 152, be appointed in accordance with that provision.

(3) Where no provision has been made in the relevant trust deed for the appointment of a successor to a retiring trustee, the borrowing corporation may appoint a successor that is qualified for appointment pursuant to section 152.

(4) Notwithstanding anything in this Code or in any debentures or trust deed, a borrowing corporation may, with the consent of an existing trustee for the holders of the debentures, appoint as successor to the existing trustee any corporation that is qualified for appointment pursuant to section 152 and is related to the existing trustee.

(5) Where the trustee for the holders of debentures has ceased to exist or to be qualified under section 152, a trustee for the holders of debentures has not been appointed pursuant to sub-section 152 (3) or the trustee for the holders of debentures fails or refuses to act or is disqualified under section 152, the Court may, on the application of the borrowing corporation, the trustee (if any) for the holders of the debentures, the holder of any of the debentures or the Commission, appoint a corporation qualified pursuant to section 152 to be the trustee for the holders of the debentures and, where appropriate, to be that trustee in place of the trustee that so ceased to exist or to be qualified, failed or refused to act as trustee or is disqualified.

(6) Where a successor is appointed to be a trustee in place of a trustee, the successor shall, within one month after the appointment, lodge with the Commission notice in the prescribed form of the appointment.

Contents of trust
deed.

154. (1) Where a corporation—

(a) in the State, invites the public to subscribe for or purchase debentures or offers debentures to the public for subscription or purchase;

or

(b) offers debentures as consideration for the acquisition, pursuant to a take-over scheme within the meaning of the *Companies (Acquisition of Shares) (South Australia) Code*, of shares in a company,

the relevant trust deed shall contain a limitation on the amount that the borrowing corporation may borrow pursuant to that deed or those debentures and shall contain covenants by the borrowing corporation or, if the trust deed does not expressly contain those covenants, the trust deed shall be deemed to contain covenants by the borrowing corporation, to the effect—

(c) that the borrowing corporation will use its best endeavours to carry on and conduct its business in a proper and efficient manner;

(d) that the borrowing corporation will—

(i) make available for inspection by the trustee for the holders of the debentures or any registered company auditor appointed by that trustee the whole of the accounting or other records of the borrowing corporation;

and

(ii) give to it or him such information as it or he requires with respect to all matters relating to the accounting or other records of the borrowing corporation;

and

- (e) that the borrowing corporation will, on the delivery to its registered office of an application by persons holding not less than 10% in nominal value of the issued debentures to which the covenant relates, by giving notice to each of the holders of the debentures to which the covenant relates (other than debentures payable to bearer) at his address as specified in the register of the holders of debentures, convene a meeting of the holders of those debentures to consider the accounts and balance sheet that were laid before the last preceding annual general meeting of the borrowing corporation and to give to the trustee directions in relation to the exercise of the trustee's powers, being a meeting to be held at a time and place specified in the notice under the chairmanship of a person nominated by the trustee or, if the trustee does not nominate a person to be the chairman, under the chairmanship of such other person as is appointed for that purpose by the holders of those debentures present at the meeting.

(2) A trust deed to which sub-section (1) applies that is executed after the commencement of the Companies (Application of Laws) Act, 1982 shall contain covenants by each corporation that is a guarantor corporation in relation to the borrowing corporation, or, if the trust deed does not expressly contain those covenants, the trust deed shall be deemed to contain covenants by each guarantor corporation, to the effect—

- (a) that the guarantor corporation will use its best endeavours to carry on and conduct its business in a proper and efficient manner;

and

- (b) that the guarantor corporation will—

- (i) make available for inspection by the trustee for the holders of the debentures or any registered company auditor appointed by that trustee, the whole of the accounting or other records of the guarantor corporation;

and

- (ii) give to it or him such information as it or he requires with respect to all matters relating to the accounting or other records of the guarantor corporation.

(3) For the purposes of sub-section (2), each guarantor corporation shall be deemed to be a party to the trust deed.

(4) The reference in sub-section (1) to a corporation that offers debentures as consideration for the acquisition of shares in a company includes a reference to a corporation that offers a cash sum as consideration for the acquisition of shares where it is to be a term of the contract for the acquisition of those shares that the offeree make, or that the sum be applied in whole or in part in making, a payment by way of deposit with, or loan to, the corporation.

(5) Where, on or after the date of commencement of the Companies (Application of Laws) Act, 1982, any debenture (other than a debenture lawfully issued pursuant to a trust deed executed before 1 January 1965) is issued the trust deed relating to the issue of the debenture does not expressly

PART IV
DIVISION 5

contain the limitation on the amount that the borrowing corporation may borrow and the covenants referred to in sub-section (1), the corporation that issued the debenture and any officer of the corporation who is in default are each guilty of an offence.

(6) Where, on or after the date of commencement of the Companies (Application of Laws) Act, 1982, any debenture (other than a debenture lawfully issued pursuant to a trust deed executed before that date) is issued and the trust deed relating to the issue of the debenture does not expressly contain the covenants referred to in sub-section (2), the corporation that issued the debenture and any officer of the corporation who is in default are each guilty of an offence.

Penalty: \$2,500 or imprisonment for 6 months, or both.

Power of Court in relation to certain irredeemable debentures.

155. (1) Notwithstanding anything in any debenture or trust deed, where, on the application of the trustee for the holders of debentures that are irredeemable or redeemable only on the happening of a contingency or, if there is no trustee, on the application of the holder of any such debentures, the Court is satisfied that—

- (a) at the time of the issue of the debentures the property of the corporation that constituted or was intended to constitute the security for the debentures was sufficient or likely to become sufficient to discharge the principal debt and any interest on that debt;
- (b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than 60% of the principal sum of moneys outstanding (regard being had to all prior charges and charges ranking *pari passu*, if any);

and

- (c) the property covered by the security, on a fair valuation on the basis of a going concern after allowing a reasonable amount for depreciation, is worth less than the principal sum and the borrowing corporation is not making sufficient profit to pay the interest due on the principal sum or (where no definite rate of interest is payable) interest on that sum at such rate as the Court considers would be a fair rate to expect from a similar investment,

the Court may order that the security for the debentures be enforceable forthwith or at such time as the Court directs.

(2) Sub-section (1) does not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or the relevant trust deed or under a compromise or arrangement between the borrowing corporation and creditors.

Duties of trustees.

156. (1) A trustee for the holders of debentures—

- (a) shall exercise reasonable diligence to ascertain whether or not the property of the borrowing corporation and of each of its guarantor corporations that is or may be available, whether by way of security or otherwise, is sufficient, or is likely to be or become sufficient, to discharge the principal debt as and when it becomes due;

- (b) shall satisfy itself that each prospectus relating to the debentures does not contain any matter that is inconsistent with the terms of the debentures or with the relevant trust deed;
- (c) shall ensure that the borrowing corporation and each of its guarantor corporations comply with the provisions of Division 9 so far as they relate to the debentures and are applicable;
- (d) shall exercise reasonable diligence to ascertain whether or not the borrowing corporation and each of its guarantor corporations have committed any breach of the covenants, terms and provisions of the debentures or the trust deed;
- (e) except where it is satisfied that the breach will not materially prejudice the security (if any) for the debentures or the interests of the holders of the debentures—shall take all steps and do all such things as it is empowered to do to cause the borrowing corporation and any of its guarantor corporations to remedy any breach of those covenants, terms and provisions;
- (f) where the borrowing corporation or any of its guarantor corporations fails, when so required by the trustee, to remedy a breach of the covenants, terms and provisions of the debentures or the trust deed—may place the matter of the failure to remedy the breach before a meeting of holders of the debentures, submit such proposals for the protection of their investment as the trustee considers necessary or appropriate and obtain the directions of the holders in relation to the matter;

and

- (g) where the borrowing corporation submits to those holders a compromise or arrangement—shall give to them a statement explaining the effect of the compromise or arrangement and, if it thinks fit, recommend to them an appropriate course of action to be taken by them in relation to the compromise or arrangement.

(2) Where, after due inquiry, the trustee for the holders of the debentures at any time is of the opinion that the property of the borrowing corporation and of any of its guarantor corporations that is or should be available, whether by way of security or otherwise, is insufficient, or likely to become insufficient, to discharge the principal debt as and when it becomes due, the trustee may apply to the Commission for an order under this sub-section and the Commission may, on such an application, after giving the borrowing corporation an opportunity of making representations in relation to the application, by order in writing served on the corporation at its registered office in the State, impose such restrictions on the activities of the corporation, including restrictions on advertising for deposits or loans and on borrowing by the corporation, as the Commission thinks necessary for the protection of the interests of the holders of the debentures or the Commission may, and, if the borrowing corporation so requires, shall, direct the trustee to apply to the Court for an order under sub-section (4) and the trustee shall apply accordingly.

(3) Where—

- (a) after due inquiry, the trustee at any time is of the opinion that the property of the borrowing corporation and of any of its guarantor corporations that is or should be available, whether

by way of security or otherwise, is insufficient or likely to become insufficient, to discharge the principal debt as and when it becomes due;

or

- (b) the corporation has contravened or failed to comply with an order made by the Commission under sub-section (2),

the trustee may, and where the borrowing corporation has requested the trustee to do so, the trustee shall, apply to the Court for an order under sub-section (4).

(4) Where an application is made to the Court under sub-section (2) or (3), the Court may, after giving the borrowing corporation an opportunity of being heard, by order, do all or any of the following things, namely:

- (a) direct the trustee to convene a meeting of the holders of the debentures for the purpose of placing before them such information relating to their interests and such proposals for the protection of their interests as the trustee considers necessary or appropriate and of obtaining their directions in relation to the protection of their interests and give such directions in relation to the conduct of the meeting as the Court thinks fit;
- (b) stay all or any actions or other civil proceedings before any court by or against the borrowing corporation;
- (c) restrain the payment of any moneys by the borrowing corporation to the holders of debentures of the corporation or to any class of such holders;
- (d) appoint a receiver of such of the property as constitutes the security (if any) for the debentures;
- (e) give such further directions from time to time as may be necessary to protect the interests of the holders of the debentures, the members of the borrowing corporation or any of its guarantor corporations or the public,

but in making any such order the Court shall have regard to the rights of all creditors of the borrowing corporation.

(5) The Court may vary or rescind any order made under sub-section (4) as the Court thinks fit.

(6) In making an application to the Commission or to the Court, a trustee shall have regard to the nature and kind of security given when the debentures were offered to the public and, if no security was given, shall have regard to the position of the holders of the debentures as unsecured creditors of the borrowing corporation.

Powers of trustee
to apply to the
Court for
directions, &c.

157. (1) The trustee for the holders of debentures may apply to the Court—

- (a) for directions in relation to any matter arising in connection with the performance of the functions of the trustee;

or

- (b) to determine any question in relation to the interests of the holders of debentures,

and the Court may—

- (c) give such directions to the trustee as the Court deems fit;
- and

- (d) if satisfied that the determination of the question will be just and beneficial—accede wholly or partially to the application on such terms and conditions as the Court thinks fit or make such other order on the application as the Court thinks just.

(2) The Court may, on an application under this section, order a meeting of all or any of the holders of debentures to be convened to consider any matters in which they are concerned and to advise the trustee on those matters and may give such ancillary or consequential directions as the Court thinks fit.

(3) The meeting shall be held and conducted in such manner as the Court directs, under the chairmanship of a person nominated by the trustee or, if the trustee does not nominate a person to be the chairman, under the chairmanship of such other person as is appointed for that purpose by the holders of debentures present at the meeting.

158. (1) Where there is a trustee for the holders of any debentures of a borrowing corporation, the trustee shall, by notice in writing to the borrowing corporation, specify for the purposes of this section a day, being not later than 6 months after the date of the relevant prospectus, and the directors of the borrowing corporation shall—

Obligations of
borrowing
corporation.

- (a) at the end of a period not exceeding 3 months ending on the day so specified;

and

- (b) at the end of each succeeding period, being a period of 3 months or such shorter period as the trustee, in any special circumstances, allows,

prepare a report that relates to that period and complies with the requirements of sub-section (2) and, within one month after the end of each such period, lodge the report relating to that period with the trustee and a copy of the report with the Commission.

(2) The report referred to in sub-section (1) shall be signed by not less than 2 of the directors on behalf of all of them and shall set out in detail any matters adversely affecting the security or the interests of the holders of the debentures and, without affecting the generality of the foregoing, shall state—

- (a) whether or not the limitations on the amount that the corporation may borrow have been exceeded and, if they have been exceeded, particulars of borrowings exceeding those limitations;
- (b) whether or not the borrowing corporation and each of its guarantor corporations have observed and performed all the covenants and provisions binding upon them respectively by or pursuant to the debentures or any trust deed;
- (c) whether or not any event has happened that has caused or could cause the debentures or any provision of the relevant trust deed to become enforceable and, if so, particulars of that event;
- (d) whether or not any circumstances affecting the borrowing corporation, its subsidiaries or its guarantor corporations or any

of them have occurred that materially affect any security or charge included in or created by the debentures or any trust deed and, if so, particulars of those circumstances;

- (e) whether or not there has been any substantial change in the nature of the business of the borrowing corporation or any of its subsidiaries or any of its guarantor corporations since the debentures were first issued to the public that has not previously been reported upon as required by this section and, if so, particulars of that change;

and

- (f) where the borrowing corporation has deposited money with, lent money to, or assumed any liability of, a corporation that is related to the borrowing corporation, particulars, with respect to each corporation that is so related, of—

- (i) the total amounts so deposited or lent and the extent of any liability so assumed during the period covered by the report;

and

- (ii) the total amounts owing to the borrowing corporation in respect of money so deposited or lent and the extent of any liability so assumed as at the end of the period covered by the report,

distinguishing between deposits, loans and assumptions of liability that are secured and those that are unsecured, but not including any deposit with, loan to, or liability assumed on behalf of, a corporation if that corporation has guaranteed the repayment of the debentures of the borrowing corporation and has secured the guarantee by a charge over its property in favour of the trustee for the holders of the debentures of the borrowing corporation.

(3) Where, during the period to which a report referred to in sub-section (1) relates—

- (a) a corporation has become a guarantor corporation;
- (b) a guarantor corporation has ceased to be liable for the payment of the whole or part of the moneys for which it was liable under the guarantee;

or

- (c) a guarantor corporation has changed its name,

the report shall so state and shall give particulars of the matters so stated.

(4) Where there is a trustee for the holders of any debentures issued by a borrowing corporation and the borrowing corporation or any of its guarantor corporations that has guaranteed the repayment of the moneys raised by the issue of those debentures creates any charge, the borrowing corporation or the guarantor corporation, as the case requires, shall, whether or not any demand for the particulars has been made—

- (a) furnish in writing to the trustee, within 21 days after the creation of the charge, particulars of the charge;

and

- (b) if the total amount to be advanced on the security of the charge is indeterminate—

(i) furnish in writing to the trustee, within 7 days after an advance is made, particulars of the amount of the advance;

or

(ii) where the advances are merged in a current account with bankers or trade creditors—furnish in writing to the trustee, at the end of every 3 months, particulars of the net amount outstanding in respect of the advances.

(5) The directors of a borrowing corporation that has issued debentures (other than debentures of a kind that could be lawfully described pursuant to section 97 as mortgage debentures or certificates of mortgage debenture stock) and of every relevant guarantor corporation that has guaranteed the repayment of the moneys raised by the issue of those debentures shall—

(a) at a date not later than 6 months, or, in the case of a particular corporation, not later than the expiration of such other period as is for the time being fixed by the Commission with the consent of the trustee for the debenture holders of that corporation (if any), after the expiration of each financial year of the corporation, cause to be made out and lodged with the Commission and with the trustee for the holders of the debentures a profit and loss account for that financial year and a balance-sheet as at the end of that financial year;

and

(b) at a date not later than 10 months, or, in the case of a particular corporation, not later than the expiration of such other period as is for the time being fixed by the Commission with the consent of the trustee for the debenture holders of that corporation (if any), after the expiration of each financial year of the corporation, cause to be made out and lodged with the Commission and with the trustee for the holders of the debentures a profit and loss account for the period from the end of that financial year until the expiration of 6 months after the end of that financial year and a balance-sheet as at the end of the period to which the profit and loss account relates.

(6) The directors of a borrowing corporation that is a holding company shall—

(a) at a date not later than 6 months, or, in the case of a particular borrowing corporation, not later than the expiration of such other period as is for the time being fixed by the Commission with the consent of the trustee for the debenture holders of that corporation, after the expiration of each financial year of the corporation, cause to be made out and lodged with the Commission and with the trustee for the holders of the debentures (if any) a set of consolidated accounts for the borrowing corporation and each guarantor corporation that is a subsidiary of the borrowing corporation for that financial year;

and

(b) at a date not later than 10 months, or, in the case of a particular borrowing corporation, not later than the expiration of such other period as is for the time being fixed by the Commission with the consent of the trustee for the debenture holders of

that corporation, after the expiration of each financial year of the corporation, cause to be made out and lodged with the Commission and with the trustee for the holders of the debentures (if any) a set of consolidated accounts for the borrowing corporation and each guarantor corporation that is a subsidiary of that borrowing corporation for the period from the end of that financial year until the expiration of 6 months after the end of that financial year.

(7) A trustee for debenture holders of a corporation may give to the directors of a guarantor corporation that is a subsidiary of that borrowing corporation a notice requiring them to comply with sub-section (5) and, where a notice is so given—

- (a) the directors of the guarantor corporation shall comply with the requirements of sub-section (5) in relation to the next financial year of that corporation that ends after the notice is so given and in relation to each subsequent financial year of that corporation;

and

- (b) where the notice is given within the period of 6 months after the end of a financial year of that guarantor corporation—the directors of the corporation shall comply with the requirements of paragraph (5) (b) in relation to the period commencing at the end of that financial year and ending at the expiration of that period of 6 months.

(8) A trustee for debenture holders shall, within 7 days after he gives a notice under sub-section (7), lodge a copy of that notice with the Commission.

(9) Nothing in sub-section (5), (6) or (7) applies to the directors of a prescribed corporation.

(10) In sub-section (9), “prescribed corporation” means a corporation that is a pastoral company in respect of which an exemption granted under section 11 of the *Banking Act 1959* is in force and is declared by the Commission by notice published in the *Gazette* to be a prescribed corporation for the purposes of this section.

(11) The Commission may, by notice published in the *Gazette*—

- (a) specify terms and conditions subject to which sub-section (9) has effect in relation to a prescribed corporation;

or

- (b) vary or revoke any declaration made under sub-section (10) or any specification made under paragraph (a) of this sub-section.

(12) Sub-sections (1), (4), (5), (6) and (7) do not apply in respect of a borrowing corporation or a guarantor corporation if—

- (a) the borrowing corporation or the guarantor corporation, as the case may be, is being wound up;

or

- (b) a receiver, or a receiver and manager, of property of the borrowing corporation or the guarantor corporation, as the case may be, has been appointed and has not ceased to act under that appointment.

(13) The provisions of section 269 (other than sub-section (6)), sub-sections 270 (1), (2) and (3), section 273, section 285 (other than sub-section (8)) and section 288 are, with such adaptations as are necessary, applicable to every profit and loss account and balance-sheet made out and lodged pursuant to sub-section (5) of this section by the directors of a borrowing corporation as if that profit and loss account and balance-sheet were a profit and loss account and balance-sheet referred to in those sections or sub-sections.

(14) Notwithstanding anything in the preceding provisions of this section, the directors of a borrowing corporation are not required to comply, in relation to profit and loss accounts and balance-sheets required to be made out and lodged under sub-section (5), with sub-section 269 (3) or 270 (2) or with section 285 (as it relates to group accounts) if the trustee for debenture holders consents in writing to the directors being exempt from those requirements.

(15) The provisions of sections 269 (other than sub-section (6)), sub-sections 270 (1), (2) and (3), section 273, section 285 (other than sub-section (8)) and section 288 are, with such adaptations as are necessary, applicable to every profit and loss account and balance-sheet made out and lodged pursuant to sub-section (6) of this section by the directors of the borrowing corporation as if—

(a) that profit and loss account and balance-sheet were a profit and loss account and balance-sheet referred to in those sections or sub-sections;

and

(b) references in those sections and sub-sections to group accounts were references to the consolidated accounts referred to in sub-section (6) of this section.

(16) The provisions of section 269 (other than sub-section (3)), sub-sections 270 (1) and (3), section 273, section 285 (other than the provisions of that section relating to group accounts) and section 288 are, with such adaptations as are necessary, applicable to every profit and loss account and balance-sheet made out and lodged pursuant to sub-section (5) of this section by the directors of a relevant guarantor corporation as if that profit and loss account and balance-sheet were a profit and loss account and balance-sheet referred to in those sections or sub-sections.

(17) Notwithstanding the provisions of sub-section (16), where a guarantor corporation, being a corporation that is incorporated in the United Kingdom or in a State or Territory in the United States of America has lodged with the Department of Trade or other appropriate Government Department in the United Kingdom or the Securities and Exchange Commission of the United States of America a profit and loss account and balance-sheet, for a period in respect of which the corporation is required to lodge a profit and loss account and balance-sheet pursuant to sub-section (5) of this section, it is sufficient compliance with the requirements of that sub-section if certified copies of the profit and loss account and balance-sheet so lodged with the Department of Trade or that other Department or the Securities and Exchange Commission are, with the consent of the trustee for the debenture holders, lodged with the Commission and the trustee for the debenture holders within the time prescribed by that sub-section.

(18) Where the directors of a borrowing corporation do not lodge with the trustee for the holders of debentures a report as required by sub-section

(1) or where the directors of a borrowing corporation or the directors of a guarantor corporation do not lodge with the trustee the balance-sheets, profit and loss accounts and reports as required by sub-sections (5) to (16) inclusive, within the period or at the date, specified in the sub-section concerned, the trustee shall forthwith lodge notice of that fact with the Commission.

(19) Notwithstanding anything contained in sub-sections (13) to (16) inclusive, the audit of a profit and loss account and balance-sheet of a borrowing corporation or its guarantor corporation relating to a period of 6 months immediately following a financial year of the corporation required to be made out and lodged in accordance with sub-section (5) or (6) may be dispensed with or may be of a limited nature or extent if the trustee for the holders of the debentures of the borrowing corporation has consented in writing to the audit being dispensed with or being of a limited nature or extent, as the case may be.

(20) Where the trustee has so consented to the audit of a profit and loss account and balance-sheet of a borrowing corporation or guarantor corporation being dispensed with or being of a limited nature or extent, the directors of the corporation shall lodge with the Commission a copy of the instrument of consent at the time when the profit and loss account and balance-sheet are so lodged.

(21) Where the trustee for debenture holders for a borrowing corporation has consented to the directors of the corporation being exempt from complying with the requirements relating to profit and loss accounts and balance-sheets referred to in sub-section (14), the directors shall lodge with the Commission a copy of the instrument of consent at the time when the profit and loss account and balance-sheet are so lodged.

(22) Notwithstanding anything contained in this section, a profit and loss account and balance-sheet of a borrowing corporation or its guarantor corporation relating to a period of 6 months immediately following a financial year of the corporation required to be made out and lodged in accordance with sub-section (5) may, unless the trustee for the holders of the debentures of the borrowing corporation otherwise requires in writing, be based upon the value of the trading stock of the borrowing corporation or the guarantor corporation, as the case may be, as—

(a) reasonably estimated by the directors of that corporation on the basis of the value of that trading stock as adopted for the purpose of the profit and loss account and balance-sheet of that corporation laid before the corporation at its last preceding annual general meeting;

and

(b) certified in writing as such by those directors.

(23) In this section, “relevant guarantor corporation”, in relation to a borrowing corporation, means—

(a) a guarantor corporation that is not a subsidiary of that borrowing corporation;

and

(b) a guarantor corporation the directors of which have been given notice under sub-section (7) by the trustee for debenture holders of the borrowing corporation of which the guarantor corporation is a subsidiary.

159. (1) For the purpose of the preparation of a report that is required by this Code to be signed by or on behalf of the directors of a borrowing corporation or any of them, that corporation may, by notice in writing, require any of its guarantor corporations to furnish it with any information relating to that guarantor corporation that is required by this Code to be contained in that report, and that guarantor corporation shall furnish the borrowing corporation with that information before such date, being a date not earlier than 14 days after the notice is given, as is specified for that purpose in the notice.

Obligation of guarantor corporation to furnish information.

(2) If a corporation fails to comply with a requirement contained in a notice given pursuant to sub-section (1), that corporation and any officer of that corporation who is in default are each guilty of an offence.

160. (1) Where, in a prospectus issued in connection with an invitation to the public to subscribe for or to purchase, or in connection with an offer to the public for subscription or purchase of, debentures of a corporation, there is a statement as to any particular purpose or project for which the moneys received by the corporation in response to the invitation or offer are to be applied, the corporation shall from time to time make reports to the trustee for the holders of those debentures as to the progress that has been made towards achieving that purpose or completing that project.

Loans and deposits to be immediately repayable on certain events.

(2) Each such report shall be included in the report required to be furnished to the trustee for the holders of the debentures under sub-section 158 (1).

(3) Where it appears to the trustee for the holders of the debentures that the purpose or project has not been achieved or completed within the time stated in the prospectus within which the purpose or project is to be achieved or completed or, where no such time was stated, within a reasonable time, the trustee may, and, if in his opinion it is necessary for the protection of the interests of the holders of the debentures, shall, give notice in writing to the corporation requiring it to repay the moneys so received by the corporation and the trustee shall, within one month after such a notice is given, lodge with the Commission a copy of the notice.

(4) The trustee shall not give a notice pursuant to sub-section (3) if it is satisfied—

- (a) that the purpose or project has been substantially achieved or completed;
- (b) that the interests of the holders of debentures have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time;

or

- (c) that the failure to achieve or complete the purpose or project was due to circumstances beyond the control of the corporation that could not reasonably have been foreseen by the corporation at the time when the prospectus was issued.

(5) Upon receipt by the corporation of a notice referred to in sub-section (3), the corporation is liable to repay any money owing to a person (in this sub-section referred to as the "relevant person") as the result of a loan or deposit made in response to the invitation or offer, and, on demand in writing by the relevant person, shall immediately repay the money to the relevant person unless—

(a) before the moneys received by the corporation in response to the invitation or offer were accepted by the corporation, the corporation, by notice in writing served on the persons from whom moneys were received—

(i) had specified the purpose or project for which the moneys would in fact be applied by the corporation;

and

(ii) had offered to repay the moneys to those persons,

and the relevant person had not, within 14 days after the receipt of the notice or such longer time as was specified in the notice, demanded in writing from the corporation repayment of the money owing to him;

or

(b) the corporation by notice in writing served on the holders of the debentures—

(i) had specified the purpose or project for which the moneys would in fact be applied by the corporation;

and

(ii) had offered to repay the moneys to the holders of the debentures,

and the relevant person had not, within 14 days after the receipt of the notice or such longer time as was specified in the notice, demanded in writing from the corporation repayment of the money owing to him.

(6) Where the corporation has given a notice in writing as provided by sub-section (5) specifying the purpose or project for which the moneys received by the corporation in response to the invitation or offer will in fact be applied by the corporation, the provisions of this section apply and have effect as if the purpose or project so specified in the notice was the particular purpose or project specified in the prospectus as the purpose or project for which the moneys were to be applied.

Invitations or offers by prescribed corporations.

161. (1) Notwithstanding any other provision of this Code, an invitation to the public by a prescribed corporation to lend money to, or to deposit money with, that corporation or an offer to the public by a prescribed corporation to accept moneys that are lent to, or deposited with, that corporation shall, for the purposes of this Division, be deemed not to be an invitation to the public to subscribe for or purchase debentures of the corporation or an offer to the public of debentures of the corporation for subscription or purchase.

(2) In this section, “prescribed corporation” has the same meaning as in sub-section 97 (7).

Compliance with laws of another State or of a Territory sufficient compliance for certain companies.

162. Notwithstanding anything in this Division, in the case of a borrowing corporation that is a recognized company or in the case of a guarantor corporation of such a borrowing corporation, it is sufficient compliance with this Division if the corporation has complied with the provisions of the laws of the State or Territory in which the borrowing corporation is incorporated that correspond with this Division.

163. (1) Subject to this section, any provision contained in a trust deed relating to or securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, is void in so far as it would have the effect of exempting a trustee from, or indemnifying it against, liability for breach of trust where it fails to show the degree of care and diligence required of it as trustee having regard to its powers, authorities or discretions under the trust deed or contract.

(2) Sub-section (1) does not invalidate—

(a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release;

or

(b) any provision enabling such a release to be given—

(i) on the agreement to the giving of the release of a majority of not less than three-quarters in nominal value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting convened for the purpose;

and

(ii) either with respect to specific acts or omissions or on the dissolution of the trustee or on its ceasing to act.

(3) Sub-section (1) does not operate—

(a) to invalidate any provision in force at the commencement of the Companies (Application of Laws) Act, 1982, so long as any trustee then entitled to the benefit of that provision remains a trustee of the deed in question;

or

(b) to deprive any trustee of any exemption or right to be indemnified in respect of anything done or omitted to be done by the trustee while any such provision was in force.

DIVISION 6—PRESCRIBED INTERESTS

DIVISION 6

164. (1) In this Division, unless the contrary intention appears—

Interpretation.

“company” means a public company and includes—

(a) a corporation that is a public company under the corresponding law of a participating State or of a participating Territory;

and

(b) a corporation that is a public company under the law of a declared State or a declared Territory and is registered as a foreign company in South Australia or in a participating State or a participating Territory;

“declared State” means a State that is declared by the Commission, by order in writing published in the *Gazette*, to be a declared State for the purposes of this Division;

“declared Territory” means a Territory that is declared by the Commission, by order in writing published in the *Gazette*, to be a declared Territory for the purposes of this Division;

“financial year”, in relation to a deed, means the period of 12 months ending on 30 June or on such other date as is specified in the deed in lieu of 30 June;

“management company”, in relation to any prescribed interests issued or proposed to be issued or any deed that relates to any prescribed interests issued or proposed to be issued, means a company by or on behalf of which the prescribed interests have been or are proposed to be issued, and includes any person for the time being exercising the functions of the management company.

(2) A reference in this Division to a deed shall be read as including a reference to any instrument amending or affecting the deed.

(3) Any deed approved under a corresponding previous law of the State shall, if it does not contain the covenants concerned, be deemed to contain covenants to the effect of the covenants required to be contained in a deed under sub-section 168 (1) except the covenants required under sub-paragraphs 168 (1) (b) (i), (ii) and (iii), and sub-sections 168 (3), (4), (5) and (6) apply in relation to the deed accordingly.

Approved deeds.

165. (1) For the purposes of this Division, a deed is an approved deed if—

(a) an approval has been granted to the deed under this Division or under any corresponding previous law of the State;

and

(b) an approval has been granted under this Division or under any corresponding previous law of the State to the trustee or representative appointed for the purposes of the deed acting as trustee or representative and that approval has not been revoked and the trustee or representative has not ceased to hold office.

(2) In the case of a management company that is a recognized company or is a recognized foreign company, a deed is an approved deed for the purposes of this Division if the deed and the company acting as trustee or representative for the purposes of the deed have been approved under the provisions of the law of the participating State or participating Territory in which that recognized company or recognized foreign company is incorporated or registered that correspond with this Division.

Approval of deeds.

166. (1) Where a deed makes provision for the appointment of a company as trustee for or representative of the holders of prescribed interests issued or proposed to be issued by a company, the Commission may, subject to this section, grant its approval to the deed.

(2) The Commission shall not grant its approval to a deed unless the deed—

(a) complies with the requirements of this Division;

and

- (b) makes provision for such other matters and things as are required by or under the regulations to be included in the deed.

(3) Within 7 days after a deed has been approved under this section, the management company shall lodge with the Commission the deed, or a copy of the deed verified by a statement in writing, and a copy so lodged shall for all purposes, in the absence of proof that it is not a true copy, be regarded as an original.

167. (1) The Commission may, subject to such terms and conditions as it thinks fit, grant its approval to a company acting as trustee or representative for the purposes of a deed.

Approval of trustees.

(2) The Commission may, at any time, by reason of a breach of a term or condition subject to which the approval was granted or for any other reason, revoke an approval granted under this section or under any corresponding previous law of the State.

168. (1) Subject to sub-section (2), a deed shall, for the purposes of paragraph 166 (2) (a), contain covenants to the following effect:

Covenants to be included in deeds.

- (a) a covenant binding the management company that it will use its best endeavours to carry on and conduct its business in a proper and efficient manner and to ensure that any undertaking, scheme or enterprise to which the deed relates is carried on and conducted in a proper and efficient manner;
- (b) covenants binding the management company—

(i) that the management company will pay to the trustee or representative, within 30 days after their receipt by the company, any moneys that, under the deed, are payable by the company to the trustee or representative;

(ii) that the management company will not sell or issue, or permit to be sold or issued, a prescribed interest to which the deed relates otherwise than at a price calculated in accordance with the provisions of the deed;

(iii) that the management company will, at the request of the holder of a prescribed interest, purchase, or cause to be purchased, that prescribed interest from the holder and that the purchase price will be a price calculated in accordance with the provisions of the deed;

and

(iv) that the management company will not, without the approval of the trustee or representative, publish or cause to be published any advertisement, circular or other document containing any statement with respect to the sale price of prescribed interests to which the deed relates or the yield from those prescribed interests or containing any invitation to buy prescribed interests;

- (c) covenants binding the trustee or representative that it will—

(i) exercise all due diligence and vigilance in carrying out its functions and duties and in watching the rights and

- interests of the holders of the prescribed interests to which the deed relates;
- (ii) keep or cause to be kept proper books of account in relation to those prescribed interests;
 - (iii) cause those accounts to be audited at the end of each financial year by a registered company auditor;
- and
- (iv) send or cause to be sent by post a statement of the accounts with the report of the auditor on those accounts within 2 months of the end of the financial year to each of the holders of those prescribed interests;
- (d) a covenant binding the management company and the trustee or representative, respectively, that no moneys available for investment under the deed will be invested in or lent to the management company, or to the trustee or representative, or to any company (other than a banking corporation or a corporation declared pursuant to paragraph 97 (7) (b) to be an authorized dealer in the short term money market) that is related to the management company or to the trustee or representative;
- (e) a covenant binding the management company that the company will—
- (i) make available to the trustee or representative, or to any registered company auditor appointed by it, for inspection all the books of the company whether kept at the registered office or elsewhere;
- and
- (ii) give to the trustee or representative or to any such auditor such oral or written information as it or he requires with respect to all matters relating to the undertaking, scheme or enterprise of the company or any property (whether acquired before or after the date of the deed) of the company or otherwise relating to the affairs of the company;
- (f) a covenant binding the management company that the management company will make available, or ensure that there is made available, to the trustee or representative such details as the trustee or representative requires with respect to all matters relating to the undertaking, scheme or enterprise to which the deed relates;
- (g) covenants binding the management company and the trustee or representative, respectively, that the management company or the trustee or representative, as the case may be, will not exercise the right to vote in respect of any shares relating to the prescribed interests to which the deed relates held by the management company, trustee or representative at any election for directors of a corporation shares in which are so held, without the consent of the majority of the holders of the prescribed interests to which the deed relates present in person and voting given at a meeting of those holders convened in

the manner provided for in paragraph (h) for the purpose of authorizing the exercise of the right at the next election;

and

- (h) a covenant binding the management company that the management company will, within 21 days after an application is delivered to the company at its registered office, being an application by not less than 50, or one-tenth in number, whichever is the less, of the holders of the prescribed interests to which the deed relates, by sending notice by post of the proposed meeting at least 7 days before the proposed meeting to each of the holders of the prescribed interests to which the deed relates at his last known address or, in the case of joint holders, to the joint holder whose name appears first in the company's records, convene a meeting of the holders for the purpose of laying before the meeting the accounts and balance-sheet that were laid before the last preceding annual general meeting of the management company or the last audited statement of accounts of the trustee or representative, and for the purpose of giving to the trustee or representative such directions as the meeting thinks proper.

(2) The Commission may, by notice published in the *Gazette*, declare that, subject to such terms and conditions as are specified in the notice, a specified deed that makes provision for the appointment of a specified company as trustee for or representative of the holders of the prescribed interests to which the deed relates is not required to contain covenants to the effect of such of the matters referred to in sub-section (1) or to contain such of the matters provided for in regulations made for the purposes of paragraph 166 (2) (b), as are specified in the notice and the Commission may, by notice so published, revoke such a notice or vary it in such manner as it thinks fit.

(3) A meeting convened for the purposes of a covenant contained in a deed pursuant to paragraph (1) (g) or (h) shall be held at the time and place specified in the notice, being a time not later than 2 months after the giving of the notice, under the chairmanship of—

- (a) such person as is appointed for that purpose by the holders of the prescribed interests to which the deed relates present at the meeting;

or

- (b) where no such appointment is made, a nominee of the trustee or representative approved by the Commission,

and shall be conducted in accordance with the provisions of the deed or, in so far as the deed makes no provision, as directed by the chairman of the meeting.

(4) Notwithstanding anything to the contrary contained in an approved deed, the undertaking, scheme, enterprise, contract or arrangement to which the deed relates may be continued in operation or existence if it appears to be in the interests of the holders of the prescribed interests to which the deed relates during such period as is, or such periods as are, agreed upon by the trustee or representative and the management company.

(5) Where a direction is given to the trustee or representative at a meeting convened pursuant to a covenant complying with paragraph (1) (h), the trustee or representative—

(a) shall comply with the direction unless it is inconsistent with the deed or this Code;

and

(b) is not liable for anything done or omitted to be done by it by reason only of its following that direction.

(6) Where the trustee or representative is of the opinion that a direction so given is inconsistent with the deed or this Code or is otherwise objectionable, the trustee or representative may apply to the Court for an order confirming, setting aside or varying the direction and the Court may make such order as it thinks fit.

Prescribed interests to be issued by companies only.

169. A person, other than a company or an agent of a company authorized for that purpose under the common or official seal of the company, shall not issue to the public, offer to the public for subscription or purchase, or invite the public to subscribe for or purchase, any prescribed interest.

Statement to be issued.

170. (1) A company or an agent of a company shall not issue to the public, offer to the public for subscription or purchase, or invite the public to subscribe for or purchase, any prescribed interest unless a statement in writing in relation to that prescribed interest has been registered by the Commission under Division 1.

(2) For the purposes of the registration of the statement referred to in sub-section (1), and for all other purposes, the statement shall be deemed to be a prospectus issued by a company.

(3) Subject to sub-section (4) and (5), all provisions of this Code and rules of law relating to—

(a) prospectuses;

(b) the offering or intended offering to the public of shares for subscription or purchase;

(c) the inviting or intended inviting of the public to subscribe for or purchase shares;

and

(d) the issuing or intended issuing of forms of application for shares,

shall, with such adaptations as are necessary, apply and have effect in relation to prescribed interests as if—

(e) the prescribed interests were shares that were offered or intended to be offered to the public for subscription or purchase or that the public were invited or intended to be invited to subscribe for or purchase;

(f) persons accepting any offers or making offers pursuant to any invitation in respect of, or subscribing for or purchasing, any such prescribed interests were subscribers for shares;

(g) the references in paragraph 99 (4) (a) to the corporation were references to the financial or business undertaking or scheme, the common enterprise or the investment contract to which the statement relates;

(h) the reference in sub-paragraph 99 (4) (a) (iv) to the directors of the corporation were a reference to the management company for the prescribed interest and the directors of that company;

and

- (j) the reference in sub-paragraph 99 (4) (a) (vi) to debentures were a reference to prescribed interests and the reference in that sub-paragraph to the trustee for the debenture holders were a reference to the trustee for, or representative of, the holders of the prescribed interests.

(4) Subject to sub-section (5), the statement shall set out the prescribed matters, and shall contain the prescribed reports, with such adaptations (if any) as the circumstances of each case require and the Commission approves.

(5) A matter or report referred to in sub-section (4) may be omitted from a statement if, having regard to the nature of the prescribed interest, the Commission is of the opinion that the matter or report is not appropriate for inclusion in the statement and has by instrument in writing approved the omission.

(6) Where a statement in respect of a recognized company has been registered under the provisions of the law of the participating State or participating Territory in which the company is incorporated that correspond with Division 1, that statement shall, for the purposes of this Division, be deemed to have been registered by the Commission under Division 1 and anything required to be done before registration under that Division shall be deemed to have been done.

171. (1) A person shall not issue to the public, offer to the public for subscription or purchase, or invite the public to subscribe for or purchase, any prescribed interest unless, at the time of the issue, offer or invitation, there is in force, in relation to the interest, a deed that is an approved deed.

No issue without approved deed.

(2) A person shall not, in any deed, prospectus, statement, advertisement or other document relating to a prescribed interest, make any reference to an approval of a deed or of a trustee or representative granted under—

- (a) this Division or a previous corresponding law of the State;

or

- (b) the provisions of the law of a participating State or participating Territory that correspond with this Division, or a previous corresponding law of a participating State or participating Territory.

172. (1) Subject to sub-section (6), the management company shall, in respect of each deed with which the company is concerned, keep at the registered office or principal place of business in the State of the company, or at such other place in the State as the Commission approves, a register of the holders of prescribed interests under the deed and enter in the register—

Register of holders of prescribed interests.

- (a) the names and addresses of the holders;
- (b) the extent of the holding of each holder and, if his prescribed interest consists of a specific interest in any property, a description of the property sufficient to identify it;
- (c) the date at which the name of each person was entered in the register as a holder;

and

- (d) the date at which any person ceased to be a holder.

(2) A management company incorporated in a participating State, participating Territory, declared State or declared Territory that—

(a) keeps a register of holders of prescribed interests in accordance with the provisions of the law of that State or Territory that correspond with the preceding provisions of this section;

and

(b) keeps within the State a register containing with respect to the holders of prescribed interest who are resident within the State the information prescribed by sub-section (1),

shall be deemed to comply with sub-section (1).

(3) A management company that is deemed by sub-section (2) to comply with sub-section (1) shall, within 14 days after receiving a written request from a holder of a prescribed interest resident in the State, make available for inspection by him a copy of the register of holders of prescribed interests kept as mentioned in paragraph (2) (a).

(4) The provisions of Division 4 of Part V (except section 262) shall, with such adaptations and modifications as are necessary, apply to and in relation to the registers kept under sub-section (1) and under paragraph (2) (b).

(5) A management company that—

(a) keeps a register of holders of prescribed interests pursuant to sub-section (1) or paragraph (2) (b) at a place in the State within 25 kilometres of the office of the State Commission;

and

(b) provides reasonable accommodation and facilities for persons to inspect and take copies of its list of holders of prescribed interests,

need not comply with the provision of paragraph 173 (1) (c) in relation to the deed under which the prescribed interests are held unless the Commission, by order in writing published in the *Gazette*, otherwise directs.

(6) The Commission may, by order in writing published in the *Gazette* declare that, subject to such terms and conditions as are specified in the order, a specified management company is not required to comply with the provisions of sub-section (1) in respect of a deed specified in the order.

173. (1) Where a deed is or has at any time been an approved deed under sub-section 165 (1), the management company shall lodge with the Commission—

(a) so long as the deed, or any deed in substitution in whole or in part for the deed, remains in force—within 2 months after the end of each financial year applicable to the deed or substituted deed;

or

(b) if the deed ceases to be in force and no deed has been substituted in whole or in part for the deed, or any such substituted deed ceases to be in force—within 2 months after the deed or substituted deed, as the case may be, ceases to be in force,

a return in the prescribed form containing—

(c) a list of all persons who, at the end of the relevant financial year, were holders of the prescribed interests to which the deed or substituted deed relates;

and

(d) such other particulars as are prescribed,

and accompanied by the prescribed documents.

(2) Any document required to be lodged with the Commission by the management company under sub-section (1) shall be signed by at least one director of the management company.

(3) A company to which sub-section (1) applies shall, if so requested by any holder of a prescribed interest to which the deed relates within a period of one month after the end of the relevant financial year, send by post or cause to be sent by post to the holder, within 2 months after the end of the relevant financial year, a copy of each of the documents that the company is required to lodge with the Commission by virtue of that sub-section (other than the list referred to in paragraph (1) (c)).

(4) Sub-section (1) does not apply to a management company that is a recognized company and has complied with the provision of the law of the participating State or participating Territory in which it was incorporated that corresponds with this section.

(5) A reference in this section to the relevant financial year shall be read as a reference—

(a) in a case to which paragraph (1) (a) applies—to the financial year referred to in that paragraph in respect of which the return is lodged;

or

(b) in a case to which paragraph (1) (b) applies—

(i) if the deed ceases to be in force at the expiration of the last day of a financial year applicable to the deed—that financial year;

or

(ii) in any other case—the period that commenced at the expiration of the last preceding financial year applicable to the deed and ended on the day on which the deed ceased to be in force.

174. (1) A person shall not—

(a) contravene or fail to comply with a provision of section 169, 170 or 171;

or

(b) fail to comply with a covenant contained or deemed to be contained in any deed that is or at any time has been an approved deed.

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

(2) A person is not relieved from any liability to any holder of a prescribed interest by reason of any contravention of, or failure to comply with, a provision of this Division.

Penalty for breach
of certain
provisions or
covenants.

175. (1) Where—

(a) the management company under a deed is in the course of being wound up;

or

(b) in the opinion of the trustee or representative, the management company has ceased to carry on business or has, to the prejudice of holders of prescribed interests to which the deed relates, failed to comply with a provision of the deed,

the trustee or representative shall convene a meeting of those holders in the manner set out in sub-section (2).

Penalty: \$2,500.

(2) A meeting under sub-section (1) shall be convened by sending by post notice of the proposed meeting at least 21 days before the proposed meeting to each holder at his last known address, or, in the case of joint holders, to the joint holder whose name appears first in the company's records.

(3) The provisions of sub-section 168 (3) apply to such a meeting as if the meeting were a meeting referred to in that sub-section.

(4) If at any such meeting a resolution is passed by a majority of not less than three-quarters in value of the holders of the prescribed interests present in person and voting at the meeting that the undertaking, scheme, enterprise, contract or arrangement to which the deed relates be wound up, the trustee or representative shall, within 28 days after the day on which the meeting is held, apply to the Court for an order confirming the resolution.

Penalty: \$2,500.

(5) On an application by the trustee or representative, the Court may, if it is satisfied that it is in the interest of the holders of the prescribed interests, confirm the resolution and may make such orders as it thinks necessary or expedient for the effective winding up of the undertaking, scheme, enterprise, contract or arrangement.

Power to exempt from compliance with Division and non-application of Division in certain circumstances.

176. (1) The Commission may, by notice published in the *Gazette*, exempt any company, subject to such terms and conditions as are specified in the notice, from complying with all or any of the provisions of this Division in relation to any prescribed interest, or class of prescribed interests, specified in the notice, and may, by notice published in the *Gazette*, revoke such a notice or vary it in such manner as it thinks fit.

(2) This Division does not apply in the case of the sale of any prescribed interest by a personal representative, liquidator, receiver or trustee in bankruptcy in the normal course of realization of property.

Liability of trustees.

177. (1) Subject to this section, a provision contained in a deed that is or has been at any time an approved deed, or in any contract with the holders of prescribed interests to which such a deed relates, is void in so far as it would have the effect of exempting a trustee or representative under the deed from, or indemnifying a trustee or representative against, liability for breach of trust where the trustee or representative fails to show the degree of care and diligence required of a trustee or representative having regard to the powers, authorities or discretions conferred on the trustee or representative by the deed.

(2) Sub-section (1) does not invalidate—

(a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee or representative before the giving of the release;

or

(b) any provisions enabling such a release to be given—

(i) on the agreement to the giving of the release of a majority of not less than three-quarters in nominal value of holders of prescribed interests present in person and voting at a meeting convened for the purpose;

and

(ii) either with respect to specific acts or omissions or on the trustee or representative ceasing to act.

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DIVISION 7—TITLE TO AND TRANSFER OF SECURITIES

DIVISION 7

178. (1) A share or other interest of a member in a company—

Nature of shares.

(a) is personal property;

(b) is transferable or transmissible as provided by the articles;

and

(c) subject to the articles, is capable of devolution by will or by operation of law.

(2) Subject to sub-section (1)—

(a) the laws applicable to ownership of and dealing with personal property apply to a share or other interest of a member in a company as they apply to other property;

and

(b) equitable interests in respect of a share or other interest of a member in a company may be created, dealt with and enforced as in the case of other personal property.

(3) For the purposes of any law, a share or other interest of a member in a company shall be taken to be situated—

(a) in a case to which paragraph (b) does not apply—in the State or Territory in which the register of members of the company is kept;

or

(b) if the name of the member is, in respect of the share or interest concerned, entered in a branch register—in the State, Territory or country other than Australia in which that branch register is kept.

179. (1) Each share in a company shall be distinguished by an appropriate number.

Numbering of shares.

(2) Notwithstanding sub-section (1)—

(a) if at any time all the issued shares in a company, or all the issued shares in a company of a particular class, are fully paid up and rank equally for all purposes, none of those shares is required to have a distinguishing number so long as each of those shares remains fully paid up and ranks equally for all purposes with all shares of the same class for the time being issued and fully paid up;

or

(b) if all the issued shares in a company are evidenced by certificates in accordance with the provisions of section 180, each certificate is distinguished by an appropriate number and that number is recorded in the register of members, none of those shares is required to have a distinguishing number.

Certificate to be evidence of title.

180. (1) A certificate issued in accordance with sub-section (2) specifying any shares held by a member of a company is *prima facie* evidence of the title of the member to the shares.

(2) Such a certificate shall be under the common seal of the company or, in the case of a share certificate relating to shares on a branch register, the common or official seal of the company and shall state—

(a) the name of the company and the authority under which the company is constituted;

(b) the class of the shares;

and

(c) the nominal value of the shares and the extent to which the shares are paid up.

(3) Failure to comply with this section does not affect the rights of a holder of shares.

(4) If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

Company may have duplicate common seal.

181. A company may, if authorized by its articles, have a duplicate common seal, which shall be a facsimile of the common seal of the company with the addition on its face of the words “Share Seal” or “Certificate Seal” and a certificate referring to or relating to securities of the company sealed with such a duplicate seal shall, for the purposes of this Code, be deemed to be sealed with the common seal of the company.

Loss or destruction of certificates.

182. (1) Subject to sub-section (2), where a certificate or other document of title to shares, debentures or prescribed interests is lost or destroyed, the company shall, on application by the owner of the shares, debentures or prescribed interests, issue a duplicate certificate or document to the owner—

(a) if the company requires the payment of an amount not exceeding the prescribed amount—within 21 days after the payment is received by the company or within such longer period as the Commission approves;

or

(b) in a case to which paragraph (a) does not apply—within 21 days after the application is made or within such longer period as the Commission approves.

(2) The application shall be accompanied by—

(a) a statement in writing that the certificate or document has been lost or destroyed, and has not been pledged, sold or otherwise disposed of, and, if lost, that proper searches have been made;

and

(b) an undertaking in writing that if it is found or received by the owner it will be returned to the company.

(3) The directors of a company may, before accepting an application for the issue of a duplicate certificate or document, require the applicant—

(a) to cause an advertisement to be inserted in a daily newspaper circulating in a place specified by the directors stating that the certificate or document has been lost or destroyed and that the owner intends, after the expiration of 14 days after the publication of the advertisement, to apply to the company for a duplicate;

or

(b) to furnish a bond for an amount equal to at least the current market value of the shares or debentures indemnifying the company against loss following the production of the original certificate or document,

or to do both those things.

183. (1) Notwithstanding anything in its articles or in a deed relating to debentures or interests, a company shall not register a transfer of shares, debentures or interests unless a proper instrument of transfer has been delivered to the company.

Instrument of
transfer.

(2) Sub-section (1) does not prejudice the power of the company to register as a shareholder, debenture holder or interest holder a person to whom the right to any shares in, debentures of, or interests made available by, the company has devolved by will or by operation of law.

(3) A transfer of shares, debentures or interests of a deceased holder made by his personal representative is, although the personal representative is not himself registered as the holder of those shares, debentures or interests, as valid as if he had been so registered at the time of the execution of the instrument of transfer.

(4) Where the personal representative of a deceased holder duly constituted as such under the law in force in another State or in a Territory,

(a) executes an instrument of transfer of a share, debenture or interest of the deceased holder to himself or to another person;

and

(b) delivers the instrument to the company, together with a statement in writing made by him to the effect that, to the best of his knowledge, information and belief, no grant of representation of the estate of the deceased holder has been applied for or made in the State and no application for such a grant will be made, being a statement made within the period of 3 months immediately preceding the date of delivery of the statement to the company,

the company shall register the transfer and pay to the personal representative any dividends or other moneys accrued in respect of the share, debenture or interest up to the time of the execution of the instrument, but this sub-section does not operate so as to require the company to do an act or thing that it would not have been required to do if the personal representative were the personal representative of the deceased holder duly constituted under the law of the State.

(5) A transfer or payment made pursuant to sub-section (4) and a receipt or acknowledgement of such a payment is, for all purposes, as valid and effectual as if the personal representative were the personal representative of the deceased holder duly constituted under the law of the State.

(6) For the purposes of this section, an application by a personal representative of a deceased person for registration as the holder of a share, debenture or interest in place of the deceased person shall be deemed to be an instrument of transfer effecting a transfer of the share, debenture or interest to the personal representative.

(7) The production to a company of a document that is, under the law of the State or under the law in force in another State or in a Territory, sufficient evidence of probate of the will, or letters of administration of the estate, of a deceased person having been granted to a person shall be accepted by the company, notwithstanding anything in its articles, or in a deed relating to debentures or interests, as sufficient evidence of the grant.

(8) In this section, "interest" includes a prescribed interest.

Registration of
transfer at request
of transferor.

184. (1) On the request in writing of the transferor of a share in, debenture of, or interest made available by, a company, the company shall enter in the appropriate register the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

(2) On the request in writing of the transferor of a share in debenture of, or interest made available by, a company, the company shall, by notice in writing, require the person having the possession, custody or control of the share certificate or debenture or any document evidencing title to the interest (as the case may be) and the instrument of transfer of the share, debenture or interest or either of them to bring it or them into the office of the company within a stated period, being not less than 7 and not more than 28 days after the date of the notice, to have the share certificate, debenture or document cancelled or rectified and the transfer registered or otherwise dealt with.

(3) If a person refuses or neglects to comply with a notice given under sub-section (2), the transferor may apply to the Court to issue a summons for that person to appear before the Court and show cause why the documents mentioned in the notice should not be delivered up or produced as required by the notice.

(4) Upon appearance of a person so summoned, the Court may examine him upon oath or affirmation and receive other evidence or, if he does not appear after being duly served with the summons, the Court may receive evidence in his absence, and, in either case, the Court may order him to deliver up such documents to the company upon such terms or conditions as to the Court seem fit, and the costs of the summons and of proceedings on the summons are in the discretion of the Court.

(5) Lists of share certificates, debentures and other documents called in under this section and not brought in shall be exhibited in the office of the

company and shall be advertised in the *Gazette* and in such newspapers and at such times as the company thinks fit.

(6) In this section, “interest” includes a prescribed interest.

185. (1) If a company refuses to register a transfer of any shares in, debentures of, or interests made available by, the company, it shall, within 2 months after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.

Notice of refusal to register transfer.

(2) In this section, “interest” includes a prescribed interest.

(3) If a company fails to comply with this section, the company and any officer of the company who is in default are each guilty of an offence.

186. (1) Where the directors of a company refuse or fail to register a transfer or transmission of any shares in, debentures of, or interest made available by, the company, the transferee or transmittee may apply to the Court for an order under this section.

Remedy for refusal to register transfer or transmission.

(2) Where the Court is satisfied that the directors have refused or failed to register the transfer or transmission without just cause, the Court may—

(a) order that the transfer or transmission be registered;

or

(b) make such other order as it thinks proper.

(3) Where the directors have refused or failed to register a transfer or transmission of shares, the orders that may be made by the Court under paragraph (2) (b) include an order providing for the purchase of the shares by a specified member of the company or by the company itself and, in the case of a purchase by the company itself, providing for the reduction accordingly of the capital of the company.

(4) In this section, “interest” includes a prescribed interest.

187. (1) The certification by a company of an instrument of transfer of shares in, debentures of, or interests made available by, the company shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show *prima facie* title to the shares, debentures or interests in the transferor named in the instrument of transfer but not as a representation that the transferor has any title to the shares, debentures or interests.

Certification of transfers.

(2) Where a person acts on the faith of a false certification by a company made negligently, the company is under the same liability to him as if the certification had been made fraudulently.

(3) Where a certification is expressed to be limited to 42 days or any longer period from the date of certification, the company and its officers are not, in the absence of fraud, liable in respect of the registration of any transfer of shares, debentures or interests comprised in the certification after the expiration of the period so limited or any extension of that period given by the company if the instrument of transfer has not, within that period, been lodged with the company for registration.

(4) For the purposes of this section—

(a) an instrument of transfer shall be deemed to be certificated if it bears the words “certificate lodged” or words to the like effect;

(b) the certification of an instrument of transfer shall be deemed to be made by a company if—

(i) the person issuing the instrument is a person authorized to issue certificated instruments of transfer on the company's behalf;

and

(ii) the certification is signed by a person authorized to certify transfers on the company's behalf or by an officer of the company or of a corporation so authorized;

and

(c) a certification that purports to be authenticated by a person's signature or initials (whether handwritten or not) shall be deemed to be signed by him unless it is shown that the signature or initials was not or were not placed there by him and was not or were not placed there by any other person authorized to use the signature or initials for the purpose of certifying transfers on the company's behalf.

(5) In this section, "interest" includes a prescribed interest

Duties of
company with
respect to issue of
certificates.

188. (1) Within 2 months after the allotment of any shares in, the issue of debentures of, or the making available of interests by, a company, the company shall—

(a) complete and have ready for delivery to the allottee, debenture holder or interest holder, as the case may be, (in this subsection referred to as the "relevant person"), all the appropriate certificates, debentures or other documents in connection with the allotment of the shares, the issue of the debentures or the making available of the interests unless, in the case of shares, the conditions of the allotment otherwise provide;

and

(b) unless otherwise instructed by the relevant person, send or deliver the completed certificates, debentures or other documents to the relevant person or, where the relevant person has instructed the company in writing to send them to a nominated person, to that person.

(2) Within one month after the date on which a transfer of any shares, debentures or interests is lodged with a company (other than a transfer that the company is for any reason entitled to refuse to register and does not register) the company shall—

(a) complete and have ready for delivery to the transferee all the appropriate certificates, debentures or other documents in connection with the transfer;

and

(b) unless otherwise instructed by the relevant person, send or deliver the completed certificates, debentures or other documents to the relevant person or, where the relevant person has instructed the company in writing to send them to a nominated person, to that person.

(3) If a company fails to comply with this section, the company and any officer of the company who is in default are each guilty of an offence.

(4) If a company on which a notice has been served requiring the company to make good any default in complying with the provisions of this section fails to make good the default within 10 days after the service of the notice, the Court may, on the application of the person entitled to have the certificates, debentures or other documents delivered to him, make an order directing the company and any officer of the company to make good the default within such time as is specified in the order, and the order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company in default in such proportions as the Court thinks fit.

(5) In this section, "interest" includes a prescribed interest.

DIVISION 8—TRANSFER OF MARKETABLE SECURITIES

DIVISION 8

189. (1) In this Division, unless the contrary intention appears—

Interpretation.

"beneficial owner", in relation to a marketable security or a right to a marketable security, means a person for whom an authorized trustee corporation is (whether alone or together with another person or other persons) holding the security or right in trust in the ordinary course of its business;

"broker" means a member of a prescribed stock exchange;

"broker's agent" means an agent or employee of a broker;

"corresponding law" means—

(a) the provisions of a law of a participating State or of a participating Territory that correspond with this Division;

or

(b) any law of a State or Territory in respect of which a declaration under sub-section (2) is in force,

and includes regulations in force under a law referred to in paragraph (a) or (b);

"legal representative" means the executor, original or by representation, of a will, or administrator of the estate, of a deceased person;

"marketable security" means—

(a) a share in or a debenture of a company or prescribed corporation;

or

(b) a prescribed security;

"prescribed corporation" means—

(a) a body corporate incorporated in the State, not being a company;

or

- (b) an unincorporated society, association or other body, formed or established in the State, that has been admitted to the official list of a prescribed stock exchange and has not been removed from that official list,

that is, by reason of section 16 (2) of the Companies (Application of Laws) Act, 1982, a prescribed corporation;

“prescribed security” means a prescribed interest that is under the regulations a prescribed security or that is one of a class of such interests that are under the regulations prescribed securities;

“prescribed stock exchange” means a stock exchange that is a member of the Australian Associated Stock Exchanges;

“right to a marketable security” means a right, whether existing or future, and whether contingent or not, of a person to have issued to him a marketable security, whether or not on payment of any money or for any other consideration;

“transfer”, in relation to a right to a marketable security, means the renunciation and transfer of that right.

(2) The Commission may, by notice published in the *Gazette*, declare a law in force in a State or Territory that is not a participating State or a participating Territory, being a law the provisions of which correspond substantially with the provisions of this Division, to be a corresponding law and may, by notice so published, revoke a declaration made under this subsection.

(3) A reference in this Division to a form by number is a reference to the form so numbered in Schedule 4 or to a form to the like effect.

(4) A reference in a form in Schedule 4 to the full name of the transferor of marketable securities or rights to marketable securities includes a reference to the name of the person shown in the records of the company or prescribed corporation that issued those securities or rights as the holder of those securities or rights.

(5) A reference in this division other than section 198 to the stamping of an instrument is a reference to stamping in ink, and a reference to a stamp on an instrument, or a stamp borne by an instrument, is a reference to a stamp stamped on the document in ink.

(6) A reference in section 198 to the stamping of an instrument is a reference to stamping the instrument—

- (a) in ink;
 - (b) by affixing a stamp;
 - (c) by impressing a stamp;
- or
- (d) in any other manner.

190. A document that is a sufficient instrument of transfer under this Division may be used—

- (a) where it relates to a transfer of marketable securities, as a proper instrument of transfer for the purposes of section 183 and as an instrument of transfer for the purposes of any other law or instrument governing or relating to those securities;

and

- (b) where it relates to a transfer of rights to marketable securities, as an instrument of transfer of those rights for the purposes of any law or instrument governing or relating to those rights or securities.

191. (1) A document is a sufficient instrument of transfer of marketable securities if—

Transfer of marketable securities.

- (a) it is an instrument relating to those marketable securities duly completed in accordance with or to the effect of—

- (i) Form 1;
 - (ii) Part 1 of Form 1 and Parts 1 and 2 of Form 2;
- or
- (iii) Part 1 of Form 1 and Parts 1 and 2 of Form 3;

and

- (b) where the document relates to marketable securities on which there is an uncalled liability (not being marketable securities that are partly paid shares in a no liability company)—the transferee's acceptance of the marketable securities duly completed in accordance with or to the effect of Form 4 is included in or attached to the instrument referred to in paragraph (a).

(2) A document is a sufficient instrument of transfer of rights to marketable securities if—

- (a) it is an instrument relating to those rights duly completed in accordance with or to the effect of—

- (i) Form 5;
 - (ii) Part 1 of Form 5 and Parts 1 and 2 of Form 6;
- or
- (iii) Part 1 of Form 5 and Parts 1 and 2 of Form 7;

and

- (b) where the document relates to rights to marketable securities (not being marketable securities that are shares in a no liability company) for which the whole of the moneys to be subscribed is not payable in full on application being made for them—the transferee's acceptance of the marketable securities duly completed in accordance with or to the effect of Form 4 is included in or attached to the instrument referred to in paragraph (a).

(3) For the purposes of this section, an instrument is not duly completed in accordance with or to the effect of Form 1, 2, 3, 5, 6 or 7 or a part of one of those forms unless—

- (a) where the form or part refers to the name and address of the transferee—the instrument purports to state that name and address;
- (b) where the form or part refers to the stamp of the transferor's broker—the instrument bears a stamp that purports to be such a stamp;

(c) where the form or part refers to the stamp of the transferee's broker—the instrument bears a stamp that purports to be such a stamp;

and

(d) where the form or part refers to a stock exchange stamp—the instrument bears a stamp that purports to be a stamp of a prescribed stock exchange or of a prescribed stock exchange under a corresponding law.

Transfers by
authorized trustee
corporations.

192. (1) In respect of the transfer of marketable securities by an authorized trustee corporation, or by an authorized trustee corporation and another person or other persons, to the beneficial owner of those marketable securities, being a transfer that is not made by way of a sale, gift or exchange of the marketable securities, a document is a sufficient instrument of transfer if—

(a) it is an instrument relating to those marketable securities duly completed in accordance with or to the effect of Form 8;

and

(b) where the document relates to marketable securities on which there is an uncalled liability (not being marketable securities that are partly paid shares in a no liability company)—the transferee's acceptance of the marketable securities duly completed in accordance with or to the effect of Form 9 is included in or attached to the instrument referred to in paragraph (a).

(2) In respect of the transfer of rights to marketable securities by an authorized trustee corporation, or by an authorized trustee corporation and another person or other persons, in favour of the beneficial owner of those rights, being a transfer that is not made by way of a sale, gift or exchange of the rights, a document is a sufficient instrument of transfer if—

(a) it is an instrument relating to those rights duly completed in accordance with or to the effect of Form 10;

and

(b) where those rights are rights to marketable securities (not being marketable securities that are shares in a no liability company) for which the whole of the moneys to be subscribed is not payable in full on application being made for them—the transferee's acceptance of the marketable securities to which those rights relate duly completed in accordance with or to the effect of Form 11 is included in or attached to the instrument referred to in paragraph (a).

Execution of
transfer by
transferee.

193. (1) Where marketable securities in a company or prescribed corporation are transferred by means of a sufficient instrument of transfer under this Division, the transferee shall be deemed to have agreed at the relevant time to accept the marketable securities subject to the several terms and conditions on which the transferor held them at the time, being the terms and conditions applicable as between the company or prescribed corporation and the holder for the time being of the marketable securities.

(2) Where rights to marketable securities in a company or prescribed corporation for which the whole of the moneys to be subscribed is payable in full on application being made for them are transferred by means of a

sufficient instrument of transfer under this Division, the transferee shall be deemed—

- (a) to have made application at the relevant time to the company or prescribed corporation for the allotment to him of the marketable securities;

and

- (b) to have agreed at the relevant time to accept the marketable securities subject to the terms and conditions upon which they are offered by the company or prescribed corporation for subscription.

(3) Where marketable securities that are shares in a company or prescribed corporation are transferred by means of a sufficient instrument of transfer under this Division, the transferee shall be deemed to have agreed at the relevant time—

- (a) to become a member of the company or prescribed corporation;

and

- (b) to be bound by the memorandum and articles or by the constituent documents of the company or prescribed corporation.

(4) In this section, the “relevant time” means—

- (a) in relation to a sufficient instrument of transfer under section 191—the time of the stamping of the instrument with a stamp purporting to be that of the transferee’s broker;

and

- (b) in relation to an instrument that is a sufficient instrument of transfer under section 192—the time of execution by the transferor.

194. (1) Where a duly completed instrument of transfer bears a stamp that purports to be that of the transferor’s broker or of a prescribed stock exchange and to have been stamped in the State, the broker (not being a broker’s agent) of whom or stock exchange of which that stamp purports to be the stamp and, if the stamp purports to be that of the transferor’s broker (whether or not he is a broker’s agent), any associate of that broker—

Effect of certain stamps on prescribed instruments.

- (a) shall be deemed to have warranted the accuracy of the statements in the certificate of the broker or of the stock exchange, as the case may be, set out in the instrument;

- (b) shall be deemed to have warranted that the transferor is the registered holder of, or is entitled to be registered as the holder of, the marketable securities to which the instrument relates or is entitled to the rights to marketable securities to which the instrument relates and is legally entitled or authorized to sell or dispose of those marketable securities or rights;

and

(c) is liable to indemnify—

- (i) the company, prescribed corporation, foreign company, or prescribed corporation under a corresponding law, that has issued or proposes to issue the marketable

securities or rights to marketable securities to which the instrument relates;

- (ii) the transferee;
- and
- (iii) the transferee's broker,

against any loss or damage arising from a forged or unauthorized signature of the transferor appearing in the instrument.

(2) Without limiting the operation of sub-section (1), where—

- (a) a duly completed instrument of transfer bears a stamp that purports to be that of the transferor's broker and to have been stamped in the State;

and

- (b) the instrument relates to marketable securities or rights to marketable securities to which or to any of which another duly completed instrument of transfer relates, being another instrument that bears a stamp that purports to be that of a prescribed stock exchange,

the broker (not being a broker's agent) whose stamp that first-mentioned stamp purports to be and (whether or not that broker is a broker's agent) any associate of that broker are jointly and severally liable to indemnify that stock exchange against any loss or damage arising from a forged or unauthorized signature of the transferor appearing in the instrument.

(3) In this section—

- (a) a reference to a duly completed instrument of transfer is a reference to an instrument—

- (i) that is in accordance with or to the effect of Part 1 of Form 1, 2, 3, 5, 6 or 7 and that has been duly completed within the meaning of section 191;

or

- (ii) that is in accordance with or to the effect of a like part of a like form under a corresponding law and that has been duly completed within the meaning of the provision of that corresponding law that corresponds with section 191;

and

- (b) a reference to an associate of a broker is a reference—

- (i) where the broker whose stamp the stamp on the instrument purports to be is a member of a firm of brokers and is not a broker's agent—to each other member of that firm;

and

- (ii) where the broker whose stamp the stamp on the instrument purports to be is a broker's agent—to the broker for whom he is a broker's agent and, if the broker for whom he is a broker's agent is a member of a firm of brokers, to each other member of that firm.

(4) In this section—

“marketable security”, in relation to a duly completed instrument of transfer under a corresponding law; means a marketable security within the meaning of the corresponding law;

“right to a marketable security”, in relation to a duly completed instrument of transfer under a corresponding law, means a right to a marketable security within the meaning of the corresponding law.

195. (1) A company or prescribed corporation with which an instrument that is a sufficient instrument of transfer under section 191 is lodged for the purpose of registering a transfer of marketable securities or obtaining the allotment or issue of marketable securities is, and its officers are, in the absence of knowledge to the contrary, entitled to assume without inquiry that—

Registration of prescribed instruments.

(a) a stamp on the instrument that purports to be the stamp of the transferee’s broker is the stamp of that broker;

(b) a stamp on the instrument that purports to be the stamp of the transferor’s broker is the stamp of that broker;

and

(c) a stamp on the instrument that purports to be the stamp of a prescribed stock exchange is the stamp of that stock exchange.

(2) A company or prescribed corporation with which an instrument that is a sufficient instrument of transfer under section 192 is lodged for the purpose of registering a transfer of marketable securities or obtaining the allotment or issue of marketable securities is, and its officers are, in the absence of knowledge to the contrary, entitled to assume without inquiry that—

(a) at the time of the execution of the instrument, the authorized trustee corporation named in the instrument was (whether alone or together with another person or other persons) holding the marketable securities or the rights to the marketable securities in the ordinary course of its business in trust for or on behalf of the transferee;

and

(b) the transfer was not made by way of a sale, gift or exchange of the marketable securities or rights.

196. (1) This Division applies and has effect in relation to the transfer of marketable securities and to the transfer of rights to marketable securities notwithstanding anything to the contrary in this Code other than this Division or in another law or instrument relating to the transfer of the securities or the transfer of the rights.

Operation of Division.

(2) Except as provided by this Division, this Division does not affect the terms and conditions on which marketable securities or rights to marketable securities are sold.

(3) Nothing in this Division affects any right of a company or prescribed corporation to refuse to acknowledge or register a person as the holder of marketable securities or to allot or issue marketable securities to a person on a ground other than an objection to the form of instrument lodged with the company or prescribed corporation purporting to transfer the marketable securities or rights to the marketable securities to him.

(4) The registration of a transfer of a marketable security, or the allotment or issue of a marketable security, by means of an instrument that is a sufficient instrument of transfer under this Division does not constitute a breach of any law, memorandum, articles, trust deed or other instrument relating to marketable securities.

(5) This Division does not prevent or affect the use of any other form of transfer of marketable securities or form of transfer of rights to marketable securities, or mode of execution of an instrument of transfer of marketable securities or mode of execution of an instrument of transfer of rights to marketable securities, that is otherwise permitted by law.

(6) A transfer of marketable securities or of rights to marketable securities by or to a trustee or legal representative may, notwithstanding any law or the provisions of the instrument (if any) creating or having effect in relation to the trust or will under which he is appointed trustee or legal representative, be effected by means of an instrument that is a sufficient instrument of transfer under this Division.

Occupation need
not appear in
register,
instrument, &c.

197. (1) The omission from a register, certificate or other document relating to marketable securities of a statement of the occupation of the person who is, or is entitled to be, registered as the holder of the marketable securities does not constitute a breach of any law, memorandum, articles, trust deed or other instrument relating to the marketable securities.

(2) Notwithstanding anything contained in the memorandum or articles of a company or the constituent documents of a prescribed corporation or in the terms or conditions upon which marketable securities or rights to marketable securities in a company or prescribed corporation are created or issued, it is not necessary in an instrument of transfer of marketable securities or of rights to marketable securities to state the occupation of the transferee or transferor or to have the signature of the transferee or transferor witnessed.

Offences.

198. (1) A broker shall not, in the State, stamp with a broker's stamp an instrument that may be used as a sufficient instrument of transfer under this Division or under a corresponding law unless the instrument relates to a sale or purchase made in the ordinary course of business of the broker for a consideration of not less than the unencumbered market value (at the time of the sale or purchase) of the marketable securities or rights to marketable securities to which the instrument relates.

(2) A prescribed stock exchange shall not, in the State, stamp with a stamp of the stock exchange an instrument that may be used as a sufficient instrument of transfer of marketable securities or of rights to marketable securities under this Division or under a corresponding law unless—

(a) there has been lodged;

or

(b) the stock exchange holds a duly completed instrument of transfer bearing a certificate that purports to be that of the transferor's broker that there has been or will be lodged,

with the company or prescribed corporation that has issued or proposes to issue the marketable securities or rights to marketable securities a duly completed instrument of transfer relating to those marketable securities or rights.

(3) A person shall not, in the State, execute an instrument that may be used as a sufficient instrument of transfer under section 192 or under a like provision of a corresponding law if the instrument relates to a transfer of marketable securities or of rights to marketable securities—

(a) made by way of a sale, gift or exchange of the marketable securities or rights;

or

(b) to or in favour of a person who is not the beneficial owner of the marketable securities or rights.

(4) A person other than an authorized trustee corporation shall not, in the State, knowingly cause, authorize or permit to be executed an instrument that may be used as a sufficient instrument of transfer under section 192 or under a like provision of a corresponding law if it is not a sufficient instrument of transfer within the meaning of that section or provision, as the case may be.

(5) A person shall not knowingly lodge or cause to be lodged with a company or prescribed corporation an instrument that has been stamped in contravention of sub-section (1) or (2), or an instrument that has been executed in contravention of sub-section (3), for the purpose of securing the registration of the transfer of marketable securities or the allotment or issue of marketable securities to the transferee named in the instrument.

(6) An expression in this section that is used in a corresponding law has, in relation to a reference in this section to an instrument that is a sufficient instrument of transfer under that corresponding law, the same meaning as it has under that corresponding law.

(7) A reference in this section to a duly completed instrument of transfer is a reference to an instrument—

(a) that is in accordance with or to the effect of Part 1 of Form 1, 2, 3, 5, 6 or 7 and has been duly completed within the meaning of section 191;

or

(b) that is in accordance with or to the effect of a like part of a like form under a corresponding law and has been duly completed within the meaning of the provision of that law that corresponds with section 191.

Penalty: \$2,500 or imprisonment for 6 months, or both.

DIVISION 9—REGISTRATION OF CHARGES

DIVISION 9

199. (1) In this Division and in Schedule 5, unless the contrary intention appears—

Interpretation and
application of
Division.

“document of title” means a document—

(a) used in the ordinary course of business as proof of possession or control, or of the right to possession or control, of property other than land;

or

(b) authorizing or purporting to authorize, whether by endorsement or delivery, the possessor of the document to transfer or receive property other than land,

and includes—

(c) a bill of lading;

(d) a warehousekeeper's certificate;

(e) a warfinger's certificate;

(f) a warrant or order for the delivery of goods;

and

(g) a document that is, or evidences title to, a marketable security;

“present liability”, in relation to a charge, means a liability that has arisen, being a liability the extent or amount of which is fixed or capable of being ascertained, whether or not the liability is immediately due to be met;

“prospective liability”, in relation to a charge, means any liability that may arise in the future, or any other liability, but does not include a present liability;

“Register” means the Register of Company Charges referred to in section 203;

“registrable charge” means a charge to and in relation to which, by virtue of section 200, the provisions of this Division mentioned in sub-section 200 (1) apply.

(2) In this Division and in Schedule 5, unless the contrary intention appears, a reference to property of a company includes a reference to property held by the company as trustee.

(3) A charge referred to in sub-section 201 (3) or (4) or section 202 shall, until the charge is registered, be treated for the purposes of this Division and Schedule 5 as if it were not a registrable charge but, when the charge is so registered, it has the priority accorded to a registered charge as from the time of registration.

(4) The registration of a charge referred to in sub-section 201 (3) or (4) or section 202 does not prejudice any priority that would have been accorded to the charge under any other law if the charge had not been registered.

(5) For the purposes of this Division and of Schedule 5, a notice or other document shall be taken to be lodged with the Commission when it is received at the office of the State Commission by an officer authorized to receive it.

(6) A reference in this Division and in Schedule 5 to a company includes a reference to a registered foreign company.

(7) A reference in this Division and in Schedule 5 to a charge on property of a company shall, in the case of a company other than a foreign company, be construed as a reference to a charge on property of the company, whether within or outside Australia.

(8) A reference in this Division and in Schedule 5 to a charge on property of a company shall, in the case of a foreign company formed within Australia, be construed as a reference to a charge on property in the State of the foreign company.

(9) A reference in this Division and in Schedule 5 to a charge on property of a company shall, in the case of a foreign company formed outside Australia, be construed as a reference to a charge on property in Australia of the foreign company.

(10) For the purposes of this section, "Australia" includes the external Territories.

200. (1) Subject to this section, the provisions of this Division relating to the giving of notice in relation to, the registration of, and the priorities of, charges apply to and in relation to the following charges (whether legal or equitable) on property of a company and do not apply to or in relation to any other charges:

Charges required to be registered.

- (a) a floating charge on the whole or a part of the property, business or undertaking of the company;
- (b) a charge on uncalled share capital or uncalled share premiums;
- (c) a charge on a call, whether in respect of share capital or share premiums, made but not paid;
- (d) a charge on a personal chattel, including a personal chattel that is unascertained or is to be acquired in the future, but not including a ship registered in an official register kept under a law in force in the State relating to title to ships;
- (e) a charge on goodwill, on a patent or licence under a patent, on a trade mark or service mark or a licence to use a trade mark or service mark, on a copyright or a licence under a copyright or on a registered design or a licence to use a registered design;
- (f) a charge on a book debt;
- (g) a charge on a marketable security, not being—
 - (i) a charge created in whole or in part by the deposit of a document of title to the marketable security;
 or
 - (ii) a mortgage under which the marketable security is registered in the name of the chargee or a person nominated by him;
- (h) a lien or charge on a crop, a lien or charge on wool or a stock mortgage;
- (j) a charge on a negotiable instrument other than a marketable security.

(2) The provisions of this Division mentioned in sub-section (1) do not apply to or in relation to—

- (a) a charge, or a lien over property, arising by operation of law;

- (b) a pledge of a personal chattel or of a marketable security;
 - (c) a charge created in relation to a negotiable instrument or a document of title to goods, being a charge by way of pledge, deposit, letter of hypothecation or trust receipt;
 - (d) a transfer of goods in the ordinary course of the practice of any profession or the carrying on of any trade or business;
- or
- (e) a dealing, in the ordinary course of the practice of any profession or the carrying on of any trade or business, in respect of goods outside Australia.

(3) The reference in paragraph (1) (d) to a charge on a personal chattel is a reference to a charge on any article capable of complete transfer by delivery, whether at the time of the creation of the charge or at some later time, and includes a reference to a charge on a fixture or a growing crop that is charged separately from the land to which it is affixed or on which it is growing, but does not include a reference to a charge on—

- (a) a document evidencing title to land;
- (b) a chattel interest in land;
- (c) a marketable security;
- (d) a document evidencing a thing in action;

or

- (e) stock or produce on a farm or land that by virtue of a covenant or agreement ought not to be removed from the farm or land where the stock or produce is at the time of the creation of the charge.

(4) The reference in paragraph (1) (f) to a charge on a book debt is a reference to a charge on a debt due or to become due to the company at some future time on account of or in connection with a profession, trade or business carried on by the company, whether entered in a book or not, and includes a reference to a charge on a future debt of the same nature although not incurred or owing at the time of the creation of the charge, but does not include a reference to a charge on a marketable security, on a negotiable instrument or on a debt owing in respect of a mortgage, charge or lease of land.

(5) For the purposes of this section, a company shall be deemed to have deposited a document of title to property with another person (in this sub-section referred to as the “chargee”) in a case where the document of title is not in the possession of the company if—

- (a) the person who holds the document of title acknowledges in writing that he holds the document of title on behalf of the chargee;

or

- (b) a government, an authority or a corporation that proposes to issue a document of title in relation to the property agrees, in writing, to deliver the document of title, when issued, to the chargee.

(6) For the purposes of this section, a charge shall be taken to be a charge on property of a kind to which a particular paragraph of sub-section

(1) applies notwithstanding that the instrument of charge also charges other property of the company including other property that is of a kind to which none of the paragraphs of that sub-section applies.

(7) The provisions of this Division mentioned in sub-section (1) do not apply to or in relation to a charge on land.

(8) The provisions of this Division mentioned in sub-section (1) do not apply to or in relation to a charge on fixtures given by a charge on the land to which they are affixed.

(9) The provisions of this Division mentioned in sub-section (1) do not apply to or in relation to a charge created by a company in its capacity as legal personal representative of a deceased person or as trustee of the estate of a deceased person.

(10) A charge on property of a company is not invalid by reason only of the failure to lodge with the Commission or give to the company or another person a notice or other document that is required by this Division to be so lodged or given.

201. (1) Where a company creates a charge, the company shall ensure that there is lodged with the Commission, within 45 days after the creation of the charge—

Lodgment of
notice of charge
and copy of
instrument.

- (a) a notice in the prescribed form setting out the following particulars:
 - (i) the name of the company and the date of the creation of the charge;
 - (ii) whether the charge is a fixed charge, a floating charge or both a fixed and floating charge;
 - (iii) if the charge is a floating charge—whether there is any provision in the resolution or instrument creating or evidencing the charge that prohibits or restricts the creation of subsequent charges;
 - (iv) a short description of the liability (whether present or prospective) secured by the charge;
 - (v) a short description of the property charged;
 - (vi) whether the charge is created or evidenced by a resolution, by an instrument or by a deposit or other conduct;
 - (vii) if the charge is constituted by the issue of a debenture or debentures—the name of the trustee (if any) for debenture holders;
 - (viii) if the charge is not constituted by the issue of a debenture or debentures or there is no trustee for debenture holders—the name of the chargee;
 - (ix) such other information as is prescribed;
- (b) if, pursuant to a resolution or resolutions passed by the company, the company issues a series of debentures constituting a charge to the benefit of which all the holders of debentures in the series are entitled in equal priority, and the charge is evidenced only by the resolution or resolutions and the debentures—a copy of the resolution or of each of the resolutions verified by a statement in writing to be a true copy, and a copy of the

first debenture issued in the series and a statement in writing verifying the execution of that first debenture;

and

(c) if, in a case to which paragraph (b) does not apply, the charge was created or evidenced by an instrument or instruments—

(i) the instrument or each of the instruments;

or

(ii) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy, and a statement in writing verifying the execution of the instrument or of each of the instruments.

(2) In a case to which paragraph (1) (b) applies—

(a) the charge shall, for the purposes of sub-section (1), be deemed to be created when the first debenture in the series of debentures is issued;

and

(b) if, after the issue of the first debenture in the series, the company passes a further resolution authorizing the issue of debentures in the series, the company shall ensure that a copy of that resolution, verified by a statement in writing to be a true copy of that resolution, is lodged with the Commission within 45 days after the passing of that resolution.

(3) A foreign company that applies for registration as a company under Division 4 of Part III shall lodge with the application for registration the documents specified in sub-section (5) in relation to any charge on property of the foreign company that would be registrable under this Division if the foreign company were a company as defined in sub-section 5 (1).

(4) A foreign company that applies for registration under Division 5 of Part XIII shall lodge with the application for registration the documents specified in sub-section (5) in relation to any charge on property of the foreign company that would be registrable under this Division if the foreign company were a registered foreign company.

(5) The documents required to be lodged under sub-section (3) or (4) in relation to a charge on property of a foreign company are the following documents:

(a) a notice in the prescribed form—

(i) setting out the name of the foreign company;

(ii) if the charge was created by the foreign company—specifying the date of the creation of the charge;

(iii) if the charge was a charge existing on property acquired by the foreign company—setting out the date on which the property was so acquired;

and

(iv) otherwise complying with the requirements of paragraph (1) (a);

(b) if the charge was created or evidenced as mentioned in paragraph

(1) (b)—

(i) in the case of a charge created by the foreign company—
a copy of the resolution or of each of the resolutions referred to in that paragraph verified by a statement in writing to be a true copy and a copy of the first debenture issued in the series referred to in that paragraph and a statement in writing verifying the execution of that first debenture;

or

(ii) in the case of a charge that existed on property acquired by the foreign company—the copies referred to in sub-paragraph (i) verified by statements in writing to be true copies;

(c) if the charge was created or evidenced by an instrument or instruments (otherwise than as mentioned in paragraph (1) (b))—

(i) in the case of a charge created by the foreign company—

(A) the instrument or each of the instruments;

or

(B) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy, and a statement in writing verifying the execution of the instrument or of each of the instruments;

or

(ii) in the case of a charge that existed on property acquired by the foreign company—a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy;

and

(d) if the charge was created or evidenced as mentioned in paragraph (1) (b) and, after the issue of the first debenture in the series, the company passed a further resolution or resolutions authorizing the issue of debentures in the series—a copy of that resolution or of each of those resolutions verified by a statement in writing to be a true copy.

(6) A notice in relation to a charge, being a charge in relation to which paragraph (1) (b) or (c) or (5) (b) or (c) applies, shall not be taken to have been lodged with the Commission under sub-section (1), (3) or (4) unless the notice is accompanied by the documents specified in that paragraph.

(7) Where a notice with respect to an instrument creating a charge has been lodged under sub-section (1), (3) or (4), being a charge in respect of an issue of several debentures the holders of which are entitled under the instrument in equal priority to the benefit of the charge, section 204 and Schedule 5 have effect as if any charges constituted by those debentures were registered at the time when the charge to which the notice relates was registered.

(8) Where a payment or discount has been made or allowed, either directly or indirectly, by a company to a person in consideration of his

subscribing or agreeing to subscribe, whether absolutely or conditionally, for debentures, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for debentures, the notice required to be lodged under subsection (1), (3) or (4) shall include particulars as to the amount or rate per centum of the payment or discount.

(9) Where a company issues debentures as security for a debt of the company, the company shall not thereby be regarded as having allowed a discount in respect of the debentures.

Acquisition of
property subject
to charge.

202. (1) Where a company acquires property that is subject to a charge, being a charge that would have been registrable when it was created if it had been created by a company, the company shall, within 45 days after the acquisition of the property—

(a) ensure that there is lodged with the Commission—

(i) a notice in the prescribed form in relation to the charge, setting out the name of the company and the date on which the property was so acquired and otherwise complying with the requirements of paragraph 201 (1) (a);

(ii) if the charge was created or evidenced as mentioned in paragraph 201 (1) (b)—a copy of the resolution or of each of the resolutions referred to in that paragraph verified by a statement in writing to be a true copy and a copy of the first debenture issued in the series referred to in that paragraph verified by a statement in writing to be a true copy;

and

(iii) if the charge was created or evidenced by an instrument or instruments (otherwise than as mentioned in paragraph 201 (1) (b))—

(A) the instrument or each of the instruments;

or

(B) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy;

and

(b) give to the chargee notice that it has acquired the property and the date on which it was so acquired.

(2) A notice in relation to a charge, being a charge in relation to which sub-paragraph (1) (a) (ii) or (iii) applies, shall not be taken to have been lodged with the Commission under sub-section (1) unless it is accompanied by the documents specified in that sub-paragraph.

Registration of
documents
relating to
charges.

203. (1) The Commission shall keep a register to be known as the Register of Company Charges.

(2) Where a notice in respect of a charge on property of a company that is required by section 201 or 202 to be lodged with the Commission is lodged with the Commission (whether during or after the period within which the notice was required to be lodged) and the notice contains all the particulars required by the relevant section to be included in the notice, the

Commission shall forthwith cause to be entered in the Register the time and date when the notice was so lodged with the Commission and the following particulars in relation to the charge:

- (a) if the charge is a charge created by the company, the date of its creation or, if the charge was a charge existing on property acquired by the company, the date on which the property was so acquired;
- (b) a short description of the liability (whether present or prospective) secured by the charge;
- (c) a short description of the property charged;
- (d) the name of the trustee for debenture holders or, if there is no such trustee, the name of the chargee.

(3) Subject to sub-section (9), where particulars in respect of a charge are entered in the Register in accordance with sub-section (2), the charge shall be deemed to be registered, and to have been registered from and including the time and date entered in the Register under that sub-section.

(4) Where a notice in respect of a charge on property of a company is lodged with the Commission under section 201 or 202 (whether during or after the period within which the notice was required to be lodged) and a document that accompanies that notice has not been duly stamped as required by any applicable law relating to stamp duty, the Commission shall cause to be entered in the Register the time and date when the notice was lodged and the particulars referred to in paragraphs (2) (a), (b), (c) and (d), but shall cause the word “provisional” to be entered in the Register next to the entry specifying that time and date.

(5) Where—

- (a) in accordance with sub-section (4), the word “provisional” is entered in the Register next to an entry specifying the time and date on which a notice in respect of a charge was lodged;

and

- (b) within a period of 30 days after the notice was lodged, or within such further period as the Commission, if it considers it to be appropriate in a particular case, allows, evidence satisfactory to the Commission that the document has been duly stamped has been produced to the Commission,

the Commission shall delete the word “provisional” from the entry in the Register relating to that charge, but if such evidence is not produced within the period, or the further period, referred to in paragraph (b), the Commission shall delete from the Register all the particulars that were entered in relation to the charge.

(6) Where a document that purports to be a notice in respect of a charge on property of a company for the purposes of section 201 or 202 is lodged with the Commission (whether during or after the period within which the notice was required to be lodged) and the document contains the name of the company concerned and the particulars referred to in subparagraph 201 (1) (a) (vii) or (viii), as the case requires, but does not contain some or all of the other particulars that are required to be included in the notice or is otherwise defective—

- (a) the Commission shall cause to be entered in the Register the time and date when the document was so lodged with the Commission and such of the particulars referred to in paragraphs (2) (a), (b), (c) and (d) as are ascertainable from the document, but shall cause the word “provisional” to be entered in the Register next to the entry specifying that time and date;
- and
- (b) the Commission shall, by notice in writing to the person who lodged the document, direct the person to ensure that there is lodged with the Commission, on or before the date specified in the notice, a notice in relation to the charge that complies with the requirements of section 201 or 202, as the case may be, but the giving by the Commission of a direction to the person under this paragraph does not affect any liability that the company may have incurred or may incur by reason of a contravention of section 201 or 202.
- (7) Where the Commission gives a direction to a person under paragraph (6) (b) in relation to a charge—
- (a) if the direction is complied with on or before the date specified in the notice containing the direction, the Commission shall—
- (i) delete from the Register the word “provisional” that was inserted pursuant to paragraph (6) (a);
- and
- (ii) cause to be entered in the Register in relation to the charge any particulars referred to in sub-section (2) that have not previously been entered;
- (b) if the direction is not complied with on or before that date—the Commission shall delete from the Register all the particulars that were entered in relation to the charge;
- and
- (c) if the direction is complied with after that date—the Commission shall cause to be entered in the Register in relation to the charge the time at which and date on which the direction was complied with and the particulars referred to in paragraphs (2) (a), (b), (c) and (d).
- (8) The Commission may enter in the Register in relation to a charge, in addition to the particulars expressly required by this section to be entered, such other particulars as the Commission thinks fit.
- (9) If the word “provisional” is entered in the Register next to an entry specifying a time and date in relation to a charge, the charge shall be deemed not to have been registered but—
- (a) where the word “provisional” is deleted from the Register pursuant to sub-section (5) or paragraph (7) (a)—the charge shall be deemed to be registered and to have been registered from and including the time and date specified in the Register pursuant to sub-section (4) or paragraph (6) (a), as the case may be;
- or
- (b) where the particulars in relation to the charge are deleted from the Register pursuant to paragraph (7) (b) and those particulars

and a time and date are subsequently entered in the Register in relation to the charge pursuant to paragraph (7) (c)—the charge shall be deemed to be registered from and including that last-mentioned time and date.

(10) Where, pursuant to sub-section 201 (3) or (4), a foreign company lodges with the Commission notices relating to 2 or more charges on the same property of the foreign company, the time and date that shall be entered in the Register in relation to each of those charges are the time and date when the first notice was lodged with the Commission.

(11) Where, in accordance with sub-section (10), the time and date that are entered in the Register are the same in relation to 2 or more charges on property of a foreign company, those charges shall, as between themselves, have the respective priorities that they would have had if they had not been registered under this Division.

(12) Where, pursuant to section 202, a company lodges with the Commission notices relating to 2 or more charges on the same property acquired by the company (being charges that are not already registered under this Division), the time and date that shall be entered in the Register in relation to each of those charges are the time and date when the first notice was lodged with the Commission.

(13) Where, in accordance with sub-section 12, the time and date that are entered in the Register are the same in relation to 2 or more charges on property acquired by a company, those charges shall, as between themselves, have the respective priorities that they would have had if they had not been registered under this Division.

(14) Where a notice is lodged with the Commission under section 206 (whether during or after the period within which it was required to be lodged), the Commission shall forthwith cause to be entered in the Register the time and date when the notice was so lodged with the Commission and the particulars set out in the notice.

204. (1) Subject to this section, the provisions of schedule 5 have effect with respect to the priorities, in relation to each other, of registrable charges on the property of a company.

Priorities of charges.

(2) The application, in relation to particular registrable charges, of the order of priorities of charges set out in Schedule 5 is subject to—

(a) any consent (express or implied) that varies the priorities in relation to each other of those charges, being a consent given by the holder of one of those charges, being a charge that would otherwise be entitled to priority over the other charge;

and

(b) any agreement between those chargees that affects the priorities in relation to each other of the charges in relation to which those persons are the chargees.

(3) The holder of a registered charge, being a floating charge, on property of a company shall be deemed, for the purposes of sub-section (2), to have consented to that charge being postponed to a subsequent registered charge, being a fixed charge that is created before the floating charge becomes fixed, on any of that property unless—

(a) the creation of the subsequent registered charge contravened a provision of the instrument or resolution creating or evidencing the floating charge;

and

(b) a notice in respect of the floating charge indicating the existence of the provision referred to in paragraph (a) was lodged with the Commission under section 201, 202 or 206 before the creation of the subsequent registered charge.

(4) Where a charge relates to property of a kind or kinds to which a particular paragraph or paragraphs of sub-section 200 (1) applies or apply and also relates to other property, the provisions of Schedule 5 apply so as to affect the priority of the charge only in so far as it relates to the first-mentioned property and do not affect the priority of the charge in so far as it relates to the other property.

(5) * * * * *

205. (1) Where—

(a) an order is made, or a resolution is passed, for the winding up of a company;

or

(b) an official manager is appointed in respect of a company,

a registrable charge on any property of the company is void as a security on that property as against the liquidator or official manager, as the case may be, unless—

(c) a notice in respect of the charge was lodged with the Commission under section 201 or 202, as the case requires—

(i) within the relevant period;

or

(ii) not later than 6 months before the commencement of the winding up or the appointment of the official manager, as the case may be;

(d) in relation to a charge other than a charge to which sub-section 201 (3) or (4) applies—the period within which a notice in respect of the charge (other than a notice under section 206) is required to be lodged with the Commission, being the period specified in the relevant section or that period as extended by the Court under sub-section (3), has not expired at the commencement of the winding up or at the time of the appointment referred to in paragraph (b) and the notice is lodged before the expiration of that period;

(e) in relation to a charge to which sub-section 201 (3) or (4) applies—the period of 45 days after the chargee becomes aware that the foreign company has been registered as a company under Division 4 of Part III or as a foreign company under Division 5 of Part XIII has not expired at the commencement of the winding up or at the time of the appointment referred to in paragraph (b) and the notice is lodged before the expiration of that period;

or

Certain charges
void against
liquidator or
official manager.

(f) in relation to a charge to which section 202 applies—the period of 45 days after the chargee becomes aware that the property charged has been acquired by a company has not expired at the commencement of the winding up or at the time of the appointment referred to in paragraph (b) and the notice is lodged before the expiration of that period.

(2) The reference in paragraph (1) (c) to the relevant period shall be construed as a reference to—

(a) in relation to a charge to which sub-section 201 (1) applies—the period of 45 days specified in that sub-section, or that period as extended by the Court under sub-section (3) of this section;

(b) in relation to a charge to which sub-section 201 (3) or (4) applies—the period of 45 days after the chargee becomes aware that the foreign company has been registered as a company under Division 4 of Part III or as a foreign company under Division 5 of Part XIII;

or

(c) in relation to a charge to which section 202 applies—the period of 45 days after the chargee becomes aware that the property has been acquired by a company;

(2A) Where, after there has been a variation in the terms of a registrable charge on property of a company having the effect of increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge—

(a) an order is made, or a resolution is passed, for the winding up of the company;

or

(b) an official manager is appointed in respect of the company,

the registrable charge is void as a security on that property to the extent that it secures the amount of the increase in that debt or liability unless—

(c) a notice in respect of the variation was lodged with the Commission under section 206—

(i) within the period of 45 days specified in sub-section 206 (2) or that period as extended by the Court under sub-section (3) of this section;

or

(ii) not later than 6 months before the commencement of the winding up or the appointment of the official manager, as the case may be;

or

(d) the period of 45 days specified in sub-section 206 (2), or that period as extended by the Court under sub-section (3) of this section, has not expired at the commencement of the winding up or at the time of the appointment of the official manager and the notice is lodged before the expiration of that period.

(3) The Court, if it is satisfied that the failure to lodge a notice in respect of a charge, or in respect of a variation in the terms of a charge, as required by any provision of this Division—

(a) was accidental or due to inadvertence or some other sufficient cause;

or

(b) is not of a nature to prejudice the position of creditors or shareholders,

or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient, by order, extend the period for such further period as is specified in the order.

(4) Where—

(a) a registrable charge (in this sub-section referred to as the “later charge”) is created before the expiration of 45 days after the creation of an unregistered registrable charge (in this sub-section referred to as the “earlier charge”);

(b) the later charge relates to all or any of the property to which the earlier charge related;

and

(c) the later charge is given as a security for the same liability as is secured by the earlier charge or any part of that liability,

the later charge, to the extent to which it is a security for the same liability or part thereof, and so far as it relates to the property comprised in the earlier charge, is void as a security on that property as against a liquidator or official manager of the company, notwithstanding that a notice in respect of the later charge was lodged with the Commission under section 201 within a period mentioned in paragraph (1) (c) or (d) of this section, unless it is proved to the satisfaction of the Court that the later charge was given in good faith for the purpose of correcting some material error in the earlier charge or under other proper circumstances and not for the purposes of avoiding or evading the provisions of this Division.

(5) Nothing in sub-section (1) or (2A) operates to affect the title of a person to property purchased for value from a chargee or from a receiver appointed by a chargee in the exercise of powers conferred by the charge or implied by law if that person purchased the property in good faith and without notice of—

(a) the filing of an application for an order for the winding up of the company;

(b) the passing of a resolution for the voluntary winding up of the company;

or

(c) the passing of a resolution that the company be placed under official management.

(6) The onus of proving that a person purchased property in good faith and without notice of any of the matters referred to in paragraphs (5) (a), (b) and (c) is on the person asserting that the property was so purchased.

206. (1) Where, after a registrable charge on property of a company has been created, a person other than the original chargee becomes the

holder of the charge, the person who becomes the holder of the charge shall, within 45 days after he becomes the holder of the charge—

- (a) lodge with the Commission a notice stating that he has become the holder of the charge;

and

- (b) give the company a copy of the notice.

(2) Where, after a registrable charge on property of a company has been created, there is a variation in the terms of the charge having the effect of—

- (a) increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge;

or

- (b) prohibiting or restricting the creation of subsequent charges on the property,

the company shall, within 45 days after the variation occurs, ensure that there is lodged with the Commission a notice setting out particulars of the variation and accompanied by the instrument (if any) effecting the variation or a certified copy of that instrument.

(3) Where a charge created by a company secures a debt of an unspecified amount or secures a debt of a specified amount and further advances, a payment or advance made by the chargee to the company in accordance with the terms of the charge shall not be taken, for the purposes of subsection (2), to be a variation in the terms of the charge having the effect of increasing the amount of the charge or the liabilities (whether present or prospective) secured by the charge.

(4) A reference in this section to the chargee in relation to a charge shall, if the charge is constituted by a debenture or debentures and there is a trustee for debenture holders, be construed as a reference to the trustee for debenture holders.

(5) Nothing in section 201 requires the lodgment of a notice under that section in relation to a charge by reason only of the fact that the terms of the charge are varied only in a manner mentioned in this section.

207. (1) Where, with respect to a charge registered under this Division—

- (a) the debt or other liability the payment or discharge of which was secured by the charge has been paid or discharged in whole or in part;

or

- (b) the property charged or part of that property is released from the charge,

the person who was the holder of the charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released shall, within 14 days after receipt of a request in writing made by the company on whose property the charge exists, give to the company a memorandum in the prescribed form acknowledging that the debt or other liability has been paid or discharged in whole or in part or that the property or that part of it is no longer subject to the charge, as the case may be.

Satisfaction of, and release of property from, charges.

(2) The company may lodge the memorandum with the Commission and, upon the memorandum being so lodged, the Commission shall enter in the Register particulars of the matters stated in the memorandum.

(3) The reference in sub-section (1) to the person who was the holder of a charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released shall, if the charge was constituted by a debenture or debentures and there was a trustee for debenture holders, be construed as a reference to the person who was, at that time, the trustee for debenture holders.

Lodgment of notices, offences, &c.

208. (1) Where a notice in respect of a charge on property of a company is required to be lodged with the Commission under section 201 or 202 or sub-section 206 (2), the notice may be lodged by the company or by any interested person.

(2) Where default is made in complying with section 201 or 202 or sub-section 206 (2) in relation to a registrable charge on property of a company, the company and any officer of the company who is in default are each guilty of an offence.

(3) Where a person who becomes the holder of a registrable charge fails to comply with sub-section 206 (1), the person and, if the person is a corporation, any officer of the corporation who is in default, are each guilty of an offence.

(4) Where a document required by this Division other than sub-section 206 (1) to be lodged with the Commission is so lodged by a person other than the company concerned, that person—

(a) shall, within 7 days after the lodgment of the document, give to the company a copy of the document;

and

(b) is entitled to recover from the company the amount of any fees properly paid by him on lodgment of the document.

Company to keep documents relating to charges and register of charges.

209. (1) A company shall keep, at the place where the register referred to in sub-section (2) is kept, a copy of every document relating to a charge on property of the company that is lodged with the Commission under this Division or was lodged with the Registrar of Companies or the State Commission under Division 7 of Part IV of the Companies Act, 1962-1981 and a copy of every document that is given to the company under this Division.

(2) A company shall keep a register and shall, upon the creation of a charge (whether registrable or not) on property of the company, or upon the acquisition of property subject to a charge (whether registrable or not), forthwith enter in the register particulars of the charge, giving in each case—

(a) if the charge is a charge created by the company, the date of its creation or, if the charge was a charge existing on property acquired by the company, the date on which the property was so acquired;

(b) a short description of the liability (whether present or prospective) secured by the charge;

(c) a short description of the property charged;

(d) the name of the trustee for debenture holders or, if there is no such trustee, the name of the chargee;

and

- (e) the name of the person whom the company believes to be the holder of the charge.

(3) A register kept by a company pursuant to sub-section (2) shall be open for inspection—

- (a) by any creditor or member of the company—without charge;

and

- (b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

(4) A person may request a company to furnish him with a copy of the register or any part of the register and, where such a request is made, the company shall send the copy to that person—

- (a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves;

or

- (b) in a case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Commission approves.

(5) If default is made in complying with any provision of this section, the company and any officer of the company who is in default are each guilty of an offence.

210. (1) Where particulars of a charge are entered in the Register in accordance with this Division, the Commission shall, on request by any person, issue to that person a certificate under the common seal of the Commission setting out those particulars and stating the time and date when a notice in respect of the charge containing those particulars was lodged with the Commission and, if the word “provisional” appears in the Register next to the reference to that time and date, stating that fact.

Certificates.

(2) A certificate issued under sub-section (1) is *prima facie* evidence of the matters stated in the certificate.

(3) Where particulars of a charge are entered in the Register in accordance with this Division, and the word “provisional” does not appear in the register next to the reference to the time and date when a notice in respect of the charge was lodged with the Commission, the Commission shall, on request by any person, issue to that person a certificate under the common seal of the Commission stating that particulars of the charge are entered in the Register in accordance with this Division.

(4) A certificate issued under sub-section (3) is conclusive evidence that the requirements of this Division as to registration (other than the requirements relating to the period after the creation of the charge within which notice in respect of the charge is required to be lodged with the Commission) have been complied with.

211. (1) Notwithstanding anything in any Act, a charge, notice of which requires lodgment with the Commission under this Division or under the

Registration
under other Acts.

PART IV
DIVISION 9

corresponding provisions of the law of a participating State or participating Territory need not be registered under and is not subject to postponement or avoidance by reason of the Bills of Sale Act, 1886-1972, the Liens on Fruit Act, 1923-1975, or the Stock Mortgages and Wool Liens Act, 1924-1975, and upon registration under this Division or under the corresponding provisions of the law of a participating State or participating Territory the charge shall be as valid and effectual as if it had been duly registered under those Acts.

(2) Sub-section (1) does not apply where one or more of the persons giving the charge is not a company, a recognized company or a recognized foreign company.

Power of Court to rectify Register, &c.

212. Where the Court is satisfied—

(a) that a particular with respect to a registrable charge on property of a company has been omitted from, or mis-stated in, the Register or a memorandum referred to in section 207;

and

(b) that the omission or mis-statement—

(i) was accidental or due to inadvertence or to some other sufficient cause;

or

(ii) is not of a nature to prejudice the position of creditors or shareholders,

or that on other grounds it is just and equitable to grant relief, the Court may, on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the omission or mis-statement be rectified.

Charges on property of recognized companies or recognized foreign companies.

213. The provisions of the law of a participating State or participating Territory that correspond with the provisions of this Division (other than this section) and with Schedule 5 apply in and in relation to South Australia—

(a) in relation to property of a recognized company incorporated in that participating State or participating Territory;

and

(b) in relation to property in Australia and the external Territories of a recognized foreign company registered in that participating State or participating Territory.

Provisions applying when incorporation transferred.

214. (1) Where a recognized company is registered as a company under Division 4 of Part III and, immediately before the company is so registered, a charge or charges on property of the company was or were registered under the provisions of the law of the State or Territory from which the company transferred its incorporation that correspond with this Division and was not or were not registered under this Division—

(a) the Commission shall forthwith enter in the Register the time and date, and the particulars, entered in the register of company

charges kept under those provisions in relation to that charge or those charges;

and

- (b) the time and date, and the particulars, so entered shall be deemed to have been entered in the Register in accordance with subsection 203 (2).

(2) Where a foreign company that was registered as a foreign company under the law of a participating State or participating Territory is registered as a company under Division 4 of Part III and, immediately before the company is so registered, a charge or charges on property of the company was or were registered under the provisions of the law of that State or Territory that correspond with this Division and was not or were not registered under this Division—

- (a) the Commission shall forthwith enter in the Register the time and date, and the particulars, entered in the register of company charges kept under those provisions in relation to that charge or those charges;

and

- (b) the time and date, and the particulars, so entered shall be deemed to have been entered in the Register in accordance with subsection 203 (2).

215. (1) The Commission may, by instrument in writing, exempt a person, as specified in the instrument and subject to such conditions (if any) as are specified in the instrument, from compliance with such of the requirements of section 201, 202 or 206 relating to—

Power to exempt from compliance with certain requirements of Division.

- (a) the particulars to be contained in a notice under the relevant section;

- (b) the documents (other than the notice) to be lodged under the relevant section;

or

- (c) the verification of any document required to be lodged under the relevant section,

as are specified in the instrument.

(2) A person who is exempted by the Commission, subject to a condition, from compliance with a requirement of section 201, 202 or 206 shall not contravene or fail to comply with the condition.

(3) Where a person has contravened or failed to comply with a condition to which an exemption under this section is subject, the Court may, on the application of the Commission, order the person to comply with the condition.

215A. (1) Notwithstanding section 18 of the Companies (Application of Laws) Act, 1982—

Charges created before the commencement of the Companies (Application of Laws) Act, 1982.

- (a) Division VII of Part IV of the Companies Act, 1962-1981;

and

- (b) any other provisions of that Act that are necessary for the effectual operation of that Division,

continue in force, as if that section had not been enacted, in relation to—

(c) any charge created by a corporation before the commencement of the Companies (Application of Laws) Act, 1982;

and

(d) any charge to which property acquired by a corporation before the commencement of that Act was subject when the property was so acquired,

and the provisions of this Division do not apply in relation to any such charge.

(2) Sub-section (1) operates in substitution for section 30 of the Companies (Application of Laws) Act, 1982.

PART V

MANAGEMENT AND ADMINISTRATION

DIVISION 1—OFFICE AND NAME

DIVISION 1

216. (1) A company shall, as from the day of its incorporation, have a registered office within the State to which all communications and notices may be addressed and which shall be open and accessible to the public—

Registered office
of company.

- (a) where a notice has been lodged by the company with the Commission under sub-section 217 (2) or under a corresponding previous law of the State—for such hours (being not less than three) between the hours of 9 a.m. and 5 p.m. of each day, Saturdays, Sundays and holidays excepted, as are specified in the later of that notice or a notice lodged by the company with the Commission under sub-section 217 (4) or under a corresponding previous law of the State;

or

- (b) where a notice has not been lodged by the company with the Commission under sub-section 217 (2) or under a corresponding previous law of the State—for not less than 5 hours between 10 a.m. and 4 p.m. of each day, Saturdays, Sundays and holidays excepted.

(2) If default is made in complying with sub-section (1), the company and any officer of the company who is in default are each guilty of an offence.

217. (1) On the lodging of the memorandum of a proposed company for registration, there shall be lodged with the Commission notice in the prescribed form of the address of the proposed registered office of the company.

Notice of address
of registered
office and office
hours.

(2) On the lodging of the memorandum of a proposed company for registration or at any later time, notice in the prescribed form of the hours (being not less than 3) between the hours of 9 a.m. and 5 p.m. of each day, Saturdays, Sundays and holidays excepted, during which the registered office of the company is to be open and accessible to the public may be lodged with the Commission.

(3) Notice in the prescribed form of a change in the situation of the registered office of a company shall be lodged by the company with the Commission not later than 7 days after the day on which the change occurred.

(4) Where a notice has been lodged by a company under sub-section (2) or under a corresponding previous law of the State, notice in the prescribed form of a change of the hours during which the registered office of the company is open and accessible to the public shall be lodged by the company with the Commission not later than 7 days after the day on which the change occurred.

(5) If default is made in complying with sub-section (3) or (4), the company and any officer of the company who is in default are each guilty of an offence.

218. (1) The name of a company shall appear in legible characters on—

Publication of
name.

- (a) the common seal and every other seal of the company;

and

- (b) every business letter, statement of account, invoice, order for goods, order for services, official notice, publication, bill of exchange, promissory note, cheque or other negotiable instrument, indorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument, receipt and letter of credit of, or purporting to be issued or signed by or on behalf of, the company, whether or not the company is carrying on a business under a business name,

and, if default is made in complying with this sub-section, the company is guilty of an offence.

Penalty: \$1,000.

- (2) If an officer of a company or any person on its behalf—

- (a) uses or authorizes the use of any seal that purports to be a seal of the company but on which the name of the company does not appear as required by sub-section (1);
- (b) issues or authorizes the issue of any business letter, statement of account, invoice, order for goods, order for services or official notice or publication of the company on which the name of the company does not appear as required by that sub-section;

or

- (c) signs, issues or authorizes to be signed or issued on behalf of the company any bill of exchange, promissory note, cheque or other negotiable instrument, any indorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument, or any receipt or letter of credit, on which the name of the company does not appear as required by that sub-section,

he is guilty of an offence.

Penalty: \$1,000.

(3) If an officer of a company or any person on its behalf signs, issues or authorizes to be signed or issued on behalf of the company any bill of exchange, promissory note, cheque or other negotiable instrument, or any indorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument, or any letter of credit, on which the name of the company does not appear as required by sub-section (1), he is liable to the holder of the instrument or letter of credit for the amount due on it unless that amount is paid by the company.

(4) A company shall paint or affix and keep painted or affixed on the outside of every office or place in which its business is carried on, in a conspicuous position and in letters easily legible, its name, and also, in the case of the registered office, the words "Registered Office" and, if default is made in complying with this sub-section, the company is guilty of an offence.

Penalty: \$1,000.

DIVISION 2—DIRECTORS AND OTHER OFFICERS

219. (1) A public company shall have at least 3 directors and a proprietary company shall have at least 2 directors. Directors.

(2) A person is incapable of being appointed as a director of a company unless he is a natural person.

(3) In the case of a public company, at least 2 directors shall be natural persons who ordinarily reside within Australia and, in the case of a proprietary company, at least one director shall be a natural person who ordinarily so resides.

(4) Where the articles of a company incorporated before the date of commencement of the Companies (Application of Laws) Act, 1982 provide for the appointment of one director only, the articles shall on and after that date be deemed to provide for the appointment of 2 directors.

(5) If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

220. (1) A person shall not be named as a director or proposed director in the memorandum or articles of a company, or in a prospectus, unless before the registration of the memorandum or articles or the issue of the prospectus, as the case may be, he has by himself or by his agent authorized in writing for the purpose signed and lodged with the Commission a consent in writing to act as a director and— Restrictions on appointment or advertisement of director.

- (a) signed the memorandum for a number of shares not less than his qualification (if any);
- (b) signed and lodged with the Commission an undertaking in writing to take from the company and pay for his qualification shares (if any);
- (c) made and lodged with the Commission a statement in writing to the effect that a number of shares, not less than his qualification (if any), are registered in his name;

or

- (d) in the case of a company formed, or intended to be formed, by way of reconstruction of another corporation or group of corporations or to acquire the shares in another corporation or group of corporations—made and lodged with the Commission a statement in writing that he was a shareholder in that other corporation or in one or more of the corporations of that group and that, as a shareholder, he will be entitled to receive and have registered in his name a number of shares not less than his qualification by virtue of the terms of an agreement relating to the reconstruction.

(2) Where a person has signed and lodged an undertaking to take and pay for his qualification shares, he is, as regards those shares, in the same position as if he had signed the memorandum for that number of shares.

(3) The foregoing provisions of this section (other than the provisions relating to the signing of a consent to act as director) do not apply to—

- (a) a company not having a share capital;
- (b) a proprietary company;

or

- (c) a prospectus issued by or on behalf of a company or the articles adopted by a company after the expiration of one year from the date of incorporation of the company.

(4) On the lodging of the memorandum of a company for registration, the persons desiring the incorporation of the company shall also lodge with the Commission a list, certified by one of those persons to be correct, of the persons who have consented to be directors of the company, and, if the list contains the name of any person who has not so consented, the person who certified the list to be correct is guilty of an offence.

Qualification of director.

221. (1) Without affecting the operation of any of the preceding provisions of this Division, a director who is by the articles required to hold a specified share qualification and is not already qualified shall obtain his qualification within 2 months after his appointment or such shorter period as is fixed by the articles.

(2) Unless otherwise provided by the articles, the qualification of any director of a company must be held by him solely and not as one of several joint holders.

Vacation of office.

222. (1) The office of a director of a corporation is, by force of this section, vacated if—

- (a) he has not within the period referred to in sub-section 221 (1) obtained his qualification;

(b) after so obtaining his qualification he ceases at any time to hold his qualification;

(c) he becomes an insolvent under administration;

or

(d) he is convicted of an offence referred to in sub-section 227 (2).

(2) A person whose office is vacated by reason of paragraph (1) (a) or (b) is incapable of being re-appointed as a director until he has obtained his qualification.

(3) A person whose office is vacated by reason of paragraph (1) (c) is incapable, without the leave of the Court, of being re-appointed as a director until he ceases to be an insolvent under administration.

(4) A person whose office is vacated by reason of paragraph (1) (d) is incapable, without the leave of the Court, of being re-appointed as a director within the period of 5 years referred to in sub-section 227 (2).

(5) A person whose office is vacated by reason of paragraph (1) (a) or (b) shall not purport to act as a director of the corporation unless he is validly re-appointed as a director.

Penalty: \$1,000 or 3 months imprisonment, or both.

Appointment of directors to be voted on individually.

223. (1) At a general meeting of a public company, a motion for the appointment of 2 or more persons as directors by a single resolution shall not be moved unless a resolution that it be moved has first been agreed to by the meeting without any vote being cast against it.

(2) A resolution passed pursuant to a motion moved in contravention of this section is void, whether or not its being so moved was objected to at the time.

(3) Where a resolution pursuant to a motion moved in contravention of this section is passed, no provision for the automatic re-appointment of retiring directors in default of another appointment applies.

(4) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

(5) Nothing in this section applies to a resolution altering the company's articles.

(6) Nothing in this section prevents the election of 2 or more directors by ballot or poll.

224. (1) The acts of a director or secretary are valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification. Validity of acts of directors and secretaries.

(2) Where a person whose office as director of a corporation is vacated pursuant to sub-section 222 (1) purports to do an act as director of the corporation, that act is as valid, in relation to a person dealing with the corporation in good faith and for value and without actual knowledge of the matter referred to in that sub-section by reason of which the office of the first-mentioned person was vacated, as if that office had not been vacated.

225. (1) A public company may, by resolution, remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him, but, where any director so removed was appointed to represent the interests of a particular class of shareholders or debenture holders, the resolution to remove him does not take effect until his successor has been appointed. Removal of directors.

(2) Special notice is required of any resolution to remove a director under this section or to appoint some person in place of a director so removed at the meeting at which he is removed and, on receipt of notice of an intended resolution to remove a director under this section, the company shall forthwith send a copy of the notice to the director concerned, and the director (whether or not he is a member of the company) is entitled to be heard on the resolution at the meeting.

(3) Where notice is given pursuant to sub-section (2) and the director concerned makes with respect to the notice representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so—

(a) in any notice of the resolution given to members of the company—
state the fact of the representations having been made;

and

(b) send a copy of the representations to every member of the company to whom notice of the meeting has been or is sent,

and, if a copy of the representations is not so sent because they were received too late or because of the company's default, the director may, without

prejudice to his right to be heard orally, require that the representations be read out at the meeting.

(4) Notwithstanding the foregoing provisions of this section, copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter, and the Court may order the costs of the company or the other person on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

(5) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(6) A person appointed as director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become a director on the day on which the person in whose place he is appointed was last appointed a director.

(7) Nothing in the foregoing provisions of this section shall be taken as depriving a person removed under those provisions of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director that may exist apart from this section.

(8) A director of a public company shall not be removed by, or be required to vacate his office by reason of, any resolution, request or notice of the directors or any of them notwithstanding anything in the articles or any agreement.

Age of directors.

226. (1) Subject to this section, no person of or over the age of 72 years shall be appointed or act as a director of—

(a) a public company;

or

(b) a company that is a subsidiary of—

(i) a public company;

or

(ii) a corporation that is a public company within the meaning of the corresponding law in force in another State or in a Territory,

but nothing in this sub-section prevents a person from acting as a director of a company during the period commencing on the day on which he attains the age of 72 years and ending at the conclusion of the annual general meeting commencing next after that day.

(2) The office of a director of a public company or of a company referred to in paragraph (1) (b) becomes vacant at the conclusion of the annual general meeting of that public company or that other company, as the case may be, commencing next after the director attains the age of 72 years.

(3) An act done by a person as director is valid notwithstanding that it is afterwards discovered that he was of or over the age of 72 years at the time of his appointment or that his appointment had terminated by virtue of sub-section (2).

(4) Where the office of a director has become vacant by virtue of sub-section (2), no provision for the automatic re-appointment of retiring directors in default of another appointment applies in relation to that director.

(5) If a vacancy created by virtue of sub-section (2) is not filled at the meeting at which the office became vacant, the office may be filled as a casual vacancy.

(6) Subject to sub-section (7), a person of or over the age of 72 years may, by a resolution stating the age of that person, being a resolution—

- (a) of which not less than 14 days' written notice has been given to the members of the company entitled to vote stating that the person is a candidate for election who is of or over the age of 72 years and stating his age;

and

- (b) which is passed by a majority of not less than three-quarters of such members of the company as, being entitled so to do, vote in person or where proxies are allowed, by proxy, at a general meeting of that company,

be appointed or re-appointed as a director of that company to hold office until the conclusion of the next annual general meeting of the company.

(7) Where the company is a subsidiary of a public company, or of a corporation that is a public company within the meaning of the corresponding law in force in another State or in a Territory, the appointment or re-appointment referred to in sub-section (6) does not have effect unless—

- (a) the person appointed or re-appointed is a director of the holding company;

or

- (b) the appointment or re-appointment of the person as a director of the company has been approved by a resolution of the holding company—

- (i) of which not less than 14 days' written notice was given to the members of the holding company entitled to vote stating that the person was a candidate for election as a director of the company who was of or over the age of 72 years and stating his age;

and

- (ii) which was passed by a majority of not less than three-quarters of such members of the holding company as, being entitled so to do, voted in person or, where proxies were allowed, by proxy at a general meeting of the holding company.

(8) Where the articles of a company limited by guarantee provide for the holding of postal ballots for the election of a director or directors and a postal ballot for the election of a director or directors is held, being a postal ballot in which—

- (a) the members entitled to vote have been given notice in writing by the company stating that a candidate for election is of or over the age of 72 years and stating the age of the candidate;

and

- (b) that candidate is elected by a majority of not less than three-quarters of the members who, being entitled to vote, vote in the ballot,

that candidate may be appointed or re-appointed as a director to hold office until the conclusion of the next annual general meeting of the company.

(9) Where the articles of a company limited by guarantee provide for the election or appointment of a director or directors otherwise than by members at a general meeting or by postal ballot of members and the Commission, by instrument in writing, declares that this section does not apply to the company or its directors, then, subject to such conditions (if any) as the Commission specifies in the instrument, this section does not so apply.

(10) A vacancy in the office of a director occurring by virtue of subsection (2) shall not be taken into account in determining when other directors are to retire.

(11) Nothing in this section limits or affects the operation of any provision of the memorandum or articles of a company preventing any person from being appointed a director or requiring any director to vacate his office at any age less than 72 years.

(12) A person is incapable of being appointed as a director of a company unless he has attained the age of 18 years.

Certain persons
not to manage
corporations.

227. (1) A person who is an insolvent under administration shall not be a director or promoter of, or be in any way (whether directly or indirectly) concerned in or take part in the management of, a corporation without the leave of the Court.

Penalty: \$5,000 or imprisonment for one year, or both.

(2) A person who has, whether before or after the commencement of the Companies (Application of Laws) Act, 1982, been convicted, within or outside the State—

- (a) on indictment of any offence in connection with the promotion, formation or management of a corporation;
- (b) of any offence involving fraud or dishonesty punishable on conviction by imprisonment for a period of not less than 3 months;
- (c) of any offence under section 108, 229, 554, 555, 556, 559 or 560 under section 44 of the *Companies (Acquisition of Shares) (South Australia) Code*, under section 129 of the *Securities Industry (South Australia) Code*, or under any provision of a law in force in another State or in a Territory that corresponds with any of those provisions;

or

- (d) of any offence under any provision of a previous law of the State, or of another State or of a Territory, with which any of the provisions referred to in paragraph (c) corresponds,

shall not, within a period of 5 years after his conviction or, if he was sentenced to imprisonment, after his release from prison, without the leave of the Court, be a director or promoter of, or be in any way (whether directly or indirectly) concerned in or take part in the management of, a corporation.

Penalty: \$5,000 or imprisonment for one year, or both.

(3) In any proceeding for an offence against sub-section (2), a certificate by a prescribed authority stating that a person was released from prison on a specified date is *prima facie* evidence that that person was released from prison on that date.

(4) When granting leave under this section, the Court may impose such conditions or limitations as it thinks fit and a person who contravenes or fails to comply with any such condition or limitation that is applicable to him is guilty of an offence.

Penalty: \$5,000 or imprisonment for one year, or both.

(5) A person intending to apply for leave of the Court under this section shall give to the Commission not less than 21 days' notice of his intention so to apply.

(6) The Court may at any time, on the application of the Commission, revoke leave granted by the Court under this section.

228. (1) Subject to this section, a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall, as soon as practicable after the relevant facts have come to his knowledge, declare the nature of his interest at a meeting of the directors of the company.

Disclosure of
interests in
contracts,
property, offices,
&c.

Penalty: \$1,000 or imprisonment for 3 months, or both.

(2) The requirements of sub-section (1) do not apply in any case where the interest of a director of a company consists only of being a member or creditor of a corporation that is interested in a contract or proposed contract with the first-mentioned company if the interest of the director may properly be regarded as not being a material interest.

(3) A director of a company shall not be taken to be interested or to have been at any time interested in any contract or proposed contract by reason only—

(a) in a case where the contract or proposed contract relates to any loan to the company—that he has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan;

or

(b) in a case where the contract or proposed contract has been or will be made with or for the benefit of or on behalf of a corporation that is related to the company—that he is a director of that corporation,

and this sub-section has effect not only for the purposes of this Code but also for the purposes of any rule of law, but does not affect the operation of any provision in the articles of the company.

(4) For the purposes of sub-section (1), a general notice given to the directors of a company by a director to the effect that he is an officer or member of a specified corporation or a member of a specified firm and is

to be regarded as interested in any contract that may, after the date of the notice, be made with that corporation or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made or proposed to be made if—

- (a) the notice states the nature and extent of the interest of the director in the corporation or firm;
 - (b) when the question of confirming or entering into the contract is first taken into consideration, the extent of his interest in the corporation or firm is not greater than is stated in the notice;
- and
- (c) the notice is given at a meeting of the directors or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given.

(5) A director of a company who holds any office or possesses any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his duties or interests as director shall, in accordance with sub-section (6) declare at a meeting of the directors of the company the fact and the nature, character and extent of the conflict.

Penalty: \$1,000 or imprisonment for 3 months, or both.

(6) A declaration required by sub-section (5) in relation to the holding of an office or the possession of any property shall be made by a person—

- (a) where the person holds the office or possesses the property as mentioned in sub-section (5) when he becomes a director—at the first meeting of directors held after—
 - (i) he becomes a director;
 - or
 - (ii) the relevant facts as to the holding of the office or the possession of the property come to his knowledge,
 whichever is later;

or

- (b) where the person commences to hold the office or comes into possession of the property as mentioned in sub-section (5) after he becomes a director—at the first meeting of directors held after the relevant facts as to the holding of the office or the possession of the property come to his knowledge.

(7) A secretary of a company shall record every declaration under this section in the minutes of the meeting at which it was made.

(8) Except as provided in sub-section (3), this section is in addition to, and not in derogation of, the operation of any rule of law or any provision in the articles restricting a director from having any interest in contracts with the company or from holding offices or possessing properties involving duties or interests in conflict with his duties or interests as a director.

229. (1) An officer of a corporation shall at all times act honestly in the exercise of his powers and the discharge of the duties of his office.

Penalty—

(a) in a case to which paragraph (b) does not apply—\$5,000;

or

(b) where the offence was committed with intent to deceive or defraud the company, members or creditors of the company or creditors of any other person or for any other fraudulent purpose—\$20,000 or imprisonment for 5 years, or both.

(2) An officer of a corporation shall at all times exercise a reasonable degree of care and diligence in the exercise of his powers and the discharge of his duties.

Penalty: \$5,000.

(3) An officer or employee of a corporation, or a former officer or employee of a corporation, shall not make improper use of information acquired by virtue of his position as such an officer or employee to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the corporation.

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

(4) An officer or employee of a corporation shall not make improper use of his position as such an officer or employee, to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the corporation.

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

(5) For the purposes of this section, “officer”, in relation to a corporation, means—

(a) a director, secretary or executive officer of the corporation;

(b) a receiver, or receiver and manager, of the property or part of the property of the corporation;

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

(d) a liquidator of the corporation;

and

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

(6) Where—

(a) a person is convicted of an offence under this section;

and

(b) the court is satisfied that the corporation has suffered loss or damage as a result of the act or omission that constituted the offence,

the court by which he is convicted may, in addition to imposing a penalty, order the convicted person to pay compensation to the corporation of such amount as that court specifies, and any such order may be enforced as if it were a judgment of that court.

(7) Where a person contravenes or fails to comply with a provision of this section in relation to a corporation, the corporation may, whether or not the person has been convicted of an offence under this section in relation to that contravention or failure to comply, recover from the person as a debt due to the corporation by action in any court of competent jurisdiction—

(a) if that person or any other person made a profit as a result of the contravention or failure—an amount equal to that profit;

and

(b) if the corporation has suffered loss or damage as a result of the contravention or failure—an amount equal to that loss or damage.

(8) Where a person who contravenes or fails to comply with this section has been found by a court to be liable to pay to a person an amount by reason of a contravention of Part X of the *Securities Industry (South Australia) Code* that arose out of or was constituted by the same act or transaction as the contravention of or failure to comply with this section, the amount of the liability of the person under this section shall be reduced by the first-mentioned amount.

(9) For the purposes of sub-section (8), the onus of proving that the liability of a person to pay an amount to another person arose from the same act or transaction as that from which another liability arose lies on the person liable to pay the amount.

(10) This section has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person by reason of his office or employment in relation to a corporation and does not prevent the institution of any civil proceedings in respect of a breach of such a duty or in respect of such a liability.

Loans to
directors.

230. (1) A company shall not, whether directly or indirectly—

(a) make a loan to—

(i) a director of the company, a spouse of such a director, or a relative of such a director or spouse;

(ii) a director of a corporation that is related to the company, a spouse of such a director, or a relative of such a director or spouse;

(iii) a trustee of a trust under which a person referred to in sub-paragraph (i) or (ii) has a beneficial interest being a loan made to the trustee in his capacity as trustee;

or

(iv) a corporation, where a person referred to in sub-paragraph (i) or (ii) has, or 2 or more such persons together have, a direct or indirect beneficial interest in shares in the corporation the nominal value of which is not less than 10% of the nominal value of the issued share capital of the corporation;

or

(b) give a guarantee or provide security in connection with a loan made or to be made by another person to a natural person or corporation referred to in paragraph (a).

(2) Where a company makes a loan to a corporation, or gives a guarantee or provides security in connection with a loan made to a corporation, a person or persons shall not be taken for the purposes of sub-section (1) to have a beneficial interest in shares in the corporation by reason only that

the company has a relevant interest or relevant interests in shares in the corporation and the person or persons has or have a relevant interest or relevant interests in shares in the company.

(3) Nothing in sub-section (1) applies—

- (a) to anything done by a company that is an exempt proprietary company;
- (b) to a loan made by a company to, or a guarantee given or security provided by a company in relation to, a corporation that is related to the company if the making of the loan, the giving of the guarantee or the provision of the security has been authorized by a resolution of the directors;
- (c) subject to sub-section (4), to anything done by a company to provide a person with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company;
- (d) subject to sub-section (4), to anything done by a company to provide a person who is engaged in the full-time employment of the company or of a corporation that is related to the company with funds to meet expenditure incurred or to be incurred by him in purchasing or otherwise acquiring premises to be used by him as his principal place of residence;
- (e) to a loan made by a company to a person who is engaged in the full-time employment of the company or of a corporation that is related to the company, where—
 - (i) in the case where neither sub-paragraph (ii) nor (iii) applies—the company has at a general meeting;
 - (ii) in the case where the company is a subsidiary of a listed corporation or listed corporations—the company and the listed corporation or listed corporations have at general meetings;or
 - (iii) in the case where the company is not a subsidiary of a listed corporation but is a subsidiary whose ultimate holding company is incorporated in Australia or an external Territory—the company and the ultimate holding company have at general meetings,approved a scheme for the making of such loans and the loan is made in accordance with the scheme;
- (f) to a loan made, guarantee given or security provided by a company in the ordinary course of its ordinary business where—
 - (i) that business includes the lending of money or the giving of guarantees or the provision of security in connection with loans made by other persons;and
 - (ii) the loan that is made by the company or in respect of which the company gives the guarantee or provides the security is made on ordinary commercial terms as to the rate of interest, the terms of repayment of

principal and payment of interest, the security to be provided and otherwise.

(4) Paragraph (3) (c) or (d) does not authorize the making of any loan, the entering into any guarantee or the provision of any security except—

(a) with the prior approval of—

(i) in the case where neither sub-paragraph (ii) nor (iii) applies—the company;

(ii) in the case where the company is a subsidiary of a listed corporation or listed corporations—the company and the listed corporation or listed corporations;

or

(iii) in the case where the company is not a subsidiary of a listed corporation but is a subsidiary whose ultimate holding company is incorporated in Australia or an external Territory—the company and the ultimate holding company,

given at a general meeting of the company or at general meetings of the company and the listed corporation or listed corporations or of the company and the ultimate holding company, as the case may be, at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed;

or

(b) on condition that if the making of the loan, the giving of the guarantee or the provision of the security is not approved—

(i) in the case where neither sub-paragraph (i) nor (ii) applies—by the company at or before the next annual general meeting of the company;

(ii) in the case where the company is a subsidiary of a listed corporation or listed corporations—by the company at or before the next annual general meeting of the company or by the listed corporation or by each listed corporation at or before the next annual general meeting of the listed corporation concerned;

or

(iii) in the case where the company is not a subsidiary of a listed corporation but is a subsidiary whose ultimate holding company is incorporated in Australia or an external Territory—by the company at or before the next annual general meeting of the company or by the ultimate holding company at or before the next annual general meeting of the ultimate holding company,

the loan be repaid or the liability under the guarantee or security be discharged, as the case may be, within 6 months after the conclusion of that meeting.

(5) Where a company makes a loan, gives a guarantee or provides security in contravention of this section, the company is, notwithstanding section 570, not guilty of an offence but—

(a) in the case of a loan made to, or a guarantee given or security provided in relation to a loan made to, a director of the company or of a corporation that is related to the company or a spouse of such a director, or a relative of such a director or spouse—the director and any officers of the company who are in default are each guilty of an offence and, in addition, are jointly and severally liable to indemnify the company against any loss arising from the making of the loan, the giving of the guarantee or the providing of the security, as the case may be;

or

(b) in the case of a loan made to, or a guarantee given or security provided in relation to a loan made to, a trustee of a trust referred to in sub-paragraph (1) (a) (iii)—any director of the company, or of a corporation that is related to the company, by virtue of whose beneficial interest under the trust the making of the loan, the giving of the guarantee or the provision of the security contravened this section, and any other officers of that company who are in default, are each guilty of an offence and, in addition, are jointly and severally liable to indemnify the company against any loss arising from the making of the loan, the giving of the guarantee or the providing of the security, as the case may be;

or

(c) in the case of a loan made to, or a guarantee given or security provided in relation to a loan made to, a corporation referred to in sub-paragraph (1) (a) (iv) (in this paragraph referred to as the “relevant corporation”)—any director of the company, or of a corporation that is related to the company, by virtue of whose beneficial interest in shares in the relevant corporation the making of the loan, the giving of the guarantee or the provision of the security contravened this section, and any other officers of that company or of the relevant corporation who are in default, are each guilty of an offence and, in addition, are jointly and severally liable to indemnify the company against any loss arising from the making of the loan, the giving of the guarantee or the providing of the security, as the case may be.

Penalty—

(d) in a case to which paragraph (c) does not apply—\$5,000;

or

(e) where the offence was committed with intent to deceive or defraud the company, members or creditors of the company or creditors of any other person or for any other fraudulent purpose—\$20,000 or imprisonment for 5 years, or both.

(6) It is a defence to a prosecution for an offence against sub-section (5) or to a proceeding instituted in respect of a liability under that sub-

section if the defendant proves that he had no knowledge of the making of the loan, the giving of the guarantee or the provision of the security.

(7) Nothing in this section operates to prevent the company from recovering the amount of, or of any interest on, any loan made, or any amount for which it becomes liable under any guarantee given or in respect of any security provided, contrary to the provisions of this section.

(8) If a person has made a loan in relation to which a company has given a guarantee or provided security in contravention of this section, the person may enforce the guarantee or security against the company if, and only if—

(a) in a case where the company is a proprietary company—a certificate signed by a director and a secretary of the company certifying that the company was an exempt proprietary company was furnished to the person before the loan was made;

or

(b) in any case—a certificate signed by a director and a secretary of the company certifying that the company was not prohibited by this section from giving the guarantee or providing the security was furnished to the person before the loan was made and the person did not know, and had no reason to believe, that the certificate was incorrect.

(9) A director or secretary of a company who furnishes a person with a certificate referred to in sub-section (8) that is false is guilty of an offence.

Penalty: \$5,000 or imprisonment for 1 year, or both.

(10) This section has effect in addition to, and not in derogation of, any other law in force in the State.

Register of
directors'
shareholdings, &c.

231. (1) A company shall keep a register showing with respect to each director of the company particulars of—

(a) shares in the company or in a corporation that is related to the company, being shares in which the director has a relevant interest, and the nature and extent of that interest;

(b) debentures of, or prescribed interests made available by, the company or a corporation that is related to the company being debentures or prescribed interests in which the director has a relevant interest, and the nature and extent of that interest;

(c) rights or options of the director or of the director and another person or other persons in respect of the acquisition or disposal of shares in, debentures of, or prescribed interests made available by, the company or a corporation that is related to the company;

and

(d) contracts to which the director is a party or under which he is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in, debentures of, or prescribed interests made available by, the company or a corporation that is related to the company.

(2) A company need not show in its register with respect to a director particulars of shares in a corporation that is related to the company and is a wholly-owned subsidiary of the company or of another corporation.

(3) A company that is a wholly-owned subsidiary of another company shall be deemed to have complied with this section in relation to a director who is a director of that other company if the particulars required by this section to be shown in the register of the first-mentioned company with respect to the director are shown in the register of the second-mentioned company.

(4) A company shall, within 7 days after receiving notice from a director under paragraph 232 (1) (a), enter in its register in relation to the director the particulars referred to in sub-section (1) including the number and description of shares, debentures, prescribed interests, rights, options and contracts to which the notice relates and, in respect of shares, debentures, prescribed interests, rights or options acquired or contracts entered into after he became a director—

(a) the price or other consideration for the transaction (if any) by reason of which an entry is required to be made under this section;

and

(b) the date of—

(i) the agreement for the transaction or, if it is later, the completion of the transaction;

or

(ii) where there was no transaction, the occurrence of the event by reason of which an entry is required to be made under this section.

(5) A company shall, within 3 days after receiving a notice from a director under paragraph 232 (1) (b), enter in its register the particulars of the change referred to in the notice.

(6) A company is not, by reason of anything done under this section, to be taken for any purpose to have notice of, or to be upon inquiry as to, the right of a person to or in relation to a share in, debenture of, or prescribed interest made available by, the company.

(7) A register kept by a company pursuant to this section shall be open for inspection—

(a) by a member of the company—without charge;

and

(b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

(8) A person may request a company to furnish him with a copy of the register or any part of the register and, where such a request is made, the company shall send the copy to that person—

(a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves;

or

(b) in a case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Commission approves.

(9) A company shall produce its register at the commencement of each annual general meeting of the company and keep it open and accessible during the meeting to all persons attending the meeting.

(10) It is a defence to a prosecution for failing to comply with sub-section (1) or (4) in respect of particulars relating to a director if the defendant proves that the failure was due to the failure of the director to comply with section 232 with respect to those particulars.

(11) In determining for the purposes of this section whether a person has a relevant interest in a debenture or prescribed interest, the provisions of section 8 that apply for the purposes of this section have effect as if a reference in those provisions to a share were a reference to a debenture or prescribed interest.

(12) If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

General duty to
make disclosure.

232. (1) A director of a company shall give notice in writing to the company—

- (a) of such particulars relating to shares, debentures, prescribed interests, rights, options and contracts as are necessary for the purposes of compliance by the company with the provisions of section 231;
- (b) of particulars of any change in respect of the particulars referred to in paragraph (a), including the consideration (if any) received as a result of the event giving rise to the change;
- (c) of such matters and events affecting or relating to himself as are necessary for the purposes of compliance by the company with any of the provisions of section 238 that are applicable in relation to him;
- (d) of such matters and events affecting or relating to himself as are necessary for the purposes of compliance by the company with any of the provisions of the *Companies (Acquisition of Shares) (South Australia) Code* that are applicable in relation to him;

and

- (e) if he is a director of a public company or of a subsidiary of a public company, of the date of his birth.

(2) A director required to give a notice under sub-section (1) shall give the notice—

- (a) in the case of a notice under paragraph (1) (a), within 14 days after—
 - (i) the date on which he became a director;
- or

(ii) as the case may require, the date on which the director became aware that he had a relevant interest in the shares, debentures or prescribed interests or the date on which the director became aware that he had acquired the rights or options or the date on which the director entered into the contracts,

whichever last occurs;

- (b) in the case of a notice under paragraph (1) (b), within 14 days after he becomes aware of the occurrence of the event giving rise to the change referred to in that paragraph;
- (c) in the case of a notice under paragraph (1) (c), within 14 days after he becomes aware of the matter or the occurrence of the event;
- (d) in the case of a notice under paragraph (1) (d), forthwith upon becoming aware that the company requires or will require the information for the purposes of compliance with any of the provisions of the *Companies (Acquisition of Shares) (South Australia) Code*;

and

- (e) in the case of a notice under paragraph (1) (e), within 14 days after the date on which he became a director.

(3) Nothing in this section requires a director of a company to give notice to the company of any matter or event of which he has given notice to the company before the commencement of the Companies (Application of Laws) Act, 1982, for the purposes of a corresponding provision of a previous law of the State.

(4) A company shall, within 7 days after the receipt by it of a notice given under sub-section (1), send a copy of the notice to each of the other directors of the company.

(5) In any proceedings under this section, a person shall, in the absence of proof to the contrary, be presumed to have been aware at a particular time of a fact or occurrence of which a servant or agent of the person, being a servant or agent having duties or acting in relation to his master's or principal's interest or interests in a share in, a debenture of, or a prescribed interest made available by, the company concerned, was aware at that time.

(6) In determining for the purposes of this section whether a person has a relevant interest in a debenture or prescribed interest, the provisions of section 8 that apply for the purposes of this section have effect as if a reference in those provisions to a share were a reference to a debenture or prescribed interest.

Penalty: \$1,000 or imprisonment for 3 months, or both.

233. (1) It is unlawful—

- (a) for a company to make or give to a prescribed person, or for a prescribed person to receive from a company, a payment or other valuable consideration or any other benefit by way of compensation for the loss by that person or any other person of, or for or in connection with retirement of that person or any other person from, a prescribed office in relation to the company;

Payments for loss
of, or retirement
from, office.

or

- (b) for a person to make or give to a prescribed person, or for a prescribed person to receive from a person, a payment or any other valuable consideration or any other benefit in connection with the transfer of the whole or any part of the undertaking or property of a company,

unless—

- (c) particulars with respect to the proposed payment or consideration (including the amount of the proposed payment or the money value of the proposed consideration) or the proposed other benefit;

and

- (d) in a case to which paragraph (a) applies—particulars of all other relevant benefits proposed to be given,

have been disclosed to the members of the company and the making of the proposed payment referred to in paragraph (c), or the giving of the proposed consideration or proposed other benefit referred to in paragraph (c), has been approved by the company in general meeting.

(2) Paragraph (1) (a) does not apply in relation to the making or giving by a company, or to the receipt by a person, of a payment or other valuable consideration or other benefit if that payment or other valuable consideration or other benefit is an exempt benefit.

(3) A company which, or person who, does an act that is unlawful by reason of sub-section (1) is guilty of an offence.

(4) Where an amount is paid or other valuable consideration or any other benefit is given to a person and the making or receipt of the payment or the giving or receipt of the consideration or other benefit is unlawful by reason of sub-section (1), the amount or the money value of the consideration or other benefit shall be deemed to be received by the person in trust for the company.

(5) This section is in addition to, and not in derogation of, any rule of law requiring disclosure to be made with respect to the making of any payment or the giving of any other valuable consideration or any other benefit.

(6) In this section—

- (a) a reference to a prescribed office, in relation to a company, is a reference to—

- (i) an office of director of the company or of a related corporation;
- (ii) an office of principal executive officer of the company or of a related corporation;

and

- (iii) any other office in connection with the management of affairs of the company or of a related corporation that is held by a person who also holds, or who has, at any time within the period of 12 months immediately preceding the loss of, or retirement from, that

office, held, an office mentioned in sub-paragraph (i) or (ii);

- (b) a reference to a prescribed person, in relation to a company, is a reference to—
- (i) a person who holds, or has at any previous time held, a prescribed office in relation to the company;
 - (ii) the spouse of a person referred to in sub-paragraph (i);
 - (iii) a person who is a relative of a person referred to in sub-paragraph (i) or of the spouse of such a person;
- or
- (iv) a person associated with a person referred to in sub-paragraph (i) or the spouse of a person associated with a person referred to in sub-paragraph (i);
- (c) a reference to the making of a payment or the giving of any other valuable consideration or any other benefit by a company or person includes a reference to the making of a payment or the giving of any other valuable consideration or any other benefit that the company or person is obliged under a contract to make or give;

and

- (d) a reference to a payment includes a reference to a payment by way of damages for breach of contract.

(7) In this section—

“emoluments” in relation to a person who is a director or other officer of a corporation, means the amount or value of any money, consideration or benefit given, directly or indirectly, to that person in connection with the management of affairs of the corporation or of any holding company or subsidiary of the corporation, whether as a director or officer or otherwise, but does not include amounts in payment or reimbursement of out-of-pocket expenses incurred for the benefit of the corporation;

“exempt benefit” means a payment or other valuable consideration or any other benefit made or given by a company by way of compensation for the loss by a person of, or for or in connection with the retirement of a person from, a prescribed office in relation to the company—

- (a) made or given under an agreement entered into before 1 July 1963;
- (b) made or given under an agreement entered into on or after 1 July 1963 and before the commencement of the Companies (Application of Laws) Act, 1982 where the making of the payment or the giving of the consideration or benefit would have been lawful if the Companies (Application of Laws) Act, 1982 had not been enacted;
- (c) made or given under an agreement if particulars of the terms of that agreement have been disclosed to the members of the company and approved by the company in general meeting;

- (d) being a *bona fide* payment by way of damages for breach of contract;
- (e) being a *bona fide* payment by way of pension or lump sum payment in respect of past services, including any superannuation, retiring allowance, superannuation gratuity or similar payment the value of which (excluding any part of the pension or payment that is attributable to contributions made by the person) does not exceed the total emoluments of that person in the period of 3 years immediately preceding the loss of that prescribed office by that person or the retirement of that person from that prescribed office or, where the prescribed office is an office referred to in sub-paragraph (6) (a) (ii), does not exceed an amount ascertained in accordance with the formula $\frac{7x}{3}$, where x is the total emoluments of that person in the period of 3 years immediately preceding the loss of that prescribed office by that person or the retirement of that person from that prescribed office;
- (f) made or given to the person pursuant to an agreement made between the company and the person before the person became the holder of the prescribed office as the consideration or part of the consideration for the person agreeing to hold the prescribed office;

or

- (g) being a payment made in respect of leave of absence to which the person is entitled by virtue of an industrial instrument;

“relevant benefit”, in relation to a proposal to make or give to a person a payment or other valuable consideration or any other benefit, being a payment, consideration or other benefit to which paragraph (1) (a) would apply (in this definition referred to as the “proposed benefit”), means any other payment, valuable consideration or other benefit (including any exempt benefit) that is proposed to be made or given by way of compensation for the loss of, or in connection with the retirement from, the prescribed office in relation to which the proposed benefit is proposed to be made or given.

(8) The giving of approval by a company for the making of a payment referred to in paragraph (1) (b) or for the giving of consideration or another benefit referred to in paragraph (1) (b) does not relieve a director of the company of any duty to the company under section 229 or otherwise, and whether of a fiduciary nature or not, in connection with the making of the payment or the giving of the consideration or other benefit.

Penalty: \$2,500 or imprisonment for 6 months, or both.

234. (1) If, in the case of a public company, provision is made by the articles or by an agreement entered into between any person and the company for empowering a director of the company to assign his office as such to another person, any such assignment of office is, notwithstanding anything

in the provision of the articles or agreement, of no effect until approved by a special resolution of the company.

(2) This section shall not be construed so as to prevent the appointment by a director (if authorized by the articles and subject to the articles) of an alternate or substitute director to act for or on behalf of the director during his inability for any time to act as director.

235. (1) If a company is served with a notice sent by or on behalf of—

(a) at least 10% of the total number of members of the company;

or

(b) the holders in aggregate of not less than 5% in nominal value of the company's issued share capital,

requiring the emoluments and other benefits received by the directors of the company or of a subsidiary to be disclosed, the company shall—

(c) forthwith prepare or cause to be prepared and cause to be audited a statement showing the total amount of emoluments and other benefits paid to or received by each of the directors of the company and each director of a subsidiary, including any amount paid by way of salary, for the financial year immediately preceding the service of the notice;

(d) when the statement referred to in paragraph (c) has been audited, forthwith send a copy of the statement to all persons entitled to receive notice of general meetings of the company;

and

(e) lay the statement before the next general meeting of the company held after the statement is audited.

(2) If a company fails to comply with any provision of this section, the company and the directors of the company are each guilty of an offence.

236. (1) A company shall have at least one secretary.

Secretary.

(2) A secretary of a company shall be appointed by the directors.

(3) A person is not capable of being a secretary of a company unless the person is a natural person who has attained the age of 18 years.

(4) The secretary, or one of the secretaries, shall be a person who ordinarily resides in the State.

(5) A secretary who ordinarily resides in the State shall be present at the registered office of the company in person or by his agent on the days and during the hours when the registered office is required to be open and accessible to the public.

(6) If there is no secretary of a company, or no secretary of the company is capable of acting, any act or thing required or authorized to be done by or in relation to the secretary may be done by or in relation to any assistant or deputy secretary or, if there is no assistant or deputy secretary or no assistant or deputy secretary is capable of acting, by or in relation to an officer of the company authorized by the directors to act as secretary, either generally or in relation to the doing of that act or thing.

(7) A provision of this Code or of the memorandum or articles requiring or authorizing any act or thing to be done by or in relation to a director

and a secretary is not satisfied by its being done by or in relation to the same person acting both as director and as, or in place of, a secretary.

(8) If default is made in complying with any provision of this section, the company and any officer of the company who is in default are each guilty of an offence.

Provisions indemnifying officers or auditors.

237. (1) Any provision, whether contained in the articles or in a contract with a company or otherwise, for exempting any officer or auditor of the company from, or indemnifying him against, any liability that by law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company is void.

(2) Notwithstanding anything in this section, a company may, pursuant to its articles or otherwise, indemnify an officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in relation to any such proceedings in which relief is under this Code granted to him by the Court.

(3) Sub-section (1) does not apply in relation to a contract of insurance, not being a contract of insurance the premiums in respect of which are paid by the company or by a related corporation.

(4) For the purposes of this section, 'officer', in relation to a company, means—

- (a) a director, secretary, executive officer or employee of the company;
 - (b) a receiver, or receiver and manager, of the property or part of the property of the company;
 - (c) an official manager or deputy official manager of the company;
 - (d) a liquidator of the company;
- and
- (e) a trustee or other person administering a compromise or arrangement made between the company and another person or other persons.

Register of directors, principal executive officers and secretaries.

238. (1) A company shall keep a register of its directors, principal executive officers and secretaries.

(2) The register shall contain with respect to each director his consent in writing to appointment as such and shall specify—

- (a) his present Christian or given name and surname, any former Christian or given name or surname, his usual residential address, and his business occupation (if any);

and

- (b) particulars of directorships held by the director in other corporations that under the law of the State, of another State or of a Territory are public companies or subsidiaries of public companies,

but it is not necessary for the register to contain particulars of directorships held by a director of a corporation in a related corporation.

(3) Where a person is a director in one or more subsidiaries of the same holding company, it is sufficient compliance with the provisions of

sub-section (2) if it is disclosed that the person is the holder of one or more directorships in that group of companies and the group may be described by the name of the holding company with the addition of the word "Group".

(4) The register shall specify with respect to each principal executive officer and secretary his full name and address and other occupation (if any) and shall contain his consent in writing to his appointment as principal executive officer or secretary, as the case may be.

(5) The register shall be open for inspection—

(a) by any member of the company—without charge;

and

(b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

(6) A person may request a company to furnish him with a copy of the register or any part of the register and, where such a request is made, the company shall send the copy to that person—

(a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves;

or

(b) in a case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Commission approves.

(7) The company shall lodge with the Commission—

(a) within one month after incorporation—a return in the prescribed form containing the particulars required to be specified in the register;

(b) within one month after a person ceases to be, or becomes, a director of the company—a return in the prescribed form notifying the Commission of the change and containing, with respect to each person who is, at the time of lodgment of the return, a director of the company, the particulars required to be specified in the register;

(c) within one month after a person becomes a principal executive officer or secretary of the company—a return in the prescribed form notifying the Commission of that fact and specifying the full name, address and other occupation (if any) of that person;

and

(d) within one month after a person ceases to be a principal executive officer or secretary of the company—a return in the prescribed form notifying the Commission of that fact.

(8) If default is made in complying with any of the preceding provisions of this section, the company and any officer of the company who is in default are each guilty of an offence.

(9) The Commission may at any time, by notice in writing to a person who appears to the Commission from returns lodged with the Commission

under this section to be a director, principal executive officer or secretary of a company, require the person to lodge with the Commission, within a period specified in the notice, a notice in the prescribed form stating whether the person is such a director, principal executive officer or secretary and, if the person has ceased to be such a director, principal executive officer or secretary, specifying the date on which he so ceased, and, where a person receives such a notice, the person shall comply with the notice.

(10) A certificate of the Commission stating that, from any return or notice lodged with the Commission pursuant to this section or lodged with the Registrar of Companies or the State Commission pursuant to a corresponding provision of a previous law of the State, it appears that at any time specified in the certificate, or throughout a period specified in the certificate, a person was a director, principal executive officer or secretary of a specified company shall, in all courts and by all persons having power to take evidence for the purposes of this Code, be received as *prima facie* evidence of the facts stated in the certificate and, for the purposes of this sub-section, a person who appears from any return or notice so lodged to be a director, principal executive officer or secretary of a company shall be deemed to continue as such until, from a return or notice subsequently so lodged with the Commission, it appears that he has ceased to be such a director, principal executive officer or secretary.

DIVISION 3

DIVISION 3—MEETINGS AND PROCEEDINGS

Statutory meeting
and statutory
report.

239. (1) Where a public company that is a limited company and has a share capital or a no liability company—

(a) issues a prospectus inviting applications or offers from the public to subscribe for, or offering to the public for subscription, shares in the company;

and

(b) the company has not previously issued such a prospectus,

the company shall, within a period of not less than one month and not more than 3 months after the date on which the company allots shares pursuant to the prospectus, hold a general meeting of the members of the company, to be called the “statutory meeting”.

(2) The directors shall at least 7 days before the day on which the meeting is to be held send a copy of a report, to be called the “statutory report”, to every member of the company.

(3) The statutory report shall be certified by not less than 2 directors of the company and shall state, as at the date of the report—

(a) the total number of shares allotted, distinguishing—

(i) shares allotted as fully paid up in cash;

(ii) shares allotted as partly paid up in cash;

(iii) shares allotted as fully paid up otherwise than in cash;

and

(iv) shares allotted as partly paid up otherwise than in cash,

and stating—

(v) in the case of shares partly paid up—the extent to which they are so paid up;

and

(vi) in the case of shares allotted as fully or partly paid up otherwise than in cash—the consideration for which they have been allotted;

(b) the total amount of cash received by the company in respect of all the shares allotted and so distinguished;

(c) an abstract of the receipts of the company and of the payments made out of those receipts up to a date within 7 days of the date of the report exhibiting under distinctive headings the receipts from shares and debentures and other sources, the payments made out of those receipts and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses;

(d) the names and addresses and descriptions of the directors, trustees for holders of debentures (if any), auditors (if any), principal executive officers and secretaries of the company;

and

(e) the particulars of any contract the modification of which is to be submitted to the meeting for its approval together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted and to the cash received in respect of such shares and to the receipts and payments on capital account, be examined and reported upon by the auditors (if any).

(5) The directors shall cause a copy of the statutory report and the auditor's report (if any) to be lodged with the Commission at least 7 days before the date of the statutory meeting.

(6) The directors shall cause a list showing the names and addresses of the members, and the numbers of shares held by them respectively, to be produced at the commencement of the meeting and to remain open and accessible to any member during the continuance of the meeting.

(7) The members present at the meeting are at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time and, at any adjourned meeting, any resolution of which notice has been given in accordance with the articles either before or after the former meeting may be passed and the adjourned meeting has the same powers as an original meeting.

(9) The meeting may by resolution appoint a committee or committees of inquiry, and at any adjourned meeting a special resolution may be passed that the company be wound up if, notwithstanding any other provision of this Code, at least 7 days notice of intention to propose the resolution has been given to every member of the company.

(10) In the event of any default in complying with the provisions of this section, any officer of the company who is in default and any director of the company who fails to take all reasonable steps to secure compliance with the provisions of this section are each guilty of an offence.

Annual general meeting.

240. (1) Subject to sub-section (2), a company shall, in addition to any other meeting held by the company, hold a general meeting, to be called the "annual general meeting", at least once in every calendar year and, in relation to a financial year of the company that ends after the commencement of the Companies (Application of Laws) Act 1982, within the period of 5 months (or, in the case of an exempt proprietary company, the period of 6 months) after the end of that financial year.

(2) A company may hold its first annual general meeting at any time within the period of 18 months after its incorporation but, where the first financial year of the company ends after the commencement of the Companies (Application of Laws) Act 1982, the company shall hold the meeting not more than 5 months (or, in the case of an exempt proprietary company, more than 6 months) after the end of that financial year.

(3) A company shall be deemed to have held an annual general meeting if that company has held a general meeting at which resolutions have been passed dealing with all matters required to be dealt with at an annual general meeting, but nothing in this sub-section affects an obligation imposed by this Code to hold an annual general meeting at a particular time or within a particular period.

(4) An exempt proprietary company shall be deemed to have held an annual general meeting if that company is deemed by section 250 to have held a general meeting and the resolution that is deemed to have been passed at that general meeting deals with all matters that are required to be dealt with at an annual general meeting.

(5) The Commission may, on application made by a company in accordance with a resolution of the directors and signed by a director or secretary, subject to such conditions as the Commission thinks fit—

(a) extend the period of 5 months or the period of 6 months referred to in sub-section (1) or the period of 18 months referred to in sub-section (2);

or

(b) permit an annual general meeting to be held in a calendar year other than the calendar year in which it would otherwise be required by sub-section (1) to be held.

(6) A company is not in default in holding an annual general meeting under sub-section (1) or (2) if, pursuant to an extension or permission under sub-section (5), an annual general meeting is not held within the period or in the calendar year in which it would otherwise be required by sub-section (1) or (2) as the case may be, to be held, but is held within the extended period or in the calendar year in which under sub-section (5) it is permitted to be held.

(7) An application by a company for an extension of a period or for permission under sub-section (5) shall be made before the expiration of that period or of the calendar year in which the annual general meeting would otherwise be required by sub-section (1) or (2), as the case may be, to be held.

(8) Subject to notice being given to all persons entitled to receive notice of the meeting, a general meeting may be held at any time and the company may resolve that any meeting held or convened to be held shall be the annual general meeting of the company.

(9) If default is made in holding an annual meeting under this section or in complying with any conditions imposed by the Commission under sub-section (5)—

(a) the company and any officer of the company who is in default are each guilty of an offence;

and

(b) the Court may, on the application of any member, order a general meeting to be convened.

Penalty: \$1,000 or imprisonment for 3 months, or both.

241. (1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition—

Convening of
general meeting
on requisition.

(a) of members holding at the date of the deposit of the requisition not less than 5% of such of the paid-up capital as at that date carries the right of voting at general meetings;

or

(b) in the case of a company not having a share capital, of members who are together entitled to not less than 5% of the total voting rights of all members having at that date a right to vote at general meetings,

or, in either case, of not less than 200 members, forthwith convene a general meeting of the company to be held as soon as practicable but, in any case, not later than 2 months after the receipt by the company of the requisition.

(2) The requisition shall state the objects of the meeting and shall be signed by the requisitioning members and deposited at the registered office of the company, and may consist of several documents in like form each signed by one or more of the requisitioning members.

(3) If the directors do not, within 21 days after the date of the deposit of the requisition, proceed to convene a meeting, the requisitioning members, or any of them representing more than 50% of the total voting rights of all of them, may themselves, in the same manner as nearly as possible as that in which meetings are to be convened by directors, convene a meeting, but any meeting so convened shall not be held after the expiration of 3 months from the date of the deposit of the requisition.

(4) Any reasonable expenses incurred by the requisitioning members by reason of the failure of the directors to convene a meeting shall be paid to those members by the company, and any sum so paid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(5) A meeting at which a special resolution is to be proposed shall be deemed not to be duly convened by the directors if they do not give such notice of the meeting as is required by this Code in the case of special resolutions.

242. (1) So far as the articles do not make other provision, 2 or more members holding not less than 5% of the issued share capital, or, if the company does not have a share capital, not less than 5% in number of the members of the company, may convene a meeting of the company.

(2) A meeting of a company or of a class of members, other than a meeting for the passing of a special resolution, shall be convened by notice in writing of not less than 14 days or such longer period as is provided in the articles.

(3) A meeting shall, notwithstanding that it is convened by notice shorter than is required by sub-section (2), be deemed to be duly convened if it is so agreed—

(a) in the case of a meeting convened as the annual general meeting—
 by all the members entitled to attend and vote at the meeting;

or

(b) in the case of any other meeting—by a majority in number of the members having a right to attend and vote at the meeting, being a majority that together hold not less than 95% in nominal value of the shares giving a right to attend and vote or, in the case of a company not having a share capital, are together entitled to not less than 95% of the total voting rights of all the members having the right to attend and vote at the meeting.

(4) So far as the articles do not make other provision, notice of every meeting shall be served on every member having a right to attend and vote at the meeting in the manner in which notices are required to be served by Table A.

243. (1) Any provision contained in a company's articles is void in so far as it would have the effect—

(a) of excluding the right to demand a poll at a general meeting on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting;

(b) of making ineffective a demand for a poll on any question or matter, other than the election of the chairman of the meeting or the adjournment of the meeting, that is made—

(i) by not less than 5 members having the right to vote at the meeting;

(ii) by a member or members who are together entitled to not less than 10% of the total voting rights of all the members having the right to vote at the meeting;

or

(iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than 10% of the total sum paid up on all the shares conferring that right;

or

(c) of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating

to the appointment of a proxy, to be received by the company or any other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective at the meeting.

(2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed to confer authority to demand or join in demanding a poll, and, for the purposes of sub-section (1), a demand by a person as proxy for a member of the company shall be deemed to be the same as a demand by the member.

244. (1) So far as the articles do not make other provision—

(a) in the case of a proprietary company, 2 members of the company, and in the case of any other company, 3 members, personally present constitute a quorum;

(b) any member elected by the members present at a meeting may be chairman of the meeting;

and

(c) in the case of a company having a share capital, every member has one vote in respect of each share or each \$20 of stock held by him, and, in any other case, every member has one vote.

(2) On a poll taken at a meeting, a person (including a proxy) entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

(3) A body corporate may, by resolution of its directors or other governing body—

(a) if it is a member of a company, authorize such person as it thinks fit to act as its representative either at a particular meeting or at all meetings of the company or of any class of members;

or

(b) if it is a creditor (including a holder of debentures) of a company, authorize such person as it thinks fit to act as its representative either at a particular meeting or at all meetings of any creditors of the company,

and a person so authorized is, in accordance with his authority and until his authority is revoked by the body corporate, entitled to exercise the same powers on behalf of the body corporate as the body corporate could exercise if it were a natural person who was a member, creditor or holder of debentures of the company.

(4) Where—

(a) a person present at a meeting is authorized to act as the representative of a body corporate at the meeting by virtue of an authority given by the body corporate under sub-section (3);

and

(b) the person is not otherwise entitled to be present at the meeting, the body corporate shall, for the purposes of sub-section (1), be deemed to be personally present at the meeting.

Quorum,
chairman, voting,
&c., at meetings.

(5) A certificate under the seal of the body corporate is *prima facie* evidence of the appointment or of the revocation of the appointment, as the case may be, of a representative pursuant to the provisions of sub-section (3).

(6) Where a holding company holds the whole of the issued shares in a subsidiary and a minute is signed by a representative of the holding company authorized pursuant to sub-section (3) stating that any act, matter or thing, or any ordinary or special resolution, required by this Code or by the memorandum or articles of the subsidiary to be made, performed, or passed by or at a general meeting of the subsidiary has been made, performed, or passed, that act, matter, thing or resolution shall, for all purposes, be deemed to have been duly made, performed or passed by or at a general meeting of the subsidiary.

(7) Where—

(a) by or under any provision of this Code any notice, copy of a resolution or other document relating to any matter is required to be lodged by the company with the Commission;

(b) a minute referred to in sub-section (6) is signed by the representative pursuant to that sub-section;

and

(c) the minute relates to such a matter,

the company shall, within one month after the signing of the minute, lodge a copy of the minute with the Commission.

Proxies.

245. (1) Subject to sub-sections (2), (3) and (4), a member of a company who is entitled to attend and vote at a meeting of the company, or at a meeting of any class of members of the company, is entitled to appoint—

(a) in the case of a company not having a share capital—another member or, where the articles so provide, another person (whether a member or not);

or

(b) in any other case—not more than 2 other persons (whether members or not),

as his proxy or proxies to attend and vote instead of the member at the meeting.

(2) A proxy appointed to attend and vote instead of a member has the same right as the member to speak at the meeting but, unless the articles otherwise provide, a proxy is not entitled to vote except on a poll.

(3) Where a member appoints 2 proxies, the appointment is of no effect unless each proxy is appointed to represent a specified proportion of the member's voting rights.

(4) A member of a proprietary company is not entitled to appoint another person as his proxy under sub-section (1) except—

(a) in accordance with the articles of the company;

or

(b) with the leave of the Court.

(5) In every notice convening a meeting of a public company or of any class of members of a public company, there shall appear with reasonable prominence—

(a) in the case of a public company having a share capital, a statement—

(i) that a member entitled to attend and vote is entitled to appoint not more than 2 proxies;

(ii) that where more than one proxy is appointed, each proxy must be appointed to represent a specified proportion of the member's voting rights;

and

(iii) that a proxy need not be a member;

or

(b) in the case of a public company not having a share capital, a statement—

(i) that a member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of the member;

and

(ii) that a proxy must, or need not, be a member (as the case requires),

and, if default is made in complying with this sub-section as respects any meeting, every officer of the company who is in default is guilty of an offence.

(6) A person who authorizes or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote at the meeting by proxy is guilty of an offence.

(7) A person is not guilty of an offence under sub-section (6) by reason only of the issue to a member at his request of a form of appointment naming the proxy or a list of persons willing to act as proxies if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

246. (1) If for any reason it is impracticable to convene a meeting in any manner in which meetings may be convened or to conduct the meeting in the manner prescribed by the articles or this Code, the Court may, either of its own motion or on the application of any director or of any member who would be entitled to vote at the meeting, order a meeting to be convened, held and conducted in such manner as the Court thinks fit, and may give such ancillary or consequential directions as it thinks expedient, including a direction that one member present in person or by proxy shall be deemed to constitute a meeting.

Power of Court to
order meeting.

(2) Any meeting convened, held and conducted in accordance with any order made pursuant to this section shall, for all purposes, be deemed to be a meeting duly convened, held and conducted.

(3) For the purposes of an application to the Court or of a meeting held by order of the Court under this section, the personal representative of

a deceased member of a company shall be deemed to be a member of the company and, notwithstanding anything to the contrary in this Code or the memorandum or articles of the company, to have the same voting rights as the deceased member had immediately before his death by reason of his holding shares that on his death were transmitted to his personal representative by operation of law.

Circulation of
members'
resolutions, &c.

247. (1) Subject to this section, a company shall, on the requisition in writing of such number of members of the company as is specified in sub-section (2) and (unless the company otherwise resolves) at the expense of those members—

- (a) give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution that may properly be moved and is intended to be moved at that meeting;

and

- (b) circulate to members entitled to have notice of any general meeting sent to them any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under sub-section (1) is—

- (a) a number of members who are together entitled to not less than 5% of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates;

or

- (b) not less than 100 members holding shares in the company on which there has been paid up an average sum, per member, of not less than \$200.

(3) Notice of a resolution referred to in sub-section (1) shall be given, and any statement so referred to shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each member in any manner permitted for service of notice of the meeting, and notice of the resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company, and the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable after that time.

(4) A company is not bound under this section to give notice of any resolution or to circulate any statement unless—

- (a) a copy of the requisition signed by the requisitioning members (or 2 or more copies that between them contain the signatures of all the requisitioning members) is deposited at the registered office of the company—
 - (i) in the case of a requisition requiring notice of a resolution—not less than 6 weeks before the meeting;

and

- (ii) in the case of any other requisition, not less than one week before the meeting;

and

- (b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect to the requisition,

but if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date 6 weeks or less after the copy has been deposited, the copy though not deposited within the time required by this sub-section shall be deemed to have been properly deposited for the purposes of this section.

(5) A company is not bound under this section to circulate any statement if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter, and the Court may order the costs of the company or of the other person on an application under this section to be paid in whole or in part by the requisitioning members, notwithstanding that they are not parties to the application.

(6) Notwithstanding anything in the company's articles, the business that may be dealt with at an annual general meeting includes any resolution of which notice is given in accordance with this section, and, for the purposes of this sub-section, notice shall be deemed to have been so given notwithstanding the accidental omission to give notice to a member or members.

(7) If default is made in complying with the provisions of this section, the company and any officer of the company who is in default are each guilty of an offence.

248. (1) A resolution is a special resolution of a company if—

Special
resolutions.

- (a) it is passed at a meeting of the company, being a meeting of which not less than 21 days' written notice specifying the intention to propose the resolution as a special resolution has been duly given;

and

- (b) it is passed at a meeting referred to in paragraph (a) by a majority of not less than three-quarters of such members of the company as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at that meeting.

(2) A resolution is a special resolution of the holders of shares in a company included in a class of shares if—

- (a) it is passed at a meeting of the holders of shares included in that class of shares, being a meeting of which not less than 21 days' written notice specifying the intention to propose the resolution as a special resolution has been duly given;

and

- (b) it is passed at a meeting referred to in paragraph (a) by a majority of not less than three-quarters of such holders of shares included

in that class of shares as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at that meeting.

(3) A resolution is a special resolution of the members of a company included in a class of members if—

(a) it is passed at a meeting of members included in that class of members, being a meeting of which not less than 21 days' written notice specifying the intention to propose the resolution as a special resolution has been duly given;

and

(b) it is passed at a meeting referred to in paragraph (a) by a majority of not less than three-quarters of such members included in that class of members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at that meeting.

(4) Notwithstanding the provisions of sub-section (1), (2) or (3), if it is so agreed by a majority in number of the members having the right to attend and vote at the meeting, being a majority that together hold not less than 95% in nominal value of the shares giving that right or, in the case of a company not having a share capital, together represent not less than 95% of the total voting rights of all members having the right to attend and vote at the meeting, a resolution may be proposed and passed as a special resolution at a meeting of which not less than 21 days' notice has been given.

(5) At a meeting at which a special resolution is submitted, a declaration of the chairman that the resolution is carried is, unless a poll is demanded, conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(6) At any meeting at which a special resolution is submitted, a poll shall be deemed to be effectively demanded if demanded—

(a) if the articles make provision permitting a specified number of members for the time being entitled under the articles to vote at the meeting to demand a poll—

(i) where the number specified does not exceed 5—by that number of members so entitled;

or

(ii) in any other case—by 5 members so entitled;

or

(b) if no such provision is made by the articles, by 3 members entitled to vote at the meeting, or by one member or 2 members so entitled if that member holds or those 2 members together hold not less than 10% in nominal value of the shares giving the right to attend and vote at the meeting or, where the company does not have a share capital, if that member is entitled, or those 2 members together are entitled, to not less than 10% of the total voting rights of all members having the right to attend and vote at the meeting.

(7) In computing the majority on a poll demanded on the question that a special resolution be passed, reference shall be had to the number of votes cast for and against the resolution and to the number of votes to which each member is entitled by this Code or the articles of the company.

(8) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting shall be deemed to be duly held when the notice is given and the meeting held in the manner provided by this Code or by the articles.

(9) Where, in the case of a company incorporated before the commencement of the Companies (Application of Laws) Act 1982, any matter is required or permitted to be done by extraordinary resolution, that matter may be done by special resolution.

249. (1) Where by this Code special notice is required of a resolution to be put at a meeting of a company, the resolution is not effective unless notice of the intention to move the resolution has been given to the company not less than 28 days before the meeting at which it is moved, but if, after notice of the intention to move such a resolution has been given to the company, a meeting is convened for a date 28 days or less after the notice has been given, the notice, although not given to the company within the time required by this section, shall be deemed to be properly given.

Resolution
requiring special
notice.

(2) The company shall give persons entitled to be given notice of a meeting of the company notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice of the resolution in any manner allowed by the articles not less than 14 days before the meeting.

250. (1) If all the members of an exempt proprietary company have signed a document containing a statement that they are in favour of a prescribed resolution in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a general meeting of the company held on the day on which the document was signed and at the time at which the document was last signed by a member or, if the members signed the document on different days, on the day on which, and at the time at which, the document was last signed by a member and, where a document is so signed—

Resolutions of
exempt
proprietary
companies.

(a) the company shall be deemed to have held a general meeting at that time on that day;

and

(b) the document shall be deemed to constitute a minute of that meeting.

(2) Sub-section (1) does not apply in relation to a document unless the document has been signed by each person who was a member of the company at the time when the document was last signed.

(3) For the purposes of this section—

(a) 2 or more separate documents containing statements in identical terms each of which is signed by one or more members shall together be deemed to constitute one document containing a statement in those terms signed by those members on the respective days on which they signed the separate documents;

and

(b) a prescribed resolution is a resolution that is required or permitted by this Code or the memorandum or articles to be passed at a general meeting of a company and includes a resolution appointing an officer or auditor or approving of or agreeing

to any act, matter or thing but does not include a resolution of which special notice is required or that is required to be passed by a majority other than a simple majority.

(4) Any document that is attached to a document signed as mentioned in sub-section (1) and is signed by the member or members who signed the last-mentioned document shall, for the purposes of this Code, be deemed to have been laid before the company at the general meeting referred to in that sub-section.

(5) Nothing in this section affects or limits any rule of law relating to the effectiveness of the assent of members of a company given to a document, or to any act, matter or thing, otherwise than at a general meeting of the company.

Lodgment with the Commission, &c., of copies of certain resolutions and agreements.

251. (1) A printed copy of—

- (a) each special resolution;
- (b) each resolution or agreement that binds a class of shareholders, whether or not agreed to by all the members of that class;

and

- (c) each document or resolution that attaches rights to shares (whether or not in substitution for other rights) and is not otherwise required to be lodged with the Commission under this Code,

shall, except where otherwise expressly provided by this Code, within one month after the passing of the resolution or the making of the agreement or document, be lodged by the company with the Commission.

(2) Where articles have not been registered, a member may request the company to furnish him with a printed copy of any resolution, document or agreement to which this section applies and, where such a request is made, the company shall send the copy to that person—

- (a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves;

or

- (b) in a case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Commission approves.

(3) If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

Resolutions at adjourned meetings.

252. Where a resolution is passed at an adjourned meeting of a company or of holders of any class of shares or of directors, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

Minutes of proceedings.

253. (1) A company shall—

- (a) cause minutes of all proceedings of general meetings and of meetings of its directors to be entered, within one month after the relevant meeting is held, in books kept for that purpose;

and

(b) except in the case of documents that are deemed to constitute minutes by virtue of section 250, cause those minutes to be signed by the chairman of the meeting at which the proceedings took place or by the chairman of the next succeeding meeting.

(2) Any minute that is so entered and, in a case to which paragraph (1) (b) applies, purports to be signed as provided by that paragraph is *prima facie* evidence of the proceedings to which it relates.

(3) Where minutes have been so entered and, in a case to which paragraph (1) (b) applies, signed, then, unless the contrary is proved—

(a) the meeting shall be deemed to have been duly held and convened;

(b) all proceedings that are recorded in the minutes as having taken place at the meeting shall be deemed to have duly taken place;

and

(c) all appointments of officers or auditors that are recorded in the minutes as having been made at the meeting shall be deemed to have been validly made.

(4) If a company fails to comply with this section, the company and any officer of the company who is in default are each guilty of an offence.

Penalty: \$1,000 or imprisonment for 3 months, or both.

254. (1) The books containing the minutes of proceedings of any general meeting or of a meeting of the directors of the company shall be kept by the company at the registered office or the principal place of business in the State of the company or at such other place in Australia as is approved by the Commission and, in the case of the books containing the minutes of proceedings of general meetings, shall be open for inspection by any member without charge.

Inspection of
minute books.

(2) A member of a company may request the company in writing to furnish him with a copy of any minutes of a general meeting and, where such a request is made, the company shall send the copy to that person—

(a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves;

or

(b) in a case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Commission approves.

(3) If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

DIVISION 4—REGISTER OF MEMBERS

DIVISION 4

255. Nothing in this Division (other than sub-section 257 (5)) applies to a company to which section 140 of the *Life Insurance Act 1945* applies so long as the company complies with the provisions of that section.

Non-application
of the Division to
mutual life
assurance
companies.

256. (1) A company shall keep a register of its members and enter in that register—

- (a) the names and addresses of the members and, in the case of a company having a share capital, a statement of the shares held by each member (distinguishing each share by its number (if any) or by the number (if any) of the certificate evidencing the member's holding) and of the amount paid or agreed to be considered as paid on the shares of each member;
- (b) the date at which the name of each person was entered in the register as a member;
- (c) the date at which any person who ceased to be a member during the previous 7 years so ceased to be a member;

and

- (d) in the case of a company having a share capital, the date of every allotment of shares to members and the number of shares comprised in each allotment.

(2) Notwithstanding anything in sub-section (1), where the company has converted any of its shares into stock and given notice of the conversion to the Commission, the company shall alter the register to show the amount of stock or number of stock units held by each member instead of the number of shares and the particulars relating to shares specified in paragraph (1) (a).

(3) Notwithstanding anything in sub-section (1), a company may keep the names and particulars relating to persons who have ceased to be members of the company separately, and the names and particulars relating to former members need not be supplied to a person who applies for a copy of the register unless he specifically requests the names and particulars of former members.

(4) The register of members is *prima facie* evidence of any matters inserted in that register as required or authorized by this Code.

(5) A company having more than 50 members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index in convenient form of the names of the members and shall, within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

(6) The index shall, in respect of each member, contain a sufficient indication to enable the account of that member in the register to be found readily.

(7) If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

257. (1) A company may close the register of members or part of that register for any time or times, but so that no part of the register shall be closed for more than 30 days in the aggregate in any calendar year.

(2) The register and index shall be open for inspection—

- (a) by any member of the company—without charge;
- (b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the company

requires or, where the company does not require the payment of an amount, without charge.

(3) A person may request a company to furnish him with a copy of the register or any part of the register (but only so far as it relates to names, addresses, number of shares held and amounts paid on shares) and, where such a request is made, the company shall send the copy to that person—

(a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves;

or

(b) in a case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Commission approves.

(4) If default is made in complying with sub-section (2) or (3), the company and any officer of the company who is in default are each guilty of an offence.

(5) Any member of a company to which section 140 of the *Life Insurance Act, 1945* applies is entitled to inspect any register, index, or other record of the company that relates to the members of the company, but may make copies of or take extracts from such a register, index or record only in relation to names, addresses and voting entitlements of the members of the company.

(6) This section has effect subject to section 261.

258. Where, by virtue of paragraph 547 (1) (b), the register of members is kept at the office of a person other than the company, and by reason of any default of that other person, the company fails to comply with section 257 or sub-section 547 (1) or (4) or with any requirements of this Code as to the production of the register, that other person is liable to the same penalties as if he were an officer of the company who was in default, and the power of the Court under section 551 extends to the making of orders against that other person and his officers and servants.

Consequences of default by agent.

259. (1) If—

- (a) an entry is omitted from the register;
- (b) an entry is made in the register without sufficient cause;
- (c) an entry wrongly exists in the register;
- (d) there is an error or defect in an entry in the register;

or

- (e) default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a member,

Power of Court to rectify register.

the person aggrieved, any member or the company may apply to the Court for rectification of the register, and the Court may refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party to the application.

(2) On any application under sub-section (1), the Court may decide—

- (a) any question relating to the right of a person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between—
- (i) a member or alleged member on the one hand and another member or alleged member on the other hand;
- or
- (ii) a member or alleged member on the one hand and the company on the other hand;

and

- (b) generally any question necessary or expedient to be decided with respect to the rectification of the register.

(3) Where a company is required by this Code to lodge a return containing a list of its members with the Commission, the Court, when making an order for rectification of the register, shall by its order direct a notice of the rectification to be so lodged.

Trustee, &c., may
be registered as
owner of shares.

260. (1) A trustee, executor or administrator of the estate of a deceased person who was registered in a register or branch register kept in the State as the holder of a share in any corporation may be registered as the holder of that share as the trustee, executor or administrator of that estate and is, in respect of that share, subject to the same liabilities as those to which he would have been subject if the share had remained registered in the name of the deceased person and is not subject to any other liabilities in respect of that share.

(2) A trustee, executor or administrator of the estate of a deceased person who was entitled in equity to a share in any corporation, being a share registered in a register or branch register kept in the State, may, with the consent of the corporation and of the registered holder of that share, be registered as the holder of the share as trustee, executor or administrator of that estate and is, in respect of that share, subject to the same liabilities as those to which he would have been subject if that share had been registered in the name of the deceased person and is not subject to any other liabilities in respect of that share.

(3) Where—

- (a) a person is appointed, under a law of a State or Territory relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of a person who is so incapable (in this sub-section referred to as the “incapable person”);

and

- (b) the incapable person is registered in a register or branch register kept in the State as the holder of a share in any corporation,

the first-mentioned person may be registered as the holder of that share as administrator of that estate and is, in respect of that share, subject to the same liabilities as those to which he would have been subject if that share had remained registered in the name of the incapable person and is not subject to any other liabilities in respect of that share.

(4) Where—

- (a) a person is appointed, under a law of a State or Territory relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of a person who is so incapable (in this sub-section referred to as the "incapable person");

and

- (b) the incapable person is entitled in equity to a share in any corporation, being a share registered in a register or branch register kept in the State,

the first-mentioned person may, with the consent of the corporation and of the registered holder of that share, be registered as the holder of the share as administrator of that estate and is, in respect of that share, subject to the same liabilities as those to which he would have been subject if that share had been registered in the name of the incapable person and is not subject to any other liabilities in respect of that share.

(5) Where—

- (a) by reason of the operation of the *Bankruptcy Act* 1966, a share in a corporation, being the property of a bankrupt, vests in the Official Trustee in Bankruptcy;

and

- (b) the bankrupt is registered in a register or branch register kept in the State as the holder of that share,

the Official Trustee in Bankruptcy may be registered as the holder of that share as Official Trustee in Bankruptcy and is, in respect of that share, subject to the same liabilities as those to which he would have been subject if that share had remained registered in the name of the bankrupt and is not subject to any other liabilities in respect of that share.

(6) Where—

- (a) by reason of the operation of the *Bankruptcy Act* 1966, a share in a corporation, being the property of a bankrupt, vests in the Official Trustee in Bankruptcy;

- (b) the share is registered in a register or branch register kept in the State;

and

- (c) the bankrupt is entitled in equity to that share,

the Official Trustee in Bankruptcy may, with the consent of the corporation and of the registered holder of that share, be registered as the holder of that share as Official Trustee in Bankruptcy and is, in respect of that share, subject to the same liabilities as those to which he would have been subject if that share had been registered in the name of the bankrupt and is not subject to any other liabilities in respect of that share.

(7) Shares in a corporation registered in a register or branch register kept in the State and held by a trustee in respect of a particular trust may, with the consent of the corporation, be marked in the register or branch register in such a way as to identify them as being held in respect of the trust.

(8) Except as provided in this section and section 261, no notice of any trust, whether express, implied or constructive, shall be entered on the

register or branch register kept in the State or be receivable by the Commission and no liabilities are affected by anything done pursuant to sub-section (1), (2), (3), (4), (5), (6) or (7) or section 261 and the corporation concerned is not affected with notice of any trust by anything so done.

(9) A person who commences to hold shares in a proprietary company as trustee for, or otherwise on behalf of or on account of, a corporation shall, within one month after commencing so to hold the shares, serve on the company notice in writing that he so holds the shares.

Power of company to obtain information as to beneficial ownership of its shares.

261. (1) In this section, "company" has the same meaning as in section 134.

(2) A company may, by notice in writing given to a person who holds voting shares in the company, require the person, within 14 days after receiving the notice, to furnish to the company a statement in writing setting out, so far as it lies within his knowledge, full particulars of the name and address of every other person (if any) who has a relevant interest in any of the voting shares in the company held by him and full particulars of each such interest and of the circumstances by reason of which the other person has that interest.

(3) Where a company receives, pursuant to a notice given to a person under sub-section (2) or under this sub-section, information that another person has a relevant interest in any of the voting shares in the company held by the first-mentioned person, the company may, by notice in writing given to that other person, require that other person, within 14 days after receiving the notice, to furnish to the company a statement in writing setting out full particulars of that interest and of the circumstances by reason of which he has that interest.

(4) Where a company receives, pursuant to a notice given to a person under sub-section (2) or (3), information that a person other than the holder of voting shares in the company has a relevant interest in voting shares in the company, the company shall enter in a separate part of the register of its members, in relation to the holder of those shares, the name and address of each other person who the company has been informed has a relevant interest in those shares and particulars of the interest and of the circumstances by reason of which the person has the interest.

(5) The separate part of the register of members of a company kept pursuant to sub-section (4) is not open to inspection by a person not being a member of the company or a person authorized by the Commission, and the company is not liable to furnish a copy of that part of the register to a person other than a member of the company, the Commission or a person authorized by the Commission.

(6) A person who fails to comply with a notice given to him under sub-section (2) or (3) is guilty of an offence.

Penalty: \$1,000 or imprisonment for 3 months, or both.

(7) If default is made in complying with sub-section (4), the company and any officer of the company who is in default are each guilty of an offence.

(8) A person is not guilty of an offence against sub-section (6) if he proves that the information required by the notice was already in the possession of the company or that the giving of the notice was for any reason frivolous or vexatious.

(9) Where the Commission is satisfied that, having regard to any undertaking given by a person in respect of any shares held or to be held by him in a company, there are special reasons why that person should be exempted from the operation of this section, the Commission may, by order in writing published in the *Gazette*, exempt that person from the operation of this section in relation to those shares.

262. (1) A company having a share capital may cause to be kept in any place outside the State a branch register of members. Branch registers.

(2) Where a member of a company having a share capital who is resident in a participating State or participating Territory requests the company in writing to register in a branch register of the company in that State or Territory shares held by the member—

(a) if the company keeps a branch register of members in that State or Territory—the company shall register in that branch register the shares held by that member;

or

(b) if the company—

(i) does not keep a branch register of members in that State or Territory;

and

(ii) is carrying on business in that State or Territory,

the company shall, within one month after receipt by it of the application, cause a branch register of members to be kept in that State or Territory and shall register in that branch register the shares held by that member.

(3) A branch register kept by a company shall be deemed to be part of the company's register of members.

(4) A branch register shall be kept in the same manner as that in which the principal register is by this Code required to be kept.

(5) A company shall transmit to the place at which its principal register is kept a copy of every entry in its branch register within 28 days after the entry is made, and shall cause to be kept at that place, duly entered up from time to time, a duplicate of its branch register, and the duplicate branch register shall, for the purposes of this Code, be deemed to be part of the principal register.

(6) Subject to the provisions of this section with respect to the duplicate branch register, the shares registered in a branch register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a branch register shall, during the continuance of that registration, be registered in any other register.

(7) Subject to sub-section (8), a company may discontinue a branch register and thereupon the company shall transfer all entries in that register to some other branch register kept by the company in the same State or Territory or, if there is no other branch register kept by the company in that State or Territory, to the principal register.

(8) Where a company keeps in a participating State or participating Territory a branch register in which are registered shares held by a member or members resident in that State or Territory, the company is not entitled to discontinue that branch register unless—

- (a) the company keeps another branch register in that State or Territory to which the entries in the first-mentioned branch register will be transferred;
 - (b) the member or members resident in that State or Territory whose shares are registered in the first-mentioned branch register consents or consent in writing to the discontinuance of that branch register;
- or
- (c) the company ceases to carry on business in that State or Territory.

(9) If default is made in complying with this section, the company, any officer of the company who is in default, and any person who has arranged with the company to make up a branch register on behalf of the company and is in default, are each guilty of an offence.

DIVISION 5

DIVISION 5—ANNUAL RETURN

Annual return.

263. (1) A company shall—

- (a) in a case to which paragraph (b) does not apply—within one month after the date of the annual general meeting of the company or, if the annual general meeting is not held within the period within which it is required by section 240 to be held, within one month after the last day of that period;

or

- (b) in the case of a company keeping pursuant to its articles a branch register in a place outside Australia—within 2 months after the date of the annual general meeting or, if the annual general meeting is not held within the period within which it is required by section 240 to be held, within 2 months after the last day of that period,

lodge with the Commission an annual return in the prescribed form, containing a list of members and such other particulars as are prescribed and accompanied by the prescribed documents.

(2) The regulations may prescribe different forms of return for companies having a share capital and companies not having a share capital.

(3) If a company fails to comply with this section, the company and any officer of the company who is in default are each guilty of an offence.

Auditor's
statement.

264. (1) A company that is not required by this Code to lodge accounts with the Commission shall include in or attach to its annual return under section 263 a statement relating to the accounts of the company required to be laid before the company at its annual general meeting held on the date to which the return is made up or, if an annual general meeting is not held on that date, the annual general meeting last preceeding that date, signed by the auditor of the company—

- (a) stating whether the company has in his opinion kept proper accounting records and other books during the period covered by those accounts;
- (b) stating whether the accounts have been audited in accordance with this Code;

and

- (c) stating whether the auditor's report on the accounts was made subject to any qualification, or included any comment made under sub-section 285 (4), and, if so, particulars of the qualification or comment.

(2) This section does not apply to an exempt proprietary company that is an unlimited company that, pursuant to section 278, did not appoint an auditor to audit the accounts referred to in sub-section (1).

(3) If a company fails to comply with this section, the company and any officer of the company who is in default are each guilty of an offence.

265. (1) A public company that—

- (a) has more than 500 members;
- (b) keeps its principal register at a place in the State within 25 kilometres of the office of the State Commission;

and

- (c) provides reasonable accommodation and facilities for persons to inspect and take copies of its list of members and its particulars of shares transferred,

need not comply with such of the provisions of this Division and of the regulations made for the purposes of this Division as relate to the inclusion in the annual return of a list of members if there is included in the annual return a certificate by the secretary that the company is of a kind to which this sub-section applies.

(2) The Commission may, by order in writing published in the *Gazette*, require any company to which sub-section (1) applies to comply with all or any of the provisions of this Division or of the regulations made for the purposes of this Division referred to in that sub-section.

(3) If default is made in complying with an order made under sub-section (2), the company and any officer of the company who is in default are each guilty of an offence.

Exemption of
certain
companies.

PART VI

PART VI

ACCOUNTS AND AUDIT

DIVISION 1

DIVISION 1—PRELIMINARY

Interpretation.

266. In this Part, unless the contrary intention appears—

“accounts” means profit and loss accounts and balance-sheets and includes statements, reports and notes, other than auditors’ reports or directors’ reports, attached to or intended to be read with any of those profit and loss accounts or balance-sheets;

“current liability”, in relation to accounts or group accounts, means a liability that would in the ordinary course of events be payable within 12 months after the end of the financial year to which the accounts or group accounts relate;

“group accounts”, in relation to a holding company, means—

- (a) a set of consolidated accounts for the group of companies of that holding company;
 - (b) 2 or more sets of consolidated accounts together covering that group;
 - (c) separate accounts for each corporation in that group;
- or
- (d) a combination of one or more sets of consolidated accounts and one or more separate accounts together covering that group;

“group of companies”, in relation to a holding company, means the holding company and the corporations that are subsidiaries of the holding company;

“holding company” means a company that is the holding company of a corporation;

“non-current liability” means a liability that is not a current liability;

“the profit or loss” means—

- (a) in relation to a corporation that is not a holding company—the profit or loss resulting from operations of that corporation;
- (b) in relation to a corporation that is a holding company of a group of companies for which group accounts are required—the profit or loss resulting from operations of that corporation;
- (c) in relation to a corporation referred to in paragraph (b) and its subsidiaries—the profit or loss resulting from operations of the group of companies of which the corporation is the holding company;

and

- (d) in relation to a corporation that is a holding company of a group of companies for which group accounts are not required—the profit or loss resulting from operations of that corporation.

DIVISION 2—ACCOUNTS

DIVISION 2

Accounts to be kept.

267. (1) A company shall—

(a) keep such accounting records as correctly record and explain the transactions of the company (including any transactions as trustee) and the financial position of the company;

and

(b) keep its accounting records in such a manner as will enable—

(i) the preparation from time to time of true and fair accounts of the company;

and

(ii) the accounts of the company to be conveniently and properly audited in accordance with this Code.

(2) A company shall retain the accounting records kept under this section or under a corresponding provision of a previous law of the State for a period of 7 years after the completion of the transactions to which they relate.

(3) The company shall keep the accounting records at such place or places as its directors think fit.

(4) If any accounting records of a company are kept at a place outside the State, the company shall if required by the Commission to produce those records at a place in the State, comply with the requirement not later than 14 days after the requirement is made.

(5) If any accounting records of a company are kept at a place outside Australia the company shall keep at a place within Australia determined by the directors such statements and records with respect to the matters dealt with in the records kept outside Australia as would enable true and fair accounts and any documents required by this Code to be attached to the accounts to be prepared.

(6) A company shall lodge with the Commission notice in writing of the place in Australia where any statements and records kept pursuant to subsection (5) are kept unless the statements and records are kept at the registered office of the company.

(7) The accounting records of the company shall be kept in writing in the English language or so as to enable the accounting records to be readily accessible and readily convertible into writing in the English language.

(8) The Court may, on application by a director of a company, make an order authorizing a registered company auditor acting for the director to inspect the accounting records of the company.

(9) A company shall make its accounting records available in writing in the English language at all reasonable times for inspection without charge by any director of the company and by any other person authorized or permitted by or under this Code to inspect the accounting records of the company.

(10) Where a registered company auditor inspects the accounting records pursuant to an order of the Court under subsection (8), he shall not disclose to a person other than the director on whose application the order was made any information acquired by him in the course of his inspection.

(11) If default is made in complying with a provision of this section other than subsection (10), the company, a director of the company who failed to take all reasonable steps to secure compliance by the company with the provision and any officer of the company who is in default are each guilty of an offence.

Penalty: \$2,500 or imprisonment for 6 months, or both.

(12) In any proceedings against a person for failure to take all reasonable steps to secure compliance by a company with a provision of this section, it is a defence if the person proves that he had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that that provision was complied with and was in a position to discharge that duty.

Financial years of
grouped
companies.

268. (1) Subject to this section, the directors of a holding company shall take such action (if any) as is necessary to ensure that the financial year of each subsidiary of the holding company coincides with the financial year of the holding company.

(2) The action referred to in subsection (1) shall be taken in relation to a particular subsidiary not later than 12 months after the date on which the subsidiary became a subsidiary of the holding company.

(3) Subject to any order by the Commission under this section, where the financial year of a holding company and the financial year of each of its subsidiaries coincide, the directors of the holding company shall at all times take such action as is necessary to ensure that the financial year of the holding company or any of its subsidiaries is not altered in such a way that all of those financial years no longer coincide.

(4) Where the directors of a holding company are of the opinion that there is good reason why the financial year of any of its subsidiaries should not coincide with the financial year of the holding company, they may apply in writing to the Commission for an order authorizing the subsidiary to continue to have or to adopt (as the case requires) a financial year that does not coincide with that of the holding company.

(5) The application shall be supported by a statement in writing made in accordance with a resolution of the directors of the holding company, signed by not less than 2 directors and stating the reasons for seeking the order.

(6) The Commission may require the directors making the application to supply such information relating to the operations of the holding company, and of any related corporation, as the Commission thinks necessary for the purpose of determining the application.

(7) The Commission may engage a registered company auditor to investigate and report to it on the application.

(8) The costs of an investigation and report under subsection (7) are payable by the holding company of which the applicants are directors.

(9) The Commission may make an order granting or refusing the application or granting the application subject to such limitations, terms or conditions as it thinks fit, and shall serve a copy of the order on the holding company.

(10) Where the applicants are aggrieved by an order made by the Commission, the applicants may, within 2 months after the service of the order upon the holding company, appeal against the order to the Court.

(11) The Court shall determine the appeal and, in determining the appeal, may make any order that the Commission had power to make on the original application and may exercise any of the powers that the Commission might have exercised in relation to the original application.

(12) Where the directors of a holding company have applied to the Commission for an order under this section, sub-section (1) shall be deemed not to apply to or in relation to the subsidiary to which the application relates until the determination of the application and of any appeal arising out of the application.

(13) Where an order is made authorizing a subsidiary to have or to adopt a financial year that does not coincide with that of its holding company, compliance with the terms of the order of the Commission (including any limitations or conditions set out in the order), or, where there has been an appeal, compliance with the terms of any order made on the determination of the appeal, shall be deemed to be compliance with the provisions of sub-section (1) in relation to the subsidiary.

(14) Where an application for an order by the Commission under this section has been refused and there is no appeal, or where there has been an appeal and the appeal has been withdrawn or dismissed, the time within which the directors of the holding company are required to comply with the provisions of sub-section (1) in relation to the subsidiary shall be deemed to be the period of 12 months after the date upon which the order of the Commission is served on the holding company, or, where there has been an appeal that has been dismissed, the period of 12 months after the determination of the appeal.

(15) Where the directors of a holding company have applied to the Commission for an order under this section, and the application has been refused and the appeal (if any) arising out of the refusal has been dismissed, the directors of the holding company are not entitled to make an application under this section with respect to the subsidiary within 3 years after the refusal of the first-mentioned application or, where there was an appeal, after the dismissal of the appeal, unless the Commission is satisfied that there has been a substantial change in the relevant facts or circumstances since the refusal of the former application or the determination of the appeal, as the case may be.

269. (1) The directors of a company shall, not less than 14 days before an annual general meeting of the company or, if no annual general meeting of the company is held within the period within which it is required by section 240 to be held, not less than 14 days before the end of that period, cause to be made out a profit and loss account for the last financial year of the company, being a profit and loss account that gives a true and fair view of the profit or loss of the company for that financial year.

Profit and loss
account, balance-
sheet and group
accounts.

(2) The directors of a company shall, not less than 14 days before an annual general meeting of the company or, if no annual general meeting of the company is held within the period within which it is required by section 240 to be held, not less than 14 days before the end of that period, cause to be made out a balance-sheet as at the end of the last financial year of the company, being a balance-sheet that gives a true and fair view of the state of affairs of the company as at the end of that financial year.

(3) Where, at the end of a financial year of a company, the company is a holding company, the directors of the company shall, not less than 14 days before the next annual general meeting of the company or, if no annual

general meeting of the company is held within the period after the end of that financial year within which it is required by section 240 to be held, not less than 14 days before the end of that period, cause to be made out group accounts dealing with—

(a) the profit or loss of the company and its subsidiaries for their respective last financial years;

and

(b) the state of affairs of the company and its subsidiaries as at the end of their respective last financial years,

and giving a true and fair view of the profit or loss and state of affairs so far as they concern members of the holding company.

(4) The directors of a company, other than a company that pursuant to section 278 or 279 did not appoint an auditor to audit the accounts concerned, shall take reasonable steps to ensure that the accounts of the company and, if it is a holding company for which group accounts are required, the group accounts are audited as required by this Part not less than 14 days before the annual general meeting of the company or, if no annual general meeting of the company is held within the period within which it is required by section 240 to be held, not less than 14 days before the end of that period.

(5) The directors of a company shall cause to be attached to, or endorsed upon, the accounts or group accounts in relation to the company the auditor's report relating to those accounts or group accounts, as the case may be, that is furnished to the directors in accordance with sub-section 285 (2).

(6) Group accounts are not required to be made out by the directors of a company in accordance with sub-section (3) where the company is, at the end of its financial year, a wholly-owned subsidiary of another corporation incorporated in the State or in a participating State or participating Territory.

(7) The directors shall, before the profit and loss account and balance-sheet referred to in sub-sections (1) and (2) are made out, take reasonable steps—

(a) to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;

(b) to ascertain whether any current assets, other than current assets to which paragraph (a) applies, are unlikely to realize in the ordinary course of business their value as shown in the accounting records of the company and, if so, to cause—

(i) those assets to be written down to an amount that they might be expected so to realize;

or

(ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realize;

and

(c) to ascertain whether any non-current asset is shown in the books of the company at an amount that, having regard to its value

to the company as a going concern, exceeds the amount that it would have been reasonable for the company to expend to acquire that asset as at the end of the financial year and, unless adequate provision for writing down that asset is made, to cause to be included in the accounts such information and explanations as will prevent the accounts from being misleading by reason of the overstatement of the amount of that asset.

(8) Without affecting the generality of the preceding provisions of this section, the directors of a company shall ensure that the accounts of the company and, if it is a holding company for which group accounts are required, the group accounts comply with such of the prescribed requirements as are relevant to those accounts or group accounts, as the case may be, but where accounts or group accounts prepared in accordance with those requirements would not otherwise give a true and fair view of the matters required by this section to be dealt with in the accounts or group accounts, the directors of the company shall add such information and explanations as will give a true and fair view of those matters.

(9) The directors of a company shall cause to be attached to any accounts required by section 275 to be laid before a company at its annual general meeting, before the auditor reports on the accounts under this Part, a statement made in accordance with a resolution of the directors and signed by not less than 2 directors stating whether, in the opinion of the directors—

- (a) the profit and loss account is drawn up so as to give a true and fair view of the profit or loss of the company for the financial year;
 - (b) the balance-sheet is drawn up so as to give a true and fair view of the state of affairs of the company as at the end of the financial year;
- and
- (c) there are reasonable grounds to believe that the company will be able to pay its debts as and when they fall due.

(10) The directors of a company that is a holding company shall cause to be attached to group accounts of the company required by section 275 to be laid before the company at its annual general meeting, before the auditor reports on the group accounts under this Part, a statement made in accordance with a resolution of the directors of the company and signed by not less than 2 directors stating whether, in the opinion of the directors, the group accounts are drawn up so as to give a true and fair view of—

- (a) the profit or loss of the company and its subsidiaries for their respective last financial years;
- and
- (b) the state of affairs of the company and its subsidiaries as at the end of their respective last financial years,

so far as they concern members of the company.

270. (1) The directors of a company, other than a company to which sub-section (2) applies, shall, not less than 14 days before the annual general meeting of the company or, if no annual general meeting of the company is held within the period within which it is required by section 240 to be held, not less than 14 days before the end of that period, cause to be made out

Directors' reports.

in respect of the last financial year of the company a report, made in accordance with a resolution of the directors and signed by not less than 2 of the directors with respect to the profit or loss of the company for that financial year and the state of the company's affairs as at the end of that financial year, stating—

- (a) the names of the directors in office at the date of the report;
- (b) the principal activities of the company in the course of the financial year and any significant change in the nature of those activities during that period;
- (c) the net amount of the profit or loss of the company for the financial year after provision for income tax;
- (d) where, at any time during the financial year, the company was a holding company—the names of any subsidiaries acquired or disposed of during the financial year, the consideration for each such acquisition or disposal and the amount in each case of the net tangible assets of the subsidiary acquired or disposed of and, in the case of a subsidiary not being a wholly-owned subsidiary, the extent of the company's interest in the subsidiary;
- (e) the amounts and particulars of any material transfers to or from reserves or provisions during the financial year;
- (f) where, during the financial year, the company has issued any shares or debentures—the purposes of the issue, the classes of shares or debentures issued, the number of shares of each class and the amount, term and rate of debentures of each class, and the terms of issue of each class of the shares;
- (g) the amount (if any) that the directors recommend should be paid by way of dividend, and any amounts that have been paid or declared by way of dividend since the end of the previous financial year, indicating which of those amounts (if any) have been shown in a previous report under this sub-section or sub-section (2) or under a corresponding previous law of the State;
- (h) whether the directors, before the profit and loss account and balance-sheet were made out, took reasonable steps to ascertain what action had been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts, and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;
- (j) whether, at the date of the report, the directors are aware of any circumstances that would render the amount written off for bad debts or the amount of the provision for doubtful debts inadequate to any substantial extent and, if so, giving particulars of the circumstances;
- (k) whether the directors, before the profit and loss account and balance-sheet were made out, took reasonable steps to ascertain whether any current assets, other than current assets to which paragraph (h) applies, were unlikely to realize in the ordinary course of business their value as shown in the accounting records of the company and, if so, to cause—
 - (i) those assets to be written down to an amount that they might be expected so to realize;

or

(ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realize;

(l) whether, at the date of the report, the directors are aware of any circumstances that would render the values attributed to current assets in the accounts misleading and, if so, giving particulars of the circumstances;

(m) whether there exists at the date of the report—

(i) any charge on the assets of the company that has arisen since the end of the financial year and secures the liabilities of any other person and, if so, giving particulars of the charge and, so far as practicable, of the amount secured;

and

(ii) any contingent liability that has arisen since the end of the financial year and, if so, stating the general nature of the liability and, so far as practicable, the maximum amount, or an estimate of the maximum amount, for which the company could become liable in respect of the liability;

(n) whether any contingent or other liability has become enforceable, or is likely to become enforceable, within the period of 12 months after the end of the financial year, being a liability that, in the opinion of the directors, will or may substantially affect the ability of the company to meet its obligations when they fall due and, if so, giving particulars of that liability;

(o) whether at the date of the report the directors are aware of any circumstances not otherwise dealt with in the report or accounts that would render any amount stated in the accounts misleading and, if so, giving particulars of the circumstances;

(p) whether the results of the company's operations during the financial year were, in the opinion of the directors, substantially affected by any item, transaction or event of a material and unusual nature and, if so, giving particulars of that item, transaction or event and the amount or the effect of that item, transaction or event, if known or reasonably ascertainable;

and

(q) whether there has arisen in the interval between the end of the financial year and the date of the report any item, transaction or event of a material and unusual nature likely, in the opinion of the directors, to affect substantially the results of the company's operations for the next succeeding financial year and, if so, giving particulars of the item, transaction or event.

(2) The directors of a company that, at the end of its last financial year, was a holding company (other than a holding company that was a wholly-owned subsidiary of another corporation incorporated in the State or in a participating State or participating Territory) shall, not less than 14 days before the annual general meeting of the company or, if no annual general meeting of the company is held within the period within which it is required

by section 240 to be held, not less than 14 days before the end of that period, cause to be made out a report, made in accordance with a resolution of the directors, and signed by not less than 2 of them, with respect to the profit or loss and the state of affairs of the group of companies of the holding company as at the end of that financial year of the holding company, stating—

- (a) the names of the directors of the company in office at the date of the report;
- (b) the principal activities of the corporations in the group in the course of the financial year and any significant change in the nature of those activities during that period;
- (c) the names of any subsidiaries acquired or disposed of during the financial year, the consideration for each such acquisition or disposal and the amount in each case of the net tangible assets of the subsidiary acquired or disposed of and, in the case of a subsidiary not being a wholly-owned subsidiary, the extent of the company's interest in the subsidiary;
- (d) the amounts and particulars of any material transfers to or from reserves or provisions of a corporation in the group during the financial year;
- (e) where, during the financial year, any corporation in the group has issued any shares or debentures—the purposes of the issue, the classes of shares or debentures issued, the number of shares of each class and the amount, term and rate of debentures of each class, and the terms of issue of each class of the shares;
- (f) the amount (if any) that the directors of the company recommend should be paid by way of dividend, and any amounts that have been paid or declared by way of dividend since the end of the previous financial year of the company, indicating which of those amounts (if any) have been shown in a previous report under this sub-section or sub-section (1) or under a corresponding previous law of the State;
- (g) the amount (if any) of dividends paid to or declared in favour of the company by each of the subsidiaries since the end of the previous financial year and up to the date of the report, except so far as those dividends are shown in the group accounts in accordance with the regulations in force for the time being under sub-section 269 (8);
- (h) whether, so far as debts owing to the company are concerned, the directors of the company, before the profit and loss account and balance-sheet were made out, took reasonable steps to ascertain what action had been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts, and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;
- (j) whether, at the date of the report, the directors of the company are aware of any circumstances that would render the amount written off for bad debts, or the amount of the provision for doubtful debts, in the group of companies inadequate to any substantial extent and, if so, giving particulars of the circumstances;

- (k) whether the directors of the company, before the profit and loss account and balance-sheet were made out, took reasonable steps to ascertain whether any current assets of the company, other than current assets to which paragraph (h) applies, were unlikely to realize in the ordinary course of business their value as shown in the accounting records of the company and, if so, to cause—
- (i) those assets to be written down to an amount that they might be expected so to realize;
- or
- (ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realize;
- (l) whether, at the date of the report, the directors of the company are aware of any circumstances that would render the values attributed to current assets in the group accounts misleading and, if so, giving particulars of the circumstances;
- (m) whether there exists at the date of the report—
- (i) any charge on the assets of any corporation in the group that has arisen since the end of the financial year and secures the liabilities of any other person and, if so, giving particulars of any such charge and, so far as practicable, of the amount secured;
- and
- (ii) any contingent liability of any corporation in the group that has arisen since the end of that financial year and, if so, stating the general nature of the liability and, so far as practicable, the maximum amount, or an estimate of the maximum amount, for which the corporation could become liable in respect of the liability;
- (n) whether any contingent or other liability of any corporation in the group has become enforceable, or is likely to become enforceable, within the period of 12 months after the end of the financial year, being a liability that, in the opinion of the directors of the company, will or may substantially affect the ability of the corporation to meet its obligations as and when they fall due and, if so, giving particulars of that liability;
- (o) whether, at the date of the report, the directors of the company are aware of any circumstances, not otherwise dealt with in the report or group accounts, that would render any amount stated in the group accounts misleading and, if so, giving particulars of the circumstances;
- (p) whether the results of the operations of the group or of a corporation in the group during the financial year were, in the opinion of the directors of the company, substantially affected by any item, transaction or event of a material and unusual nature and, if so, giving particulars of that item, transaction or event and the amount or the effect of that item, transaction or event, if known or reasonably ascertainable;

and

- (q) whether there has arisen in the interval between the end of the financial year and the date of the report any item, transaction or event of a material and unusual nature likely, in the opinion of the directors of the company, to affect substantially the results of the operations of any corporation in the group for the next succeeding financial year and, if so, giving particulars of the item, transaction or event.

(3) In sub-sections (1) and (2) the expression “any item, transaction or event of a material and unusual nature” includes but is not limited to—

- (a) any change in accounting principles adopted since the last report;
- (b) any material change in the method of valuation of the whole or any part of the trading stock;
- (c) any material item appearing in the accounts or group accounts for the first time or not usually included in the accounts or group accounts;

and

- (d) any absence from the accounts or group accounts of any material item usually included in the accounts or group accounts.

(4) Where a company, other than a holding company for which group accounts are required, has at any time granted to a person an option to have issued to him shares in the company, the directors shall state in the report made under this section—

- (a) in the case of an option so granted during the financial year or since the end of the financial year—

- (i) the name of the person to whom the option was granted or, where it was granted generally to all the holders of shares or debentures or of a class of shares or debentures of that company or of another corporation, that the option was so granted;

- (ii) the number and classes of shares in respect of which the option was granted;

- (iii) the date of expiration of the option;

- (iv) the basis upon which the option is or was to be exercised;

and

- (v) whether any person entitled to exercise the option had or has any right, by virtue of the option, to participate in any share issue of any other corporation;

- (b) particulars of shares issued, during the financial year or since the end of the financial year, by virtue of the exercise of an option;

and

- (c) the number and classes of unissued shares under option as at the date of the report, the prices, or the method of fixing the prices, of issue of those shares, the dates of expiration of the options and particulars of the rights (if any) of the holders of the options to participate by virtue of the options in any share issue of any other corporation.

(5) Where any of the particulars required by sub-section (4) have been stated in a previous report, they may be stated by reference to that report.

(6) Where a holding company or any of its subsidiaries has at any time granted to a person an option to have issued to him shares in the company or subsidiary, the directors of the company shall state in the report made under this section the name of the corporation in respect of shares in which the option was granted and the other particulars referred to in sub-section (4).

(7) The directors of a company shall state in the report whether, since the end of the previous financial year, a director of the company has received or become entitled to receive a benefit, other than—

(a) a benefit included in the aggregate amount of emoluments received or due and receivable by directors shown in the accounts or, if the company is a holding company, the group accounts, in accordance with the regulations made for the purposes of sub-section 269 (8);

or

(b) the fixed salary of a full-time employee of the company or of a related corporation,

by reason of a contract made by the company or a related corporation with the director or with a firm of which he is a member, or with a company in which he has a substantial financial interest, and, if so, the general nature of the benefit.

(8) Where there is attached to or included with a report of the directors laid before a company at its annual general meeting or sent to the members under section 274 a statement, report or other document relating to affairs of the company or any of its subsidiaries, not being a statement, report or document required by this Code to be laid before the company in general meeting, the statement, report or other document shall, for the purposes of section 563, be deemed to be part of that first-mentioned report.

271. (1) The regulations may make provisions permitting every company, or every company included in a class of companies specified in the regulations, subject to such conditions, exceptions or qualifications (if any) as are specified in the regulations, to insert in any accounts or report under this Code, in substitution for an amount that the company would, but for this section, be required or permitted to set out in the accounts or report, an amount ascertained in accordance with the regulations but not being an amount that is more than \$500 greater or less than the first-mentioned amount.

Rounding off of amounts in accounts and reports.

(2) For the purposes of sub-section (1), the insertion of zero shall be deemed to be the insertion of an amount.

272. (1) Subject to sub-section (6), the directors of a holding company shall not cause to be made out the group accounts referred to in sub-section 269 (3) or make the report referred to in sub-section 270 (2) unless they have received from each subsidiary its accounts, the statements required under section 269 and the directors' report in accordance with section 270.

Group accounts not to be issued, &c., until receipt of subsidiaries' accounts, &c.

(2) The directors of a holding company shall take all reasonable steps to ensure that, when they make their report under section 270, they will have available to them a report that—

(a) has been made by the directors of each subsidiary and, if necessary, revised or added to by the directors of the subsidiary;

and

(b) represents the state of affairs of the subsidiary not more than one month earlier than the date on which the report of the directors of the holding company is made.

(3) Where a subsidiary of a holding company is incorporated outside the State, it is sufficient compliance with this section if the directors of the holding company receive from the subsidiary accounts and reports corresponding with those required under this section and in accordance with the law of the place of incorporation of the subsidiary.

(4) The directors of a subsidiary shall, at the request of the directors of the holding company, supply all such information as is required for the preparation of group accounts of the holding company and its subsidiaries, and of the report of the directors of the holding company.

(5) The directors of a holding company are, unless they know or have reason to suspect that any matter in any accounts, report or information furnished by the directors of a subsidiary is false or misleading, entitled to rely on the accounts, report or information for the purpose of the preparation of the group accounts and their report so far as they relate to the affairs of the subsidiary.

(6) Where the directors of a holding company, having taken all such steps as are reasonably available to them, are unable to obtain from the directors of a subsidiary any accounts, report or other information required for the preparation of the group accounts and the directors' report of the group, they may cause to be made out the group accounts and make the directors' report without incorporating in, or including with, those group accounts, or incorporating in, or including with, that directors' report, the first-mentioned accounts, report or other information relating to the subsidiary but with such qualifications and explanations as are necessary to prevent the group accounts and report from being misleading.

(7) Where the directors of a holding company have caused to be made out the group accounts and have made the directors' report in accordance with sub-section (6), they shall send to the shareholders of the holding company, within one month after receiving the accounts, report or other information from the directors of the subsidiary, a copy of the accounts and report or a statement embodying the other information, as the case may be, together with a statement by the directors of the holding company containing such qualifications and explanations of the group accounts and of their report as are necessary having regard to the accounts, report or information received from the subsidiary.

273. (1) The directors of a company may apply to the Commission in writing for an order relieving them from compliance with any specified requirements of this Code relating to, or to the audit of, accounts or group accounts or to the report required by sub-section 270 (1) or (2) and the Commission may make an order relieving the directors from compliance with all or any of those requirements either unconditionally or on condition that the directors comply with such other requirements relating to, or to the audit of, the accounts or group accounts or to the report as the Commission imposes.

(2) The application shall be supported by a statement in writing made in accordance with a resolution of the directors of the company, signed by not less than 2 directors and stating the reasons for seeking an order.

(3) The Commission may require the directors making the application to supply such information relating to the operations of the company, and of any related corporation, as the Commission thinks necessary for the purpose of determining the application.

(4) Notice of an order under sub-section (1) shall be served on the company to which it relates.

(5) The Commission may, where it considers it appropriate, make an order in respect of a specified class of companies relieving the directors of a company in that class from compliance with any specified requirements of this Code relating to, or to the audit of, accounts or group accounts or to the report required by sub-section 270 (1) or (2) and the order may be made either unconditionally or on condition that the directors of the company comply with such other requirements relating to, or to the audit of, accounts or group accounts or to the report as the Commission imposes.

(6) Notice of an order under sub-section (5) shall be published in the *Gazette*.

(7) The Commission shall not make an order under sub-section (1) or (5) unless—

(a) in the case of an order relating to the form or content of accounts or group accounts or of a report required by sub-section 270 (1) or (2)—the Commission is of the opinion that compliance with the requirements of this Code would render the accounts or group accounts or the report, as the case may be, misleading or inappropriate to the circumstances of the company or would impose unreasonable burdens on the company or on an officer of the company;

or

(b) the company—

(i) is not carried on for the purposes of profit or gain to its individual members;

(ii) is, by the terms of its memorandum or articles, prohibited from making any distribution, whether in money, property or otherwise, to its members;

and

(iii) is required by or under any law of the Commonwealth, of a State or of a Territory to prepare annually a statement of its income and expenditure or a statement as to its financial position, or both.

(8) The Commission may make an order under sub-section (1) or (5) that is limited to a specific period and—

(a) in the case of an order under sub-section (1)—may from time to time either on application by the directors, or without any such application, revoke or suspend the operation of the order;

or

(b) in the case of an order under sub-section (5)—may from time to time revoke or suspend the operation of the order.

(9) The revocation or suspension under sub-section (8) of an order does not take effect until—

(a) in the case of an order under sub-section (1)—notice of the revocation or suspension is served on the company to which the order relates;

and

(b) in the case of an order under sub-section (5)—notice of the revocation or suspension is published in the *Gazette*.

(10) A person aggrieved by—

(a) an order under sub-section (1) or (5);

(b) the revocation or suspension of the operation of such an order;

or

(c) the refusal of an application for an order or for revocation or suspension of the operation of an order,

may, within 2 months after the service or publication, as the case may be, of notice of the order or notice of the revocation or suspension or after the refusal, as the case may be, appeal to the Court, and the Court may confirm, set aside or modify the order, or confirm or set aside the revocation, suspension or refusal, and may make such further order as it thinks just.

Members of
company entitled
to balance-sheet,
&c.

274. (1) A company shall, not less than 14 days before each annual general meeting, send a copy of all accounts and, if it is a holding company, group accounts that are to be laid before the company at the meeting, accompanied by a copy of the statements required under section 269, a copy of the directors' report required under section 270 and a copy of the auditor's report or reports required by section 285, to all persons entitled to receive notice of general meetings of the company.

(2) A company shall furnish to a member of a company, whether or not he is entitled to have sent to him copies of the accounts or group accounts, to whom copies have not been sent, or a holder of debentures, on request in writing being made by him to the company, as soon as practicable and without charge, a copy of the last accounts and group accounts (if any) laid or to be laid before the company at its annual general meeting, together with copies of the other documents required under sub-section (1) to accompany those accounts and group accounts (if any).

(3) It is a defence to a prosecution for a failure to comply with sub-section (1) or (2) if the defendant proves that the person in relation to whom the failure occurred had, before the failure occurred, been furnished with a copy of the accounts or group accounts and all documents referred to in sub-sections (1) and (2).

(4) This section does not apply to or in relation to a mutual life assurance company limited by guarantee registered under the *Life Insurance Act 1945*.

(5) Sub-sections (1) and (2) do not apply to a company in relation to an annual general meeting that is deemed by section 250 to have been held.

Penalty: \$1,000.

275. The directors of a company shall cause to be laid before each annual general meeting of the company held in accordance with section 240—

- (a) a copy of the profit and loss account made out in accordance with sub-section 269 (1) for the last financial year of the company;
 - (b) a copy of the balance-sheet made out in accordance with sub-section 269 (2) as at the end of the last financial year of the company;
 - (c) in the case of a company that, at the end of its last financial year before the relevant annual general meeting, was not a holding company—a copy of the directors' report made out in accordance with sub-section 270 (1) in respect of that financial year;
 - (d) in the case of a company that, at the end of its last financial year before the relevant annual general meeting, was a holding company—a copy of the group accounts made out in accordance with sub-section 269 (3) in relation to that financial year and a copy of the directors' report made out in accordance with sub-section 270 (2) in respect of the profit or loss and the state of affairs of the group of companies of the holding company as at the end of that financial year;
 - (e) a copy of any auditor's report required by sub-section 269 (5) to be attached to the accounts or group accounts of the company;
- and
- (f) a copy of the statement by the directors required by sub-section 269 (9) or (10) to be attached to the accounts or group accounts of the company.

276. (1) Subject to the succeeding provisions of this section, if a director of a company fails to take all reasonable steps to comply with, or to secure compliance with, or has knowingly been the cause of any default under, any of the preceding provisions of this Division (including any of those provisions as applying by virtue of section 158) other than section 267, he is guilty of an offence.

Failure to comply
with this
Division.

Penalty—

- (a) in a case to which paragraph (b) does not apply—\$5,000;
- or
- (b) if the offence was committed with intent to deceive or defraud members or creditors of the company or creditors of any other person or for any other fraudulent purpose—\$20,000 or imprisonment for 5 years, or both.

(2) In any proceedings against a person for failure to take all reasonable steps to comply with, or to secure compliance with, the preceding provisions of this Division relating to the form and content of the accounts of a company or group accounts of a holding company by reason of an omission from the accounts or group accounts (including any of those provisions as applying by virtue of section 158), it is a defence to prove that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by section 269 to be dealt with in the accounts or group accounts, as the case may be.

PART VI
DIVISION 2

(3) If, after the expiration of the period within which any accounts of a company or any report of the directors of a company is or are required by section 269 or 270 to be made out, the Commission, by notice in writing to each of the directors, requires the directors to produce the accounts or report to a person specified in the notice on a date and at a place so specified, and the directors fail to produce the accounts or report as required by the notice, then, in any proceeding for a failure to comply with section 269 or 270, proof of the failure to produce the accounts or report as required by the notice is *prima facie* evidence that the accounts or report were not made out within that period.

DIVISION 3

Qualifications of
auditors.

DIVISION 3—AUDIT

277. (1) Subject to this section, a person shall not—

(a) consent to be appointed as auditor of a company;

(b) act as auditor of a company;

or

(c) prepare a report required by this Code to be prepared by a registered company auditor or by an auditor of a company,

if—

(d) the person is not a registered company auditor;

(e) the person, or a corporation in which the person is a substantial shareholder for the purposes of Division 4 of Part IV or the provisions of the law of a participating State or of a participating Territory that correspond with that Division, is indebted in an amount exceeding \$5,000 to the company or to a related corporation;

or

(f) except where the company is an exempt proprietary company, the person—

(i) is an officer of the company;

(ii) is a partner, employer or employee of an officer of the company;

or

(iii) is a partner or employee of an employee of an officer of the company.

(2) Subject to this section, a firm shall not—

(a) consent to be appointed as auditor of a company;

(b) act as auditor of a company;

or

(c) prepare a report required by this Code to be prepared by a registered company auditor or by an auditor of a company,

unless—

- (d) at least one member of the firm is a registered company auditor who is ordinarily resident in a State or Territory;
- (e) where the business name under which the firm is carrying on business is not registered under the Business Names Act 1963—there has been lodged with the Commission a return in the prescribed form showing, in relation to each member of the firm, his full name and his address as at the time when the firm so consents, acts or prepares a report;
- (f) no member of the firm, and no corporation in which any member of the firm is a substantial shareholder within the meaning of Division 4 of Part IV, or the provisions of the law of a participating State or of a participating Territory that correspond with that Division, is indebted in an amount exceeding \$5,000 to the company or to a related corporation;
- (g) except where the company is an exempt proprietary company, no member of the firm is—
 - (i) an officer of the company;
 - (ii) a partner, employer or employee of an officer of the company;or
 - (iii) a partner or employee of an employee of an officer of the company;

and

- (h) except where the company is an exempt proprietary company, no officer of the company receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.

(3) A reference in sub-section (1) or (2) to indebtedness to a corporation does not, in relation to indebtedness of a natural person, include a reference to indebtedness of that person to a corporation that is a prescribed corporation for the purposes of Division 4 where—

- (a) the indebtedness arose as a result of a loan made to that person by the corporation in the ordinary course of its ordinary business;

and

- (b) the amount of that loan was used by that person to pay the whole or part of the purchase price of premises that are used by that person as his principal place of residence.

(4) For the purposes of sub-sections (1) and (2), a person shall be deemed to be an officer of a company if—

- (a) he is an officer of a related corporation;

or

- (b) except where the Commission, if it thinks fit in the circumstances of the case, directs that this paragraph shall not apply in relation to him—he has, at any time within the immediately preceding period of 12 months, been an officer or promoter of the company or of a related corporation.

(5) For the purposes of this section, a person shall not be taken to be an officer of a company by reason only of his being or having been the liquidator of that company or of a related corporation.

(6) For the purposes of this section, a person shall not be taken to be an officer of a company by reason only of his having been appointed as auditor of that company or of a related corporation or, for any purpose relating to taxation, a public officer of a corporation or by reason only of his being or having been authorized to accept on behalf of the company or a related corporation service of process or any notices required to be served on the company or related corporation.

(7) The appointment of a firm as auditor of a company shall be deemed to be an appointment of all persons who are members of the firm and are registered company auditors, whether resident in a State or Territory or not, at the date of the appointment.

(8) Where a firm that has been appointed as auditor of a company is reconstituted by reason of the death, retirement or withdrawal of a member or members or by reason of the admission of a new member or new members, or both—

(a) a person who was deemed under sub-section (7) to be an auditor of the company and who has so retired or withdrawn from the firm as previously constituted shall be deemed to have resigned as auditor of the company as from the day of his retirement or withdrawal but, unless that person was the only member of the firm who was a registered company auditor and, after the retirement or withdrawal of that person, there is no member of the firm who is a registered company auditor, section 282 does not apply to that resignation;

(b) a person who is a registered company auditor and who is so admitted to the firm shall be deemed to have been appointed as an auditor of the company as from the date of his admission;

and

(c) the reconstitution of the firm does not affect the appointment of the continuing members of the firm who are registered company auditors as auditors of the company,

but nothing in this sub-section affects the operation of sub-section (2).

(9) Except as provided by sub-section (8), the appointment of the members of a firm as auditors of a company that is deemed by sub-section (7) to have been made by reason of the appointment of the firm as auditor of the company is not affected by the dissolution of the firm.

(10) A report or notice that purports to be made or given by a firm appointed as auditor of a company shall not be taken to be duly made or given unless it is signed in the firm name and in his own name by a member of the firm who is a registered company auditor.

(11) Without limiting the generality of section 570, if, in contravention of this section, a firm consents to be appointed, or acts as, auditor of a company or prepares a report required by this Code to be prepared by an auditor of a company, each member of the firm is guilty of an offence.

(12) Where it is, in the opinion of the Commission, impracticable for an exempt proprietary company to obtain the services of a registered company auditor as auditor of the company by reason of the place where the company

carries on business, a person who is, in the opinion of the Commission, suitably qualified or experienced and is approved by the Commission for the purposes of this Code in relation to the audit of the company's accounts may be appointed as auditor of the company, subject to such terms and conditions as are specified in the approval.

(13) A person appointed in accordance with sub-section (12) shall, in relation to the auditing of the company's accounts and, if it is a holding company for which group accounts are required, group accounts but subject to the terms and conditions of the approval under that sub-section, be deemed to be a registered company auditor and the provisions of this Code shall, with the necessary modifications, apply to and in relation to him accordingly.

(14) Where a person approved by the Commission under sub-section (12) is acting as auditor of a company, the Commission may at any time, by notice in writing given to the company—

- (a) amend, revoke or vary the terms and conditions of its approval;
- or
- (b) terminate the appointment of that person as auditor of the company.

(15) A notice under sub-section (14) terminating the appointment of a person as auditor of a company takes effect as if, on the date on which the notice is received by the company, the company had received from the person notice of his resignation as auditor taking effect from that date.

(16) A person shall not—

- (a) if he has been appointed auditor of a company—knowingly disqualify himself while the appointment continues from acting as auditor of the company;
- or
- (b) if he is a member of a firm that has been appointed auditor of a company—knowingly disqualify the firm while the appointment continues from acting as auditor of the company.

278. (1) Notwithstanding the provisions of this Part, an exempt proprietary company that is an unlimited company is not required to appoint an auditor at an annual general meeting, whether that meeting is the first annual general meeting held after the company is incorporated as, or converts to, such a company or is a subsequent annual general meeting, if—

- (a) at the date of the annual general meeting no member of the company is a person other than a natural person, an exempt proprietary company that is an unlimited company or a corporation that, under the law in force in another State or in a Territory, is an exempt proprietary company that is an unlimited company;

and

- (b) not more than one month before the annual general meeting, all the members of the company have agreed that it is not necessary for the company to appoint an auditor.

(2) The directors of an exempt proprietary company that is an unlimited company are not required to comply with sub-section 280 (1) if—

Unlimited exempt
proprietary
company need
not appoint
auditor in certain
circumstances.

(a) all the members of the company have agreed, on a date not later than 14 days after the incorporation of the company, that it is not necessary for the company to appoint an auditor;

and

(b) between the date of the incorporation of the company and the date referred to in paragraph (a), no member of the company is a person other than a natural person, an exempt proprietary company that is an unlimited company or a corporation that under the law in force in another State or in a Territory is an exempt proprietary company that is an unlimited company.

(3) Where a company, by reason of the circumstances referred to in sub-section (1) or (2), does not have an auditor, a secretary of the company shall record a minute to that effect in the book containing the minutes of proceedings of general meetings of the company.

(4) An exempt proprietary company that is an unlimited company and that at an annual general meeting did not appoint an auditor shall at the next annual general meeting of the company appoint an auditor unless the conditions referred to in sub-section (1) are satisfied.

(5) Within one month after—

(a) a company that by reason of the circumstances referred to in sub-section (1) or (2) does not have an auditor ceases to be an exempt proprietary company or ceases to be an unlimited company;

or

(b) a body corporate other than—

(i) an exempt proprietary company that is an unlimited company;

or

(ii) a corporation that under the law in force in another State or in a Territory is an exempt proprietary company that is an unlimited company,

becomes a member of an exempt proprietary company that, by reason of the circumstances referred to in sub-section (1) or (2), does not have an auditor,

the directors of the company shall appoint, unless the company at a general meeting has appointed, a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the company.

(6) A person or firm appointed as auditor of a company under sub-section (5) holds office, subject to this Division, until the next annual general meeting of the company.

Exempt
proprietary
company need
not appoint
auditor in certain
circumstances.

279. (1) Notwithstanding the provisions of this Part, an exempt proprietary company that is not an unlimited company is not required to appoint an auditor at an annual general meeting, whether that meeting is the first annual general meeting held after the company is incorporated as, or becomes, such a company or is a subsequent annual general meeting, if not more than one month before the annual general meeting all the members of the company have agreed that it is not necessary for the company to appoint an auditor.

(2) The directors of an exempt proprietary company that is not an unlimited company are not required to comply with sub-section 280 (1) if all the members of the company have agreed, on a date not later than 14 days after the incorporation of the company, that it is not necessary for the company to appoint an auditor.

(3) Where a company, by reason of the circumstances referred to in sub-section (1) or (2), does not have an auditor, a secretary of the company shall record a minute to that effect in the book containing the minutes of proceedings of general meetings of the company.

(4) An exempt proprietary company that is not an unlimited company and that at an annual general meeting did not appoint an auditor shall at the next annual general meeting of the company appoint an auditor unless the conditions referred to in sub-section (1) are satisfied.

(5) Where, by reason of the circumstances referred to in sub-section (1) or (2), accounts or group accounts of a company required to be laid before the company at its annual general meeting are not audited, there shall be included in, or attached to, the annual return of the company for the financial year to which the accounts or group accounts relate a certificate signed by not less than 2 directors of the company stating whether—

(a) the company has, in respect of the financial year—

(i) kept such accounting records as correctly record and explain the transactions and financial position of the company;

(ii) kept its accounting records in such a manner as would enable true and fair accounts of the company to be prepared from time to time;

and

(iii) kept its accounting records in such a manner as would enable the accounts of the company to be conveniently and properly audited in accordance with this Code;

and

(b) the accounts and group accounts (if any) have been properly prepared by a competent person.

(6) Where—

(a) directors of a company state in a certificate in respect of a financial year of the company that—

(i) the company did not keep such accounting records as are required by this Code to be kept;

(ii) the accounting records of the company were not kept in the manner required by this Code;

or

(iii) the accounts of the company have not been properly prepared by a competent person;

or

(b) a director of a company has been convicted under sub-section 563 (2) of an offence in relation to a certificate under sub-section (5) of this section,

there shall be deemed to be a vacancy in the office of auditor of the company and sub-section 280 (5) applies to that vacancy.

(7) Where a company, by reason of circumstances referred to in sub-section (1) or (2), does not have an auditor and all the members of the company have agreed that the company should appoint an auditor, an auditor may be appointed as if a vacancy had occurred in the office of auditor.

(8) Within one month after a company that, by reason of the circumstances referred to in sub-section (1) or (2), does not have an auditor ceases to be an exempt proprietary company, the directors of the company shall appoint, unless the company at a general meeting has appointed, a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the company.

(9) If, within 14 days after a company that has an auditor becomes an exempt proprietary company, all the members of the company agree, this Code does not prevent the company from terminating the appointment of the auditor and, where the appointment is so terminated, a vacancy in the office of auditor of the company shall be deemed not to have occurred.

(10) A person or firm appointed as auditor of a company under sub-section (6) or (8) holds office, subject to this Division, until the next annual general meeting of the company and sub-section (1) does not apply to or in relation to that company.

Appointment of
auditors.

280. (1) Within one month after the date on which a company is incorporated, the directors of the company shall appoint, unless the company at a general meeting has appointed, a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the company.

(2) A person or firm appointed as auditor of a company under sub-section (1) holds office, subject to this Division, until the first annual general meeting of the company.

(3) A company shall—

(a) at its first annual general meeting appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the company;

and

(b) at each subsequent annual general meeting, if there is a vacancy in the office of auditor of the company, appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, to fill the vacancy.

(4) A person or firm appointed as auditor under sub-section (3) holds office until death or removal or resignation from office in accordance with section 282 or until ceasing to be capable of acting as auditor by reason of sub-section 277 (1) or (2).

(5) Within one month after a vacancy, other than a vacancy caused by the removal of an auditor from office, occurs in the office of auditor of the company, if there is no surviving or continuing auditor of the company, the directors shall, unless—

(a) the company at a general meeting has appointed a person or persons, a firm or firms, or a person or persons and a firm or firms, to fill the vacancy;

or

- (b) where the company is an exempt proprietary company, all the members of the company have within one month after the vacancy occurs agreed that it is not necessary for the vacancy to be filled,

appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, to fill the vacancy.

(6) While a vacancy in the office of auditor continues, the surviving or continuing auditor or auditors (if any) may act.

(7) A company or the directors of a company shall not appoint a person or firm as auditor of the company unless that person or firm has, before the appointment, consented by notice in writing given to the company or to the directors to act as auditor and has not withdrawn his or its consent by notice in writing given to the company or to the directors.

(8) A notice under sub-section (7) given by a firm shall be signed in the firm name and in his own name by a member of the firm who is a registered company auditor.

(9) If a company appoints a person or firm as auditor of a company in contravention of sub-section (7), the purported appointment does not have any effect and the company and any officer of the company who is in default are each guilty of an offence.

(10) Where an auditor of a company is removed from office at a general meeting in accordance with section 282—

- (a) the company may at that meeting (without adjournment), by a resolution passed by a majority of not less than three-quarters of such members of the company as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, forthwith appoint as auditor or auditors a person or persons, a firm or firms, or a person or persons and a firm or firms, to whom or which has been sent a copy of the notice of nomination in accordance with sub-section 281 (3);

or

- (b) if such a resolution is not passed or, by reason only that such a copy of the notice of nomination has not been sent to a person, could not be passed, the meeting may be adjourned to a date not earlier than 20 days and not later than 30 days after the day of the meeting and the company may, at the adjourned meeting, by ordinary resolution appoint as auditor or auditors a person or persons, a firm or firms, or a person or persons and a firm or firms, notice of whose nomination for appointment as auditor has been received by the company from a member of the company at least 14 clear days before the date to which the meeting is adjourned.

(11) If after the removal from office of an auditor of a company the company fails to appoint another auditor under sub-section (10), the company shall, within 7 days after the failure, notify the Commission accordingly, whereupon the Commission shall, unless—

- (a) there is another auditor of the company whom the Commission believes to be able to carry out the responsibilities of auditor alone and who agrees to continue as auditor;

or

- (b) where the company is an exempt proprietary company, all the members of the company have agreed that it is not necessary for another auditor to be appointed and the company notifies the Commission of that agreement when it notifies the Commission that it has failed to appoint another auditor,

appoint as auditor or auditors of the company a person or persons, a firm or firms, or a person or persons and a firm or firms, who or which consents or consent to be so appointed.

(12) Subject to sub-section (11), if a company does not appoint an auditor when required by this Code to do so, the Commission may, on the application in writing of a member of the company, appoint as auditor or auditors of the company a person or persons, a firm or firms, or a person or persons and a firm or firms, who or which consents or consent to be so appointed.

(13) A person or firm appointed as auditor of a company under sub-section (5), (10), (11) or (12) holds office, subject to this Division, until the next annual general meeting of the company.

(14) Notwithstanding sub-section (4), an auditor of a company that becomes a subsidiary of a corporation shall, unless he sooner vacates his office, retire at the annual general meeting of that subsidiary next held after it becomes such a subsidiary but, subject to this Division, is eligible for re-appointment.

(15) If a director of a company fails to take all reasonable steps to comply with, or to secure compliance with, sub-section (1) or (5), he is guilty of an offence.

Nomination of
auditors.

281. (1) Subject to this section, a company is not entitled to appoint a person or a firm as auditor of the company at its annual general meeting, not being a meeting at which an auditor is removed from office, unless notice in writing of his or its nomination as auditor was given to the company by a member of the company—

- (a) before the meeting was convened;

or

- (b) not less than 21 days before the meeting.

(2) If a company purports to appoint a person or firm as auditor of the company in contravention of sub-section (1), the purported appointment is of no effect and the company and any officer of the company who is in default are each guilty of an offence.

(3) Where notice of nomination of a person or firm for appointment as auditor of a company is received by the company, whether for appointment at a meeting or an adjourned meeting referred to in sub-section 280 (10) or at an annual general meeting, the company shall—

- (a) not less than 7 days before the meeting;

or

- (b) at the time notice of the meeting is given,

send a copy of the notice of nomination to each person or firm nominated, to each auditor of the company and to each person entitled to receive notice of general meetings of the company.

282. (1) An auditor of a company may be removed from office by resolution of the company at a general meeting of which special notice has been given, but not otherwise.

(2) Where special notice of a resolution to remove an auditor is received by a company, it shall forthwith send a copy of the notice to the auditor and lodge a copy of the notice with the Commission.

(3) Within 7 days after receiving a copy of the notice, the auditor may make representations in writing, not exceeding a reasonable length, to the company and request that, before the meeting at which the resolution is to be considered, a copy of the representations be sent by the company at its expense to every member of the company to whom notice of the meeting is sent.

(4) Unless the Commission on the application of the company otherwise orders, the company shall send a copy of the representations in accordance with the auditor's request, and the auditor may, without prejudice to his right to be heard orally or, where a firm is the auditor, to have a member of the firm heard orally on its behalf, require that the representations be read out at the meeting.

(5) Upon the removal from office of an auditor of a company, the company shall forthwith give to the Commission notice in writing of the removal.

(6) An auditor of a company may, by notice in writing given to the company, resign as auditor of the company if—

- (a) he has, by notice in writing given to the Commission, applied for consent to his resignation and stated the reasons for his application and, at or about the same time as he gave the notice to the Commission, notified the company in writing of his application to the Commission;

and

- (b) he has received the consent of the Commission.

(7) The Commission shall, as soon as practicable after receiving a notice from an auditor under sub-section (6), notify the auditor and the company whether it consents to the resignation of the auditor.

(8) A statement made by an auditor in an application to the Commission under sub-section (6) or in answer to an inquiry by the Commission relating to the reasons for the application—

- (a) is not admissible in evidence in any civil or criminal proceedings against the auditor;

and

- (b) may not be made the ground of a prosecution, action or suit against the auditor,

and a certificate by the Commission that the statement was made in the application or in the answer to the inquiry by the Commission is conclusive evidence that the statement was so made.

(9) A person aggrieved by the refusal of consent by the Commission to the resignation of an auditor of a company may, within one month after the date of the refusal, appeal to the Court from the refusal, and thereupon the Court, after giving the company an opportunity to be heard, may confirm or reverse the refusal and may make such further order as it thinks just.

PART VI
DIVISION 3

(10) Subject to any order of the Court under sub-section (9) and to sub-section (11), the resignation of an auditor takes effect—

(a) on the date (if any) specified for the purpose in the notice of resignation;

(b) on the date on which the Commission gives its consent to the resignation;

or

(c) on the date (if any) fixed by the Commission for the purpose, whichever last occurs.

(11) The resignation of an auditor of an exempt proprietary company does not require the consent of the Commission under sub-section (6), and takes effect—

(a) on the date (if any) specified for the purpose in the notice of resignation;

or

(b) on the date on which the notice is received by the company, whichever is the later.

(12) Where on the retirement or withdrawal from a firm of a member the firm will no longer be capable, by reason of the provisions of paragraph 277 (2) (d) of acting as auditor of a company, the member so retiring or withdrawing shall (if not disqualified from acting as auditor of the company) be deemed to be the auditor of the company until he obtains the consent of the Commission to his retirement or withdrawal.

(13) Within 14 days after the receipt of a notice of resignation from an auditor of a company or, where an auditor of a company is removed from office, within 14 days after the removal, the company shall lodge a notice of the resignation or removal in the prescribed form with the Commission and, in the case of the resignation or removal from office of an auditor of a borrowing corporation, give a copy of the notice lodged with the Commission to the trustee for the holders of debentures of the borrowing corporation.

Effect of winding up on office of auditor.

283. An auditor of a company ceases to hold office if—

(a) a special resolution is passed for the voluntary winding up of the company;

or

(b) in a case to which paragraph (a) does not apply—an order is made by the Court for the winding up of the company.

Fees and expenses of auditors.

284. The reasonable fees and expenses of an auditor of a company are payable by the company.

Powers and duties of auditors as to reports on accounts.

285. (1) An auditor of a company shall report to the members on the accounts required to be laid before the company at the annual general meeting and on the company's accounting records and other records relating to those accounts and, if it is a holding company for which group accounts are required, shall also report to the members on the group accounts.

(2) A report by an auditor of a company under sub-section (1) shall be furnished by the auditor to the directors of the company in sufficient time

to enable the company to comply with the requirements of sub-section 274 (1) in relation to that report.

(3) An auditor shall, in a report under this section, state—

(a) whether the accounts and, if the company is a holding company for which group accounts are required, the group accounts are in his opinion properly drawn up—

(i) so as to give a true and fair view of the matters required by section 269 (or, in the case of a prescribed corporation within the meaning of section 288, by this Part), to be dealt with in the accounts and, if there are group accounts, in the group accounts;

and

(ii) in accordance with the provisions of this Code;

(b) whether the accounting records and other records and the registers required by this Code to be kept by the company and, if it is a holding company, by the subsidiaries other than those of which he has not acted as auditor have been, in his opinion, properly kept in accordance with the provisions of this Code or, in the case of a subsidiary incorporated in another State or in a Territory, in accordance with the provisions of the corresponding law of that State or Territory;

(c) in the case of group accounts—

(i) the names of the subsidiaries (if any) of which he has not acted as auditor;

(ii) whether he has examined the accounts and auditors' reports of all subsidiaries of which he has not acted as auditor, being accounts that are included (whether separately or consolidated with other accounts) in the group accounts;

(iii) whether he is satisfied that the accounts of the subsidiaries that are to be consolidated with other accounts are in form and content appropriate and proper for the purposes of the preparation of the consolidated accounts, and whether he has received satisfactory information and explanations as required by him for that purpose;

and

(iv) whether the auditor's report on the accounts of any subsidiary was made subject to any qualification, or included any comment made under sub-section (4), and, if so, particulars of the qualification or comment;

(d) any defect or irregularity in the accounts or group accounts and any matter not set out in the accounts or group accounts without regard to which a true and fair view of the matters dealt with by the accounts or group accounts would not be obtained;

and

(e) if he is not satisfied as to any matter referred to in paragraph (a), (b) or (c), his reasons for not being so satisfied.

(4) It is the duty of an auditor of a company to form an opinion as to each of the following matters:

- (a) whether he has obtained all the information and explanations that he required;
- (b) whether proper accounting records and other records, including registers, have been kept by the company as required by this Code;
- (c) whether the returns received from branch offices of the company are adequate;
- (d) where the company is a holding company—whether the procedures and methods used by the company and by each of its subsidiaries in arriving at the amounts taken into any consolidated accounts were appropriate to the circumstances of the consolidation;

and

- (e) where group accounts are prepared otherwise than as one set of consolidated accounts for the group—whether he agrees with the reasons for preparing them in the form in which they are prepared as given by the directors in the accounts,

and he shall state in his report particulars of any deficiency, failure or shortcoming in respect of any matter referred to in this sub-section.

(5) An auditor of a company has a right of access at all reasonable times to the accounting records and other records, including registers, of the company, and is entitled to require from any officer of the company such information and explanations as he desires for the purposes of audit.

(6) An auditor of a holding company for which group accounts are required has a right of access at all reasonable times to the accounting records and other records, including registers, of any subsidiary and is entitled to require from any officer or auditor of any subsidiary, at the expense of the holding company, such information and explanations in relation to the affairs of the subsidiary as he requires for the purpose of reporting on the group accounts.

(7) The auditor's report shall be attached to or endorsed on the accounts or group accounts and shall, if a member so requires, be read before the company at the annual general meeting, and is open to inspection by a member at any reasonable time.

(8) An auditor of a company or his agent authorized by him in writing for the purpose is entitled to attend any general meeting of the company and to receive all notices of, and other communications relating to, any general meeting that a member is entitled to receive, and to be heard at any general meeting that he attends on any part of the business of the meeting that concerns the auditor in his capacity as auditor, and is entitled so to be heard notwithstanding that he retires at that meeting or a resolution to remove him from office is passed at that meeting.

(9) If an auditor of a company becomes aware that the company or the directors has or have made default in complying with section 240 or the provisions of section 275 relating to the laying of accounts or group accounts before the annual general meeting of the company, the auditor shall immediately inform the Commission by notice in writing and, if accounts or group accounts have been prepared and audited, send to the Commission a

copy of the accounts or group accounts and of his report on the accounts or group accounts.

(10) Except in a case to which sub-section (9) applies, if an auditor, in the course of the performance of his duties as auditor of a company, is satisfied that—

(a) there has been a contravention of, or failure to comply with, any of the provisions of this Code;

and

(b) the circumstances are such that in his opinion the matter has not been or will not be adequately dealt with by comment in his report on the accounts or group accounts or by bringing the matter to the notice of the directors of the company or, if the company is a subsidiary, of the directors of any corporation of which the company is a subsidiary,

he shall forthwith report the matter to the Commission by notice in writing.

286. (1) An officer of a corporation who refuses or fails without lawful excuse to allow an auditor of the corporation or of its holding company access, in accordance with the provisions of this Code, to any accounting records and other records, including registers, of the corporation in his custody or control, or to give any information or explanation as and when required under those provisions or otherwise hinders, obstructs or delays an auditor in the performance of his duties or the exercise of his powers, is guilty of an offence.

Obstruction of auditor.

(2) An auditor of a corporation who refuses or fails without lawful excuse to allow an auditor of a holding company of the corporation access, in accordance with the provisions of this Code, to any accounting records and other records, including registers, of the corporation in his custody or control, or to give any information or explanation as and when required under those provisions, or otherwise hinders, obstructs or delays an auditor in the performance of his duties or the exercise of his powers, is guilty of an offence.

Penalty: \$10,000 or imprisonment for 2 years, or both.

287. (1) The auditor of a borrowing corporation shall, within 7 days after furnishing the corporation or its members with any report, certificate or other document that he is required by this Code or by the debentures or trust deed to give to the corporation or its members, send to every trustee for the holders of debentures of the borrowing corporation a copy of the report, certificate or document, together with a copy of each document accompanying the report, certificate or document so furnished.

Special provisions relating to borrowing and guarantor corporations.

(2) Where, in the performance of his duties as auditor of a borrowing corporation or a guarantor corporation, the auditor becomes aware of any matter that, in his opinion, is or is likely to be prejudicial to the interests of the holders of debentures of the borrowing corporation and is relevant to the exercise and performance of the powers and duties imposed by this Code or by any trust deed upon any trustee for the holders of the debentures, the auditor shall, within 7 days after becoming aware of the matter, send a report in writing on the matter to the corporation of which he is auditor and a copy of the report to the trustee.

DIVISION 4—SPECIAL PROVISIONS RELATING TO BANKING AND LIFE INSURANCE CORPORATIONS

Banking and life insurance corporations.

288. (1) In this section “prescribed corporation” means—

(a) a banking corporation;

or

(b) a corporation that is registered under the *Life Insurance Act 1945*.

(2) Subject to this section, this Part applies to and in relation to a prescribed corporation that is a company or is a corporation that is a subsidiary of the holding company of a group of companies.

(3) Where, under a law of the Commonwealth relating to banking, a prescribed corporation is required to prepare accounts annually, accounts of the corporation that comply with the provisions of that law shall be deemed to comply with the provisions of this Code relating to accounts.

(4) Sub-section 270 (1) does not apply to or in relation to a prescribed corporation or its directors.

(5) Where, under a law of the Commonwealth relating to life insurance, a prescribed corporation is required to prepare accounts annually, the prescribed corporation and the directors and auditors of the corporation shall not be taken to have failed to comply with such of the provisions of this Part as are applicable to it or them by reason only—

(a) that no accounts are laid before the annual general meeting of the corporation other than accounts that—

(i) comply with the provisions of that law;

or

(ii) comply with such conditions as are specified by the Commission;

or

(b) that, where accounts that comply with such conditions as are specified by the Commission are laid before the annual general meeting of the corporation, an auditor’s report to the members on those accounts is not laid before that meeting.

(6) Sub-section 285 (3) does not apply to or in relation to the accounts of a prescribed corporation that is registered under the *Life Insurance Act 1945* where those accounts comply with that law.

(7) Where a company is a holding company of another corporation and is, under section 269, required to cause group accounts to be made out, the company and the directors and auditors of the company—

(a) shall not be taken to have failed to comply with the provisions of this Code relating to group accounts by reason only that the group accounts do not contain, whether separately or consolidated with other accounts, accounts of a prescribed corporation that is a corporation in the group of companies other than accounts that—

(i) comply with a law of the Commonwealth relating to the preparation of annual accounts of the prescribed corporation;

or

(ii) in the case of a prescribed corporation registered under the *Life Insurance Act 1945*, comply with such conditions as are specified by the Commission;

(b) shall not be taken to have failed to comply with the provisions of sub-section 270 (2) by reason only that a directors' report made under that sub-section relates only to corporations in the group of companies other than prescribed corporations;

and

(c) shall not be taken to have failed to comply with the provisions of sub-section 269 (4) or (5) or of section 285 by reason only that those provisions are not complied with in relation to prescribed corporations in the group of companies that are registered under the *Life Insurance Act 1945*.

(8) A prescribed corporation shall not be taken to have failed to comply with section 274 in relation to an annual general meeting by reason only that it does not send to a person entitled to receive notice of general meetings of the company accounts or documents referred to in that section other than accounts and documents so referred to that, in compliance with the provisions of this Part, whether by the operation of this section or otherwise, are to be laid before that annual general meeting.

(9) Where a prescribed corporation registered under the *Life Insurance Act 1945*, does not lay before its annual general meeting accounts and an auditor's report that comply with the provisions of that Act, it shall lodge a copy of those accounts and a copy of that report with the Commission on or before a day that is not later than 9 months after the end of the period to which they relate.

PART VII

PART VII

SPECIAL INVESTIGATIONS

Interpretation and application.

289. (1) In this Part, unless the contrary intention appears—

“company” means—

(a) a company as defined in sub-section 5 (1);

and

(b) a foreign company that—

(i) has been or is registered under Division 5 of Part XIII;

or

(ii) has carried on or is carrying on business in the State;

“corporation” includes a corporation that is in the course of being wound up or has been dissolved;

“direction” means a direction given to the Commission pursuant to sub-section 290 (4) or in the exercise of a power under sub-section 291 (1), (2) or (3) in relation to the carrying out of an investigation into affairs of a corporation;

“inspector” means an inspector appointed under this Part;

“officer”, in relation to a corporation, means an officer as defined in sub-section 5 (1) and includes—

(a) a person who acts, or has at any time acted, as banker, solicitor or auditor, or in any other capacity, for the corporation;

(b) a person who is, or has at any time been, a provisional liquidator of the corporation;

(c) a person who—

(i) has, or has at any time had, in his possession any property of the corporation;

(ii) is indebted to the corporation;

or

(iii) is capable of giving information concerning affairs of the corporation;

and

(d) where an inspector has reasonable grounds for suspecting or believing that a person is a person referred to in paragraph (c)—that person;

“prescribed direction” means a direction given—

(a) pursuant to sub-section 290 (4);

or

(b) in the exercise of a power under sub-section 291 (1) or (2) otherwise than in response to a request made by the Commission under sub-section 291 (4),

not being a direction that has been approved by the Ministerial Council under sub-section 291 (6);

“relevant authority”, in relation to a direction or in relation to an investigation that is carried out, or is to be carried out, pursuant to a direction, means—

(a) in the case of a direction given by the Commonwealth Minister other than a direction that has been approved by the Ministerial Council under sub-section 291 (6)—the Commonwealth Minister;

(aa) in the case of a direction given by the Minister other than a direction that has been approved by the Ministerial Council under sub-section 291 (6)—the Minister;

or

(b) in the case of a direction given by the Ministerial Council or approved by the Ministerial Council under sub-section 291 (6)—the Ministerial Council.

(2) This Part does not authorize an investigation into affairs of a corporation in relation to business of the corporation that is life insurance business for the purposes of the *Life Insurance Act 1945*.

(3) Where 2 or more inspectors have been appointed under this Part to investigate affairs of a corporation, each of those inspectors may exercise his powers or perform his functions under this Part independently of the other inspector or inspectors.

(4) In relation to an investigation into affairs of a corporation carried out by the Commission—

(a) a reference in section 295, 296, 297, 298, 308, 311 or 312 to an inspector shall be read as a reference to a member of the Commission or to an authorized agent of the Commission;

and

(b) the reference in section 310 to an inspector shall be read as a reference to the Commission.

(5) The reference in sub-section (4) to an authorized agent of the Commission shall be read as a reference to—

(a) an employee of the Commission;

(b) a person whose services are available to the Commission by virtue of arrangements made under sub-section 24 (1) or (2) of the *National Companies and Securities Commission Act 1979*;

or

(c) a person engaged under sub-section 25 (1) of that Act,

who is authorized by the Commission to act on behalf of the Commission in connection with the investigation concerned.

(6) In relation to an investigation into affairs of a corporation carried out pursuant to a prescribed direction, a reference in section 298, 306 (other than sub-section (6), (12) or (13)), 311 or 312 to the Commission shall be read as a reference to the relevant authority.

(7) An investigation under this Part is not a legal proceeding for the purposes of Part V of the *Evidence Act, 1929-1979*.

Application for carrying out of investigation.

290. (1) An application for an investigation to be carried out into—

(a) affairs of a corporation;

or

(b) such of the affairs of a corporation as are specified in the application,

may be made in writing to the Minister or the Ministerial Council.

(2) The application may be made—

(a) where the corporation, not being a banking corporation, has a share capital—

(i) by not less than 100 members of the corporation;

(ii) by members holding not less than one-twentieth of the issued shares in the corporation;

or

(iii) by members holding not less than one-twentieth of the paid-up capital of the corporation;

(b) where the corporation is a banking corporation that has a share capital—by members holding not less than one-third of the issued shares in the corporation;

(c) where the corporation does not have a share capital—by not less than one-twentieth of the members of the corporation;

(d) where the corporation, not being a banking corporation, has issued debentures—by the trustee for the holders of the debentures or by the holders of not less than one-twentieth in nominal value of the debentures;

(e) where the corporation has made available prescribed interests in relation to a financial or business undertaking, scheme, common enterprise or investment contract—by the trustee for or representative of the holders of those interests or by the holders of not less than one-twentieth of those interests;

or

(f) by the corporation pursuant to a special resolution.

(3) Where an application is made under this section, the applicants shall—

(a) furnish such information in connection with the application as the Minister or the Ministerial Council, as the case may be, requires to enable the Minister or Ministerial Council to determine whether it is in the public interest in respect of the State that an investigation should be carried out into affairs of the corporation to which the application relates;

and

(b) where the Minister or the Ministerial Council, as the case may be, so requires—give to the Commission security of such amount and in such manner as the Minister or Ministerial Council determines for payment of the expenses of and incidental to the investigation.

(4) Where an application is made under this section to the Minister or the Ministerial Council and the Minister or the Ministerial Council, as the case may be, is satisfied that it is in the public interest in respect of the State that an investigation should be carried out into the affairs of the corporation to which the application relates, or into particular affairs of the corporation, and the applicants have complied with the provisions of this section, the Minister or the Ministerial Council, as the case may be, shall, by instrument in writing, direct the Commission to arrange for an investigation into the affairs, or into those particular affairs, of the corporation to which the application relates.

291. (1) Where it appears to the Minister that it is in the public interest in respect of the State that an investigation be carried out into the affairs, or into particular affairs, of a corporation, the Minister may, by instrument in writing, direct the Commission to arrange for the investigation into the affairs, or into those particular affairs, of that corporation. Investigations.

(2) Where it appears to the Commonwealth Minister that it is in the national interest that an investigation be carried out into the affairs, or into particular affairs, of a company, the Commonwealth Minister may, by instrument in writing, direct the Commission to arrange for an investigation into the affairs, or into those particular affairs, of that company.

(3) The Ministerial Council may, by instrument in writing, direct the Commission to arrange for an investigation into the affairs, or into particular affairs, of a company.

(4) The Commission may request the Minister or the Commonwealth Minister in writing to exercise his powers under sub-section (1) or (2) to direct the Commission to arrange for an investigation into affairs of a corporation.

(5) The Commission may request the Ministerial Council in writing to exercise its power under sub-section (3) to direct the Commission to arrange for an investigation into affairs of a company.

(6) Where a direction is given by the Minister under sub-section 290 (4) or under sub-section (1) of this section or by the Commonwealth Minister under sub-section (2) of this section, the Ministerial Council may, if it thinks fit, approve the direction.

292. (1) An instrument containing a prescribed direction—

- (a) shall specify the matters that are to be investigated;
- (b) may require the investigation to be carried out by the Commission or require it to be carried out by an inspector to be appointed by the Commission;

and

- (c) in the case of an investigation that is to be carried out by an inspector appointed by the Commission—may require a specified person to be appointed as the inspector and may require him to be appointed on specified terms and conditions.

(2) An instrument containing a direction other than a prescribed direction—

- (a) shall specify the matters that are to be investigated;

and

Conduct of investigations.

- (b) may be accompanied by a statement in writing setting out the views of the relevant authority as to—
- (i) whether the investigation should be carried out by the Commission or by an inspector appointed by the Commission;
- and
- (ii) if the Commission decides to appoint an inspector to carry out the investigation—the person who should be appointed and the terms and conditions of his appointment.
- (3) Where the Commission receives a direction, the Commission shall—
- (a) in the case of a prescribed direction—comply with any requirements specified in the direction;
- and
- (b) in the case of any other direction—
- (i) take into account any views expressed by the relevant authority in a statement accompanying the direction;
 - (ii) if the Commission decides to arrange for the investigation to which the direction relates to be carried out contrary to the wishes of the relevant authority—notify the relevant authority accordingly;
- and
- (iii) if, after the Commission so notifies the relevant authority, the Ministerial Council gives any instructions to the Commission in relation to the investigation—comply with those instructions.
- (4) Where the Commission receives a direction, the Commission shall—
- (a) arrange for an investigation to be carried out into the matters specified in the instrument containing the direction;
- and
- (b) subject to sub-section (3)—
- (i) decide whether the investigation is to be carried out by the Commission or by an inspector to be appointed by the Commission;
- and
- (ii) if it decides that the investigation should be carried out by an inspector—appoint the inspector on such terms and conditions as the Commission determines.
- (5) Where, pursuant to a direction, an investigation is being carried out by the Commission or by an inspector appointed by the Commission, the Commission shall, if, and only if, it is so directed by the relevant authority—
- (a) arrange for the investigation to be extended to additional matters;
 - (b) terminate the investigation, or terminate the investigation in so far as it relates to particular matters;
- or

- (c) in the case of an investigation that is being carried out by an inspector—terminate, or vary the terms and conditions of, the appointment of the inspector,

before the completion of the investigation.

(6) Where the Commission is directed under sub-section 290 (4) or 291 (1), (2) or (3) to arrange for an investigation into affairs of a corporation, the Commission shall cause to be published in the *Gazette* a notice stating that the direction has been given and specifying the affairs concerned.

(7) A notice referred to in sub-section (6) shall—

- (a) if the investigation is being or is to be carried out by the Commission—state that fact;

or

- (b) if the investigation is being or is to be carried out by an inspector—state that fact and specify the name of the inspector.

(8) Where the Commission ceases to carry out an investigation or the appointment of an inspector to carry out an investigation is terminated, the Commission shall cause notice of the cessation or termination to be published in the *Gazette*.

(9) A certificate by the Commission stating that—

- (a) an investigation into a matter specified in the certificate, being a matter relating to affairs of a corporation, is being or is to be carried out by the Commission;

or

- (b) an investigation into a matter specified in the certificate, being a matter relating to affairs of a corporation, is being or is to be carried out by an inspector named in the certificate,

is *prima facie* evidence of the matters stated in the certificate and, in the case of an investigation by an inspector, that the inspector has been duly appointed.

293. (1) Where the Commission thinks it necessary, for the purposes of an investigation being carried out by the Commission into affairs of a corporation, to investigate affairs of a corporation that is or has at any relevant time been related to the first-mentioned corporation, the Commission may, with the consent in writing of the relevant authority, investigate the affairs of that related corporation or such of the affairs of that related corporation as are specified by the relevant authority.

Investigation of
affairs of related
corporation.

(2) Where an inspector appointed under this Division to investigate the affairs of a corporation thinks it necessary, for the purposes of that investigation, to investigate affairs of a corporation that is or has at any relevant time been related to that corporation, he may, with the consent in writing of the relevant authority, investigate the affairs of that related corporation or such of the affairs of that related corporation as are specified by the relevant authority.

(3) Where—

- (a) an investigation is carried out under this Part into affairs of a corporation pursuant to a direction;

and

(b) an investigation under this section is carried out into affairs of a corporation that is related to the first-mentioned corporation, the last-mentioned investigation shall be deemed, for the purposes of this Part, to be carried out pursuant to that direction.

Powers of Commission and inspectors appointed under corresponding law.

294. (1) Where, pursuant to a direction given to the Commission under the provisions of a law of a participating State or of a participating Territory that correspond with this Part—

(a) the Commission is carrying out an investigation into affairs of a corporation;

or

(b) in relation to an investigation being carried out by the Commission under that law into affairs of a corporation, any necessary consent has been given for the investigation, by the Commission, of affairs of a corporation that is or has been related to that corporation,

the Commission may exercise, in relation to the corporation referred to in paragraph (a) or the related corporation referred to in paragraph (b), as the case may be, the powers that it would have if it were carrying out an investigation under this Part into—

(c) in a case to which paragraph (a) applies—the matters specified in the direction in accordance with the provision of a law of that State or Territory that corresponds with sub-section 292 (1) or (2);

or

(d) in a case to which paragraph (b) applies—the matters specified pursuant to the provision of a law of that State or Territory that corresponds with sub-section 293 (1).

(2) Where, pursuant to a direction given to the Commission under the provisions of a law of a participating State or of a participating Territory that correspond with this Part—

(a) a person has been appointed as an inspector to carry out an investigation into affairs of a corporation;

or

(b) in relation to an investigation being carried out by a person appointed as an inspector under that law into affairs of a corporation, any necessary consent has been given for the investigation, by that person, of affairs of a corporation that is or has been related to that corporation,

that person may exercise, in relation to the corporation referred to in paragraph (a) or the related corporation referred to in paragraph (b), as the case may be, the powers of an inspector under this Part that he would have if he had been appointed as an inspector under this Part to investigate—

(c) in a case to which paragraph (a) applies—the matters specified in the direction in accordance with the provision of a law of that State or Territory that corresponds with sub-section 292 (1) or (2);

or

- (d) in a case to which paragraph (b) applies—the matters specified pursuant to the provision of a law of that State or Territory that corresponds with sub-section 293 (2).

295. (1) An inspector may, by notice in writing containing the prescribed matters given in the prescribed manner, require an officer of a corporation affairs of which are being investigated under this Part—

Powers of
inspectors.

- (a) to produce to the inspector such books of the corporation and other books relating to affairs of the corporation as are in the custody or under the control of the officer;
- (b) to give to the inspector all reasonable assistance in connection with the investigation;

and

- (c) to appear before the inspector for examination on oath or affirmation and to answer questions put to him,

and may administer an oath or affirmation to that officer.

(2) A notice given pursuant to paragraph (1) (c) shall set out the provisions of sub-sections 296 (6) and (7).

(3) Where an inspector has reasonable grounds for believing that books in the custody or under the control of a person may be relevant to any of the matters relating to affairs of a corporation that are being investigated under this Part, the inspector may, by notice in writing containing the prescribed matters given in the prescribed manner, require that person to produce those books to the inspector.

(4) * * * * *

(5) An inspector shall not exercise his powers under sub-section (1) in respect of an officer of a corporation affairs of which he is investigating under section 293 unless he has furnished to the officer a certificate in the prescribed form stating that he is investigating affairs of the corporation under that section and that the officer is an officer of the corporation.

(6) Where books are produced to an inspector under this Part, the inspector may take possession of the books for such period as he considers necessary for the purposes of the investigation, and during that period he shall permit a person who would be entitled to inspect any one or more of those books if they were not in the possession of the inspector to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

296. (1) Where affairs of a corporation are being investigated under this Part, the following provisions of this section have effect.

Examination of
officers.

(2) An officer of the corporation shall not, without reasonable excuse, refuse or fail to comply with a requirement made under section 295.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(3) An officer of the corporation shall not, in purported compliance with a requirement made under section 295, furnish information that is false or misleading in a material particular.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(4) An officer of the corporation shall not, when appearing before an inspector for examination pursuant to paragraph 295 (1) (c), make a statement that is false or misleading in a material particular.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(5) An officer of the corporation shall not, when appearing before an inspector for examination pursuant to paragraph 295 (1) (c), refuse or fail to take an oath or make an affirmation.

Penalty: \$1,000 or imprisonment for 3 months, or both.

(6) A duly qualified legal practitioner acting for an officer—

(a) may attend an examination of that officer;

and

(b) may, at such times during the examination as the inspector determines—

(i) address the inspector;

and

(ii) examine the officer,

in relation to matters in respect of which the inspector has questioned the officer.

(7) An officer is not excused from answering a question put to him by an inspector on the ground that the answer might tend to incriminate him but, where the officer claims, before answering the question, that the answer might tend to incriminate him, the answer is not admissible in evidence against him in criminal proceedings other than proceedings under sub-section (2), (3) or (4) or other proceedings in respect of the falsity of the answer.

(8) A claim referred to in sub-section (7) may be made in any form of words agreed between the officer and the inspector.

(9) A person who complies with a requirement of an inspector under section 295 does not incur a liability to any person by reason only of that compliance and, for the purposes of this sub-section, a certificate under sub-section 295 (5) is conclusive evidence of the matters stated in that certificate.

(10) A person who is required to attend for examination pursuant to paragraph 295 (1) (c) is entitled to such allowances and expenses as are prescribed.

(11) The Commission may, in its discretion, pay, on account of the costs and expenses incurred by a person in complying with a requirement under paragraph 295 (1) (a) or (b), such amount as it thinks reasonable.

(12) Where, in the opinion of an inspector, a legal practitioner acting for an officer is attempting to obstruct the examination of the officer by the exercise of the rights conferred on him under sub-section (6) to address the inspector or to examine the officer, the inspector may require the legal practitioner to cease to address him or to cease to examine the officer, as the case may be.

(13) Where an inspector makes a requirement of a legal practitioner under sub-section (12), the legal practitioner shall not refuse or fail to comply with that requirement.

297. (1) Where an inspector appointed to investigate affairs of a corporation is satisfied that an officer of a corporation or another person has, without reasonable excuse, failed to comply with a requirement of the

Officer or other person failing to comply with requirement of this Part.

inspector made under section 295, the inspector may, by writing signed by him, certify the failure to the Court.

(2) Where an inspector gives a certificate under sub-section (1) in relation to an officer of a corporation or another person, the Court may inquire into the case and—

- (a) order the officer or the other person, as the case may be, to comply with the requirement of the inspector within such period as is fixed by the Court;
- or
- (b) if the Court is satisfied that the officer or the other person, as the case may be, failed, without reasonable excuse, to comply with the requirement of the inspector, punish him in like manner as if he had been guilty of contempt of the Court and, if it sees fit, also make an order pursuant to paragraph (a).

(3) The powers of the Court under this section may be exercised in relation to an officer or another person notwithstanding that the officer or other person has been convicted of an offence in relation to the matters in respect of which the powers are to be exercised.

298. (1) An inspector may cause to be made a record of the questions asked and the answers given at an examination under this Part.

Record of
examination.

(2) Where a record of the questions asked and the answers given at an examination under this Part is in writing or is reduced to writing—

- (a) the inspector may require the person to read the written record or have the written record read to him and may require him to sign the written record;

and

- (b) if the person requests the inspector in writing to furnish him with a copy of the written record, the inspector shall furnish the copy to the person without charge but subject to such conditions (if any) as the inspector imposes.

(3) A written record of the examination of a person under this Part that is signed by the person as mentioned in sub-section (2) or is authenticated in any other prescribed manner is *prima facie* evidence of the questions asked and the answers given at the examination.

(4) A person to whom a copy of a written record of an examination is given under paragraph (2) (b) and any person who comes into possession of the copy or a copy of the copy shall comply with any conditions imposed by the inspector under that paragraph.

Penalty: \$1,000 or imprisonment for 3 months, or both.

(5) Nothing in this section affects or limits the admissibility in any criminal or civil proceedings of other evidence of the questions asked and answers given at an examination under this Part.

(6) The Commission may give a copy of a written record made of an examination under this Part and a copy of any related book to a duly qualified legal practitioner who satisfies the Commission that he is acting for a person who is conducting, or is, in good faith, contemplating, criminal or civil proceedings in respect of any matters into which an investigation has been or is being made by an inspector under this Part.

(7) A duly qualified legal practitioner to whom a copy of a written record of an examination or of a related book is given under sub-section (6) or any other person who comes into possession of the copy, or a copy of the copy, shall not use the copy otherwise than in connection with the institution or preparation of, or in the course of, criminal or civil proceedings and shall not publish or communicate for any other purpose the copy or any part of the contents of the copy to any other person.

Penalty: \$1,000 or imprisonment for 3 months, or both.

(8) The Commission may if it thinks fit give a copy of a written record made of an examination under this Part and of any related book to any other person subject to such conditions as the Commission imposes.

(9) A person to whom a copy of a written record of an examination or of a related book is given under sub-section (8) and any person who comes into possession of the copy or a copy of the copy shall comply with any conditions imposed by the Commission under that sub-section.

Penalty: \$1,000 or imprisonment for 3 months, or both.

(10) When a final report is made in respect of an investigation under this Part, any record made of questions asked and answers given at an examination relating to the investigation shall be furnished with the report.

Admissibility of record of examination in evidence in proceedings against person examined.

299. (1) Except as provided by sub-section (2), any questions asked and answers given at an examination of a person under this Part are admissible in evidence in any criminal or civil proceedings against the person.

(2) Evidence of an answer given by a person at an examination under this Part shall not be admitted in evidence in criminal or civil proceedings against the person if—

- (a) the proceedings are criminal proceedings (other than proceedings for an offence against sub-section 296 (2), (3) or (4) or other proceedings in respect of the falsity of the answer) and, before answering the question, the person claimed that the answer might tend to incriminate him;
- (b) the question and answer are not relevant to the proceedings and the person objects to the admission of the evidence;
- (c) the answer is qualified or explained by some other answer given at the examination, evidence of the other answer is not tendered in the proceedings and the person objects to the admission of the evidence of the first-mentioned answer;

or

- (d) the answer disclosed matter in respect of which a claim of legal professional privilege could be made by the person in the proceedings if the provisions of this Division did not apply in relation to that evidence, and the person objects to the admission of the evidence.

(3) This section applies whether the proceedings against the person examined are heard alone or together with proceedings against another person.

Admissibility in other proceedings of questions and answers at an examination.

300. Where, in any criminal or civil proceedings, direct evidence by a person of a matter would be admissible, a question asked of, and answer

given by, the person at an examination under this Part that tends to establish that matter are admissible in those proceedings as evidence of that matter—

(a) if it appears to the court in which the proceedings are instituted—

(i) that the person examined is dead or is unfit, by reason of any physical or mental incapacity, to attend as a witness;

(ii) that the person is outside the State and it is not reasonably practicable to secure his attendance;

or

(iii) that all reasonable steps have been taken to find the person and he cannot be found;

or

(b) in a case to which paragraph (a) does not apply—unless a party to the proceedings, other than the party tendering evidence of the question and answer, requires the tendering party to call the person as a witness in the proceedings and the tendering party does not call the person as a witness in the proceedings.

301. In ascertaining the weight (if any) to be attached to evidence of questions and answers admitted under section 300 in any proceedings, regard shall be had to all the circumstances from which an inference can reasonably be drawn as to the accuracy or otherwise of the evidence, including—

Weight of evidence.

(a) the recency or otherwise at the time when the examination concerned took place of any relevant matter dealt with at the examination;

and

(b) the presence and nature, or the absence, of any incentive for the person examined to conceal or misrepresent any relevant matter in his answers.

302. (1) Where evidence of questions and answers is admitted under section 300 in any proceedings and the person examined is not called as a witness in the proceedings, evidence is admissible where, if the person examined had been called as a witness, the evidence would have been admissible for the purpose of destroying or supporting his credibility.

Credibility of person who answered questions.

(2) Evidence is admissible to show that a statement made by a person referred to in sub-section (1) is inconsistent with another statement made by him at any time.

(3) Notwithstanding sub-sections (1) and (2), evidence is not admissible of any matter of which, if the person referred to in sub-section (1) had been called as a witness and denied the matter in cross-examination, evidence would not be admissible if adduced by the cross-examining party.

303. (1) A party to any criminal or civil proceedings may, not later than 14 days before the commencement of the hearing of the proceedings, serve upon another party notice that the first-mentioned party proposes to tender as evidence in the proceedings the written record of an examination under this Part or a specified part of the written record of such an examination.

Determination of objection to admissibility of question and answer.

(2) Where a notice is served under sub-section (1), the other party may, within 14 days after the service of the notice or within such longer period

as is agreed by the parties or allowed by the court or tribunal in which the proceedings are brought, give notice to the tendering party stating that he objects to the admission in evidence of all or any of the questions and answers contained in the written record or the part of the written record proposed to be tendered and, if he objects to the admission of some only of the questions and answers, specifying the questions and answers concerned.

(3) A notice under sub-section (2) shall, in relation to each question and answer objected to, specify the grounds upon which the objection is taken.

(4) Upon receipt of a notice under sub-section (2), the tendering party shall send a copy of the notice to the court or tribunal in which the proceedings are brought.

(5) Upon receipt of a copy of the notice, the court or tribunal in which the proceedings are brought may, in its discretion, either determine the objections specified in the notice as a preliminary point of law before the commencement of the hearing of the proceedings or defer the determination of the objections until the hearing of the proceedings.

(6) At the hearing of the proceedings, a party is not entitled, without the leave of the court or tribunal hearing the proceedings, to take any objection to the admission in evidence of the written record, or a part of the written record, of an examination under this Part in respect of which a notice was given to him under sub-section (1) if he could have objected to the tender of the written record or of that part of the written record by a notice under sub-section (2) but did not so object.

(7) Nothing in this section renders inadmissible in any criminal or civil proceedings any evidence that would have been admissible if this section had not been enacted.

Delegation by
inspector.

304. (1) An inspector may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person any of his powers or functions under this Part other than this power of delegation.

(2) The power of delegation conferred on an inspector under sub-section (1) does not, except in the case of an inspector being a body corporate that is an authority of a State or Territory, extend to delegating the power to administer oaths or affirmations or the power to examine on oath or affirmation.

(3) Any act or thing done in the exercise of a power or the performance of a function by a person to whom that power or function has been delegated by an inspector under sub-section (1) has the same force and effect as if it had been done by the inspector.

(4) A delegate shall, at the request of an officer of a corporation, produce the instrument of delegation for inspection.

(5) A delegation under this section by an inspector does not prevent the exercise or performance of a power or function by the inspector.

Reports of
investigations.

305. (1) Where an investigation is being carried out by an inspector appointed pursuant to a direction other than a prescribed direction, the inspector may, and if so directed by the Commission shall, make interim reports to the Commission, and, on the completion or termination of the investigation, the inspector shall report to the Commission his opinion on

or in relation to the affairs of the corporation or corporations that he has investigated, together with the facts on which his opinion is based.

(2) Where an investigation is being carried out by an inspector appointed pursuant to a prescribed direction, the inspector may, and if so directed by the relevant authority shall, make interim reports to the relevant authority and, on the completion or termination of the investigation, the inspector shall report to the relevant authority his opinion on or in relation to the affairs of the corporation or corporations that he has investigated, together with the facts on which his opinion is based.

(3) Where an investigation is being carried out by the Commission, the Commission may, and if so directed by the relevant authority shall, make interim reports to the relevant authority and, on the completion or termination of the investigation, the Commission shall report to the relevant authority its opinion on or in relation to the affairs of the corporation or corporations that it has investigated, together with the facts upon which its opinion is based.

306. (1) Subject to sub-section (3), a copy of a final report prepared pursuant to section 305 shall, and a copy of the whole or any part of an interim report may if the Commission thinks fit, be sent by the Commission to the registered office of the corporation to which the report relates, being the registered office in the place where the corporation was formed, and a copy of a report so sent shall, at the request of an applicant under section 290, be furnished to him by the Commission.

Provisions
relating to
reports.

(2) Subject to sub-sections (3) and (4), the Commission shall give a copy of a report made under this Part to each other person to whom, in the opinion of the Commission, the report ought to be given by reason that it relates to affairs of that person to a material extent.

(3) The Commission is not bound to furnish a corporation or any other person with a copy of any part of a report made under this Part or with a complete copy of such a report if the Commission is of the opinion that there is good reason for not divulging the contents of the report or of parts of the report.

(4) Subject to sub-section (5), the Commission shall not give a copy of a report under this Part to a person under sub-section (2) if the Commission believes that legal proceedings that have been, or that in its opinion might be, instituted might be unduly prejudiced by giving the report to that person.

(5) A court before which legal proceedings are brought against a person for or in respect of matters dealt with in a report under this Part may order that a copy of the report or of a part of the report be given to that person.

(6) Subject to sub-section (7)—

(a) the Ministerial Council may cause to be printed and published the whole or any part of a report under this Part that relates to an investigation the expenses of which are, under the Agreement, to be borne by the Commission;

(b) the Minister may cause to be printed and published the whole or any part of a report under this Part that relates to an investigation the expenses of which are, under the Agreement, to be borne by the State;

and

- (c) the Commonwealth Minister may cause to be printed and published the whole or any part of a report under this Part that relates to an investigation the expenses of which are, under the Agreement, to be borne by the Commonwealth.

(7) Where—

- (a) the Ministerial Council, the Minister or the Commonwealth Minister would, but for this sub-section, have power to publish a report;
- (b) the Ministerial Council, the Minister or the Commonwealth Minister, as the case may be, receives—
 - (i) a certificate of the Attorney-General of a State stating that the publication of the report would be prejudicial to the administration of justice in that State;
 - (ii) a certificate of the Attorney-General of the Commonwealth stating that the publication of the report would be prejudicial to the administration of justice in a Territory (not being the Northern Territory) specified in the certificate;

or

- (iii) a certificate of the Attorney-General of the Northern Territory stating that the publication of the report would be prejudicial to the administration of justice in that Territory;

and

- (c) the Ministerial Council, the Minister or the Commonwealth Minister, as the case may be, has not received a further certificate of that Attorney-General stating that the publication of the report would no longer be prejudicial to the administration of justice in the relevant State or Territory,

the Ministerial Council, the Minister or the Commonwealth Minister, as the case may be, shall not cause or permit that report to be published in whole or in part.

(8) If from a report under this Part or from the record of an examination under this Part, it appears to the Commission that an offence may have been committed by a person and that a prosecution ought to be instituted, the Commission shall cause a prosecution to be instituted and prosecuted.

(9) Where it appears to the Commission that a prosecution ought to be instituted, it may, by notice in writing given before or after the institution of a prosecution in accordance with sub-section (8), require a person whom it suspects or believes on reasonable grounds to be capable of giving information concerning any matter to which the prosecution relates (not being a person who is or, in the opinion of the Commission, is likely to be a defendant in the proceedings or is or has been a duly qualified legal practitioner acting for such a person) to give all assistance in connection with the prosecution or proposed prosecution that he is reasonably able to give.

(10) Where a person to whom a notice has been given under sub-section (9) fails to comply with a requirement specified in the notice, the Court may, on the application of the Commission, direct that person to comply with the requirement.

(11) If, from a report under this Part, or from the record of an examination under this Part, the Commission is of the opinion that proceedings ought in the public interest to be brought by a corporation for the recovery of damages in respect of fraud, negligence, default, breach of trust, breach of duty or other misconduct in connection with affairs of, or for the recovery of property of, the corporation to which the report or record relates, the Commission may cause proceedings to be brought accordingly in the name of the corporation.

(12) A copy of a report of an inspector under this Part purporting to be certified as such a report by the Commission is admissible in civil proceedings as evidence of—

(a) the inspector's report of his opinion for the purposes of paragraph 364 (1) (g) or sub-paragraph 470 (1) (c) (iv);

and

(b) any facts or matters stated in the report to have been found to exist by the inspector.

(13) A copy of a report of the Commission under this Part purporting to be certified as such a report by the Commission is admissible in civil proceedings as evidence of—

(a) the Commission's report of its opinion for the purposes of paragraph 364 (1) (g) or sub-paragraph 470 (1) (c) (iv);

and

(b) any facts or matters stated in the report to have been found to exist by the Commission.

(14) Nothing in this section operates to diminish the protection afforded to witnesses by the Evidence Act 1929-1979.

307. (1) An inspector may, when making a report under this Part, give to the Commission books of which he has taken possession under subsection 295 (6) and the Commission—

Commission's powers in respect of books.

(a) may retain the books for such period as it considers to be necessary to enable a decision to be made as to whether or not legal proceedings ought to be instituted as a result of the investigation;

(b) may retain the books for such further period as it considers to be necessary to enable any such proceedings to be instituted and prosecuted;

(c) may permit other persons to inspect the books while they are in its possession;

(d) may permit the use of the books for the purposes of legal proceedings instituted as a result of the investigation;

and

(e) shall permit a person who would be entitled to inspect any one or more of the books if they were not in the possession of the Commission to inspect at all reasonable times such of the books as that person would be so entitled to inspect.

(2) Where the Commission takes possession of books under sub-section 295 (6), the Commission has such powers and obligations with respect to those books as it would have if it had been given those books by an inspector pursuant to sub-section (1) of this section.

Privileged
communications.

308. Where in the exercise of his powers under section 295 an inspector requires a duly qualified legal practitioner to disclose a privileged communication made by or on behalf of or to that legal practitioner in his capacity as a legal practitioner, the legal practitioner is entitled to refuse to comply with the requirement unless the person to whom or by or on behalf of whom the communication was made or, if the person is a body corporate that is under official management or in the course of being wound up, the official manager or the liquidator, as the case may be, agrees to the legal practitioner complying with the requirement but, where the legal practitioner so refuses to comply with a requirement, he shall, if he knows the name and address of the person to whom or by or on behalf of whom the communication was made, forthwith furnish that name and address in writing to the inspector.

Penalty: \$1,000 or imprisonment for 3 months, or both.

Expenses of
investigation.

309. (1) Subject to this section and to clause 18 of the Agreement, the expenses of and incidental to an investigation shall be paid by the Commission.

(2) For the purposes of this section, the expenses of and incidental to an investigation under this Part include—

(a) the expenses incurred in any proceedings brought in the name of a corporation under sub-section 306 (11);

and

(b) in the case of an investigation carried out pursuant to a direction that is approved by the Ministerial Council pursuant to sub-section 291 (6)—the expenses (if any) incurred before the direction is so approved.

(3) Where an investigation has been carried out under this Part and proceedings are instituted under sub-section 306 (11) or otherwise as a result of that investigation, the Commission may make one or more of the following orders, namely:

(a) that a specified person pay, within the time and in the manner specified in the order, the whole, or a specified part, of the expenses of and incidental to the investigation;

(b) where expenses have been paid by the Commission, that a specified person reimburse the Commission, within the time and in the manner specified in the order, to the extent of the payment;

(c) that a specified person, within the time and in the manner specified in the order, pay, or reimburse the Commission in respect of, the whole, or a specified part, of the cost to the Commission of carrying out the investigation, including the remuneration of any employee of the Commission concerned with the investigation.

(4) Where the Commission is of the opinion that the whole or any part of the expenses of and incidental to an investigation into affairs of a corporation under this Part should be paid by the corporation, the Commission may by order in writing direct the corporation to pay a specified

amount, being the whole or part of those expenses, within the time and in the manner specified.

(5) Where a person or corporation has failed to comply with an order of the Commission under sub-section (3) or (4), proceedings may be taken in a court of competent jurisdiction to recover the amount in question as a debt due to the Commission.

(6) An inspector may include in his report a recommendation whether an order under sub-section (3) or (4) should be made or whether orders under both those sub-sections should be made.

(7) Where—

(a) pursuant to a direction given as a result of an application under sub-section 290 (1), the Commission carried out an investigation, or an inspector was appointed to carry out an investigation, into affairs of a corporation;

(b) the applicants have given security in accordance with sub-section 290 (3);

and

(c) the corporation fails to comply with an order under sub-section (4),

the security may, in the discretion of the Commission, be forfeited to the Commission or, if the amount that the corporation has failed to pay pursuant to an order is less than the amount of the security, a part of the security equal to the amount remaining unpaid may, in the discretion of the Commission, be forfeited to the Commission.

(8) Where, in a case where the expenses of and incidental to an investigation or part of those expenses have been or are to be borne by a party to the Agreement, the expenses or part of the expenses borne or to be borne by that party are recovered by the Commission pursuant to this section, the Commission shall, to the extent of the amount recovered, reimburse or credit that party.

310. (1) A person who—

(a) conceals, destroys, mutilates or alters a book of or relating to a corporation affairs of which are the subject of investigation by an inspector under this Part;

(b) where such a book is in the State—sends the book out of the State;

or

(c) where such a book is outside the State but is within Australia—sends the book out of Australia,

is guilty of an offence.

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

(2) It is a defence to a prosecution for an offence against sub-section (1) if the defendant proves that he did not act with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of an investigation under this Part.

311. (1) Where an investigation into affairs of a corporation is being made under this Part and it appears to the Commission that facts concerning

Concealing, &c.,
of books of
corporation.

Power of
Commission to
make certain
orders.

affairs of the corporation cannot be ascertained because an officer of the corporation has failed or refused to comply with a requirement of an inspector under section 295, the Commission may, by instrument in writing published in the *Gazette*, make one or more of the following orders:

- (a) an order restraining a specified person from disposing of any interest in specified securities of the corporation;
- (b) an order restraining a specified person from acquiring any interest in specified securities of the corporation;
- (c) an order restraining the exercise of any voting or other rights attached to specified securities of the corporation;
- (d) an order directing a person who is registered as the holder of securities in respect of which an order under this section is in force to give notice in writing of that order to any person whom he knows to be entitled to exercise a right to vote attached to those securities;
- (e) an order directing the corporation not to make payment, except in the course of winding up, of any sum due from the corporation in respect of specified securities of the corporation;
- (f) an order directing the corporation not to register the transfer or transmission of specified securities of the corporation;
- (g) an order directing the corporation not to issue shares to a person who holds shares in the corporation, being shares that were proposed to be issued to the person by reason of his holding shares in the corporation or pursuant to an offer or invitation made or issued to him by reason of his holding shares in the corporation.

(2) A copy of an order under sub-section (1) and of any order by which it is varied or revoked shall be served—

- (a) on any person affected by the order;
- and
- (b) on the corporation.

(3) Where an order made under sub-section (1) is in force, a person aggrieved by the order may apply to the Court for variation or revocation of the order and the Court may, if it is satisfied that it is reasonable to do so, vary the order or revoke the order and any order by which it has been varied.

(4) A person who contravenes or fails to comply with an order under sub-section (1) is guilty of an offence and, where that person is a corporation, each officer (as defined in sub-section 5 (1)) of the corporation who is in default is guilty of an offence.

Penalty: \$2,500 or imprisonment for 6 months, or both.

Application for winding up.

312. (1) Where a report of an investigation under this Part has been made by an inspector, application may be made to the Court by the Commission—

- (a) if the corporation the subject of the report was incorporated or deemed to be incorporated under this Code or any corresponding previous law of the State—for the winding up of the corporation;

or

- (b) if the corporation the subject of the report is a body to which Division 6 of Part XII applies—for the winding up of the corporation in accordance with that Division.

(2) Upon the making of the application, the provisions of this Code, with such adaptations as are necessary, apply as if—

- (a) in the case of a corporation to which paragraph (1) (a) applies—a winding up application had been filed with the Court by the corporation;

and

- (b) in the case of a corporation to which paragraph (1) (b) applies—a winding up application had been filed with the Court by a creditor or contributory of the corporation upon the dissolution of the corporation in the place in which it was formed.

(3) Where, in the case of a corporation to which paragraph (1) (b) applies, on an application under sub-section (1) an order is made for the winding up of the corporation, the corporation shall not carry on business or establish or keep a place of business in the State.

(4) A copy of an application by the Commission under sub-section (1) shall be served on the corporation to which it refers.

313. The Commission shall not delegate to any person its power under this Part to appoint an inspector to carry out an investigation, to determine the terms and conditions of such an appointment or to terminate such an appointment or the power to make orders under section 311.

Certain powers
not to be
delegated.

ARRANGEMENTS AND RECONSTRUCTIONS

Crown to be bound.

314. This Part binds the Crown in right of South Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Power to compromise with creditors and members.

315. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between a company and its members or any class of them, the Court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting or meetings of the creditors or class of creditors or of the members of the company or class of members to be convened in such manner, and to be held in such place or places within or outside the State, as the Court directs and, where the Court makes such an order, the Court may approve the explanatory statement required by paragraph 316 (1) (a) to accompany notices of the meeting or meetings.

(2) The Court shall not make an order pursuant to an application under sub-section (1) unless 14 days notice of the hearing, or such lesser period of notice as the Court or the Commission permits, has been given to the Commission.

(3) The Court shall not make an order under sub-section (1) that a meeting be held in another State or in a Territory unless it appears to the Court that—

(a) in the case of a meeting in respect of a proposed compromise or arrangement between the company and its creditors or any class of them—some or all of those creditors, or of the creditors included in that class, as the case may be, reside in that State or Territory;

or

(b) in the case of a meeting in respect of a proposed compromise or arrangement between the company and its members or any class of them—some or all of those members, or of the members included in that class, as the case may be, reside in that State or Territory.

(4) A compromise or arrangement is binding on the creditors, or on a class of creditors, or on the members, or on a class of members, as the case may be, of the company and on the company or, if the company is in the course of being wound up, on the liquidator and contributories of the company, if, and only if—

(a) at a meeting convened in accordance with an order of the Court under sub-section (1)—

(i) in the case of a compromise or arrangement between a company and its creditors or a class of creditors—the compromise or arrangement is agreed to by a majority in number of the creditors, or of the creditors included in that class of creditors, present and voting, either in person or by proxy, being a majority whose debts or claims against the company amount in the aggregate to not less than 75% of the total amount of the debts and claims of the creditors present and

voting in person or by proxy, or of the creditors included in that class present and voting in person or by proxy, as the case may be;

and

- (ii) in the case of a compromise or arrangement between a company and its members or a class of members—the compromise or arrangement is agreed to by a majority in number of the members, or of the members included in that class of members, present and voting, either in person or by proxy, being, in the case of a company having a share capital, a majority whose shares have nominal values that amount, in the aggregate, to not less than 75% of the total of the nominal values of all the shares of the members present and voting in person or by proxy, or of the members included in that class present and voting in person or by proxy, as the case may be;

and

- (b) it is approved by order of the Court.

(5) Where the Court orders 2 or more meetings of creditors or of a class of creditors, or 2 or more meetings of members or of a class of members, to be held in relation to the proposed compromise or arrangement—

- (a) in the case of meetings of creditors—the meetings shall, for the purposes of sub-section (4), be deemed together to constitute a single meeting and the votes in favour of the proposed compromise or arrangement cast at each of the meetings shall be aggregated, and the votes against the proposed compromise or arrangement cast at each of the meetings shall be aggregated, accordingly;

or

- (b) in the case of meetings of members—the meetings shall, for the purposes of sub-section (4), be deemed together to constitute a single meeting and the votes in favour of the proposed compromise or arrangement cast at each of the meetings shall be aggregated, and the votes against the proposed compromise or arrangement cast at each of the meetings shall be aggregated, accordingly.

(6) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.

(7) Except with the leave of the Court, a person shall not be appointed to administer, and shall not administer, a compromise or arrangement approved under this Code between a company and its creditors or any class of them or between a company and its members or any class of them, whether by the terms of that compromise or arrangement or pursuant to a power given by the terms of a compromise or arrangement, if the person is—

- (a) a mortgagee of any property of the company;
- (b) an auditor or an officer of the company;
- (c) an officer of any corporation that is a mortgagee of property of the company;

or

(d) a person who is not a registered liquidator.

(8) For the purposes of sub-section (7), a person shall be deemed to be an officer of the company if—

(a) he is an officer of a related corporation;

or

(b) except where the Commission, if it thinks fit in the circumstances of the case, directs that this paragraph shall not apply in relation to him—he has, at any time within the immediately preceding period of 12 months, been an officer or promoter of the company or of a related corporation.

(9) Nothing in paragraph (7) (d) prohibits the appointment to administer a compromise or arrangement of a corporation authorized by any Act or any law of the State to administer a compromise or arrangement to which a company is a party.

(10) Nothing in sub-section (7) disqualifies a person from administering a compromise or arrangement pursuant to an appointment validly made before the commencement of the Companies (Application of Laws) Act 1982.

(11) Where a person is or persons are appointed, whether by the terms of a compromise or arrangement or pursuant to a power given by the terms of a compromise or arrangement, to administer the compromise or arrangement—

(a) section 325, sub-sections 326 (1A) and (2) and sections 327, 330 and 332 apply in relation to that person or those persons as if—

(i) the appointment of the person or persons to administer the compromise or arrangement were an appointment of the person or persons as a receiver and manager, or as receivers and managers, of the property of the company;

and

(ii) a reference in any of those sections or sub-sections to a receiver, or to a receiver of the property, of a company were a reference to that person or to those persons;

and

(b) section 420 applies in relation to that person or those persons as if—

(i) the appointment of the person or persons to administer the compromise or arrangement were an appointment of the person or persons as a liquidator of the company;

and

(ii) a reference in that section to a liquidator were a reference to that person or to those persons.

(12) An order of the Court made for the purposes of paragraph (4) (b) does not have any effect until an office copy of the order is lodged with the Commission, and upon being so lodged, notwithstanding sub-section 72 (5),

the order takes effect, or shall be deemed to have taken effect, on and from the date of lodgment or such earlier date as the Court determines and specifies in the order.

(13) Subject to sub-section (14), a copy of every order of the Court made for the purposes of paragraph (4) (b) shall be annexed to every copy of the memorandum of the company issued after the order has been made or, in the case of a company not having a memorandum, to every copy so issued of the constituent documents of the company.

(14) The Court may, by order, exempt a company from compliance with the requirements of sub-section (13) or determine the period during which the company shall comply with those requirements.

(15) Where a compromise or arrangement referred to in sub-section (1) (whether or not for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any 2 or more companies) has been proposed, the directors of the company shall—

(a) if a meeting of the members of the company by resolution so directs—instruct such accountants or solicitors or both as are named in the resolution to report on the proposals and send their report or reports to the directors as soon as practicable;

and

(b) if a report or reports is or are obtained pursuant to paragraph (a)—make the report or reports available at the registered office of the company for inspection by the shareholders and creditors of the company at least 7 days before the date of any meeting ordered by the Court to be convened as provided in sub-section (1).

(16) A company that makes default in complying with sub-section (13) and any officer of the company who is in default are each guilty of an offence.

(17) If default is made in complying with sub-section (15), each director of the company is guilty of an offence.

(18) Where no order has been made or resolution passed for the winding up of a company and a compromise or arrangement has been proposed between the company and its creditors or any class of them, the Court may, in addition to exercising any of its other powers, on the application in a summary way of the company or of any member or creditor of the company, restrain further proceedings in any action or other civil proceeding against the company except by leave of the Court and subject to such terms as the Court imposes.

(19) Where an order is made by the Supreme Court of a participating State or of a participating Territory under the provision of the law of that State or Territory that corresponds with sub-section (1) and an office copy of the order is filed with the Registrar of the Supreme Court of South Australia, the order has effect and may be enforced in all respects in South Australia as if it were an order of that last-mentioned Court made under that sub-section in relation to a company incorporated pursuant to this Code.

(20) Where, by virtue of the provision of the law of a participating State or of a participating Territory that corresponds with sub-section (4), a compromise or arrangement is binding on the creditors, or on the creditors included in a class of creditors, of a recognized company, or of a foreign

company registered in that State or Territory, the compromise or arrangement is, by force of this sub-section, binding on the creditors, or the creditors included in that class of creditors, as the case may be, of that company whose debts are recoverable by action in a court of South Australia.

(21) The Court shall not approve a compromise or arrangement under this section unless—

- (a) it is satisfied that the compromise or arrangement has not been proposed for the purpose of enabling any person to avoid the operation of any of the provisions of the *Companies (Acquisition of Shares) (South Australia) Code*;
- (b) there is produced to the Court a statement in writing by the Commission stating that the Commission has no objection to the compromise or arrangement,

but the Court is not required to approve a compromise or arrangement by reason only that a statement by the Commission stating that the Commission has no objection to the compromise or arrangement has been produced to the Court as mentioned in paragraph (b).

(22) In this section and section 316—

“arrangement” includes a reorganization of the share capital of a body corporate by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both these methods;

“company” means a company incorporated pursuant to this Code or a corresponding previous law of the State and includes a foreign company registered in the State.

Information as to
compromise with
creditors or
members.

316. (1) Where a meeting is convened under section 315, the company shall—

- (a) with every notice convening the meeting that is sent to a creditor or member, send a statement (in this section referred to as the “explanatory statement”)—
 - (i) explaining the effect of the compromise or arrangement and, in particular, stating any material interests of the directors, whether as directors, as members or creditors of the company or otherwise, and the effect on those interests of the compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons;

and

 - (ii) setting out such information as is prescribed and any other information that is material to the making of a decision by a creditor or member whether or not to agree to the compromise or arrangement, being information that is within the knowledge of the directors and has not previously been disclosed to the creditors or members;

and

- (b) in every notice convening the meeting that is given by advertisement, include either a copy of the explanatory statement or a

notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of the explanatory statement.

(2) In the case of a creditor whose debt does not exceed \$200, paragraph (1) (a) does not apply unless the Court otherwise orders but the notice convening the meeting that is sent to such a creditor shall specify a place at which a copy of the explanatory statement can be obtained on request and, where the creditor makes such a request, the company shall forthwith comply with the request.

(3) Where the compromise or arrangement affects the rights of debenture holders, the explanatory statement shall specify any material interests of the trustees for the debenture holders, whether as such trustees, as members or creditors of the company or otherwise, and the effect on those interests of the compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons.

(4) Where a notice given by advertisement includes a notification that copies of the explanatory statement can be obtained in a particular manner, every creditor or member entitled to attend the meeting shall, on making application in that manner, be furnished by the company free of charge with a copy of the explanatory statement.

(5) Each director and each trustee for debenture holders shall give notice to the company of such matters relating to himself as are required to be included in the explanatory statement.

(6) In the case of a compromise or arrangement that is not, or does not include, a compromise or arrangement between a company and its creditors or any class of them, the company shall not send out an explanatory statement pursuant to sub-section (1) unless a copy of that statement has been registered by the Commission.

(7) Where an explanatory statement sent out pursuant to sub-section (1) is not required by sub-section (6) to be registered by the Commission, the Court shall not make an order approving the compromise or arrangement unless it is satisfied that the Commission has had a reasonable opportunity to examine the explanatory statement and to make submissions to the Court in relation to that statement.

(8) Where a copy of an explanatory statement is lodged with the Commission for registration under sub-section (6), the Commission shall not register the copy of the statement unless the statement appears to comply with the requirements of this Code and the Commission is of the opinion that the statement does not contain any matter that is false in a material particular or materially misleading in the form or context in which it appears.

(9) Subject to sub-section (11), where a company contravenes or fails to comply with a requirement of this section, the company and any officer of the company who is in default are each guilty of an offence.

(10) For the purposes of sub-section (9), the liquidator of a company and any trustee for debenture holders shall be deemed to be officers of the company.

(11) It is a defence to a prosecution for an offence against sub-section (9) if the defendant proves that the default in complying with a requirement of this section was due to the refusal of any other person, being a director or trustee for debenture holders, to supply particulars of his interests for the purposes of the explanatory statement.

317. (1) Where an application is made to the Court under this Part for the approval of a compromise or arrangement and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any corporation or corporations or the amalgamation of any 2 or more corporations and that, under the scheme, the whole or any part of the undertaking or of the property of any corporation concerned in the scheme (in this section referred to as the “transferor corporation”) is to be transferred to a company (in this section referred to as the “transferee company”), the Court may, either by the order approving the compromise or arrangement or by any subsequent order, provide for all or any of the following matters:

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor corporation;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other interests in that company that, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor corporation;
- (d) if the transferor corporation is a company—the dissolution, without winding up, of the transferor corporation;
- (e) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement;
- (f) the transfer or allotment of any interest in property to any person concerned in the compromise or arrangement;
- (g) such incidental, consequential and supplemental matters as are necessary to ensure that the reconstruction or amalgamation is fully and effectively carried out.

(2) Where an order made under this section provides for the transfer of property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee company, free, in the case of any particular property if the order so directs, from any charge that is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Where an order is made under this section, each corporation to which the order relates shall, within 14 days after the making of the order, lodge with the Commission an office copy of the order.

(4) Where an order is made by the Supreme Court of a participating State or of a participating Territory under the provision of the law of that State or Territory that corresponds with sub-section (1) and an office copy of the order is filed with the Registrar of the Supreme Court of South Australia, the order has effect and may be enforced in all respects in South Australia as if it were an order of the last-mentioned Court made under that sub-section.

(5) * * * * *

(6) In this section—

“liabilities” includes duties of any description, including duties that are of a personal character or are incapable under the general law of being assigned or performed vicariously;

“property” includes rights and powers of any description, including rights and powers that are of a personal character and are incapable under the general law of being assigned or performed vicariously.

(7) Notwithstanding the provisions of sub-section 315 (22), in this section “company” does not include any company other than a company as defined in sub-section 5 (1).

318. (1) Where a scheme or contract (not being a scheme or contract arising out of the making of take-over offers or a take-over announcement under the *Companies (Acquisition of Shares) (South Australia) Code* involving a transfer of the shares included in a class of shares in a company (in this section referred to as the “transferor company”) to a person (in this section referred to as the “transferee”) has, within 4 months after the making of the offer relating to the scheme or contract by the transferee, been approved by the holders of not less than nine-tenths in nominal value of the shares included in that class of shares (other than the prescribed shares), the transferee may at any time within 2 months after the offer has been so approved give notice as prescribed to a dissenting shareholder that he desires to acquire the shares of that shareholder.

Acquisition of shares of shareholders dissenting from scheme or contract approved by majority.

(2) Where such a notice is given, the transferee is, unless on an application made by a dissenting shareholder within one month after the date on which the notice was given or within 14 days after a statement is supplied to a dissenting shareholder pursuant to sub-section (6) (whichever is the later) the Court thinks fit to order otherwise, entitled and bound, subject to this section, to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee.

(3) Where the shares in a company are not divided into 2 or more classes, those shares shall be deemed to constitute a class.

(4) Where alternative terms were offered to the approving shareholders, the dissenting shareholder is entitled to elect not later than the expiration of one month after the date on which the notice is given under sub-section (1) or 14 days after the date on which a statement is supplied pursuant to sub-section (6) (whichever is the later) which of those terms he prefers and, if the dissenting shareholder fails to make the election within the time allowed by this sub-section, the transferee may, unless the Court otherwise orders, determine which of those terms is to apply to the acquisition of the shares of the dissenting shareholder.

(5) Notwithstanding anything in sub-section (2) or (4), where the nominal value of the prescribed shares exceeds one-tenth of the aggregate nominal value of the prescribed shares and the shares (other than prescribed shares) to be transferred under the scheme or contract, the provisions of sub-sections (2) and (4) do not apply unless—

(a) the transferee offers the same terms to all holders of the shares (other than prescribed shares) to be transferred under the scheme or contract;

and

(b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in nominal value of the shares (other than prescribed shares) to be transferred under the scheme or

contract, are not less than three-quarters in number of the holders of those shares.

(6) Where the transferee has given notice to a dissenting shareholder that he desires to acquire that shareholder's shares, that shareholder is entitled to require the transferee, by a demand in writing served on the transferee within one month after the date on which the notice was given, to furnish to him a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members.

(7) Where, pursuant to a scheme or contract referred to in sub-section (1), the transferee becomes beneficially entitled to shares in the transferor company which, together with any other shares in the transferor company to which the transferee or, where the transferee is a company, any corporation that is related to the transferee is beneficially entitled, comprise or include nine-tenths in nominal value of the shares included in the class of shares concerned, then—

(a) the transferee shall, within one month after the date on which he becomes beneficially entitled to those shares (unless in relation to the scheme or contract he has already complied with this requirement), give notice of the fact as prescribed to the holders of the remaining shares included in that class who, when the notice was given, had not assented to the scheme or contract or been given notice by the transferee under sub-section (1);

and

(b) such a holder may, within 3 months after the giving of the notice to him, by notice to the transferee, require the transferee to acquire his shares and, where alternative terms were offered to the approving shareholders, elect which of those terms he will accept.

(8) Where a shareholder gives notice under paragraph (7) (b) with respect to his shares, the transferee is entitled and bound to acquire those shares—

(a) on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to him and, where alternative terms were offered to those shareholders, on the terms for which the shareholder has elected, or where he has not so elected, for whichever of the terms the transferee determines;

or

(b) on such other terms as are agreed or as the Court, on the application of the transferee or of the shareholder, thinks fit to order.

(9) Where a notice has been given by the transferee under sub-section (1) and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee shall, within 14 days after—

(a) the expiration of 1 month after the date on which the notice is given;

(b) the expiration of 14 days after a statement under sub-section (6) is supplied;

or

- (c) where an application has been made to the Court by a dissenting shareholder, the application is disposed of,

whichever last happens, send a copy of the notice to the transferor company together with an instrument of transfer executed, on behalf of the shareholder, by a person appointed by the transferee and, on his own behalf, by the transferee, and pay, allot or transfer to the transferor company the consideration representing the price payable by the transferee for the shares that, by virtue of this section, the transferee is entitled to acquire and the transferor company shall thereupon register the transferee as the holder of those shares.

(10) All sums received by the transferor company under this section shall be paid into a separate bank account and those sums, and any other consideration so received, shall be held by that company in trust for the several persons entitled to the shares in respect of which they were respectively received.

(11) Where a sum or other property is held in trust by a company for a person under this section or under any corresponding previous law of the State and has been so held for not less than 2 years, the company shall, before the expiration of 10 years after the date on which the sum was paid or the consideration was allotted or transferred to the company, pay the sum or transfer the consideration, and any accretions to it and any property that may become substituted for it or for part of it, to the Minister administering the Unclaimed Moneys Act, 1891-1975.

(12) The Minister administering the Unclaimed Moneys Act, 1891-1975 shall sell or dispose of any property transferred to him under this section or any corresponding provision of a previous law of the State and any property that becomes substituted for it that he comes to hold in right of any property other than cash received under sub-section (11) as he thinks fit and shall deal with the proceeds of the sale or disposal and any cash so received and any dividends paid to him in respect of shares in a corporation in accordance with the Unclaimed Moneys Act, 1891-1975.

(13) Where any property transferred to the Minister administering the Unclaimed Moneys Act, 1891-1975 under this section or any corresponding provision of a previous law of the State includes shares in a corporation, that Minister is not subject to any obligation—

- (a) to pay any calls;
 - (b) to make any contribution to the debts and liabilities of the corporation;
 - (c) to discharge any other liability;
- or
- (d) to do any other act or thing,

in respect of the shares, whether the obligation arises before or after the date of the transfer, but this sub-section does not affect the right of a corporation to forfeit a share.

(14) Where, under the provision of the law in force in another State or in a Territory that corresponds with this section, shares in a company are transferred to an authority specified in that law, that authority is not subject to any obligation as specified in sub-section (13) in respect of those shares, but this sub-section does not affect a right of the company to forfeit the share.

(15) Neither the State nor the Minister administering the Unclaimed Moneys Act, 1891-1975 is liable for any loss or damage suffered by a person arising out of the exercise of, or the failure to exercise, any of the powers which are conferred on that Minister under this section or which that Minister has in relation to property transferred to him under this section or property that becomes substituted for the whole or any part of that property.

(16) In this section—

“dissenting shareholder” means a shareholder who has not assented to the scheme or contract and a shareholder who has failed or refused to transfer his shares to the transferee in accordance with the scheme or contract;

“prescribed shares”, in relation to a scheme or contract involving a transfer of the shares included in a class of shares in a company, means shares included in that class of shares that, at the time of the making of the offer relating to the scheme or contract, are held by the transferee, a nominee of the transferee or, where the transferee is a company, a subsidiary of the company.

Notification of appointment of scheme manager and power of Court to require report.

319. (1) Where a person is appointed to administer a compromise or arrangement that has been approved under this Part, he shall, within 14 days after he is appointed, lodge with the Commission a notice in writing of his appointment.

(2) Where an application is made to the Court under this Part in relation to a proposed compromise or arrangement, the Court may—

(a) before making any order on the application, require the Commission or another person specified by the Court to give to the Court a report as to the terms of the compromise or arrangement or of the scheme for the purposes of or in connection with which the compromise or arrangement has been proposed, the conduct of the officers of the corporation or corporations concerned and any other matters that, in the opinion of the Commission or that person, ought to be brought to the attention of the Court;

(b) in deciding the application, have regard to anything contained in the report;

and

(c) make such order or orders as to the payment of the costs of preparing and giving the report as the Court thinks fit.

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PART IX

CONDUCT OF AFFAIRS OF COMPANY IN OPPRESSIVE OR UNJUST MANNER

320. (1) An application to the Court for an order under this section may be made by—

Remedy in cases of oppression or injustice.

(a) a member of a company who believes—

(i) that affairs of the company are being conducted in a manner oppressive to one or more of the members (including that member);

or

(ii) that directors of the company have acted in affairs of the company in their own interests and not in the interests of the members as a whole or in any other manner whatsoever that is unfair or unjust to one or more of the members (including that member) other than the directors;

or

(b) in a case where the Commission has received a report by an inspector under this Code or where the Commission has made a report under Part VII to the relevant authority within the meaning of that Part—the Commission.

(2) If the Court is of opinion—

(a) that affairs of a company are being conducted in a manner oppressive to one or more of the members;

or

(b) that directors of a company have acted in affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatsoever that is unfair or unjust to other members,

the Court may, subject to sub-section (3), make such order or orders as it thinks fit, including, but without limiting the generality of the foregoing, one or more of the following orders:

(c) an order that the company be wound up;

(d) an order for regulating the conduct of the company's affairs in the future;

(e) an order for the purchase of the shares of any member by other members;

(f) an order for the purchase of the shares of any member by the company and for the reduction accordingly of the company's capital.

(3) The Court shall not make an order under sub-section (2) for the winding up of the company if it is of the opinion that the winding up of the company would unfairly prejudice the member or members referred to in paragraph (2) (a) or the other members referred to in paragraph (2) (b).

(4) Where an order that the company be wound up is made pursuant to sub-section (2), the provisions of this Code relating to winding up of a

company apply, with such adaptations as are necessary, as if the order had been made upon an application duly filed in the Court by the company.

(5) Where an order under this section makes any alteration in or addition to the memorandum or articles of a company, then, notwithstanding anything in any other provision of this Code but subject to the provisions of the order, the company does not have power, without the leave of the Court, to make any further alteration in or addition to the memorandum and articles inconsistent with the provisions of the order but, subject to the foregoing provisions of this sub-section, the alteration or addition has effect as if it had been duly made by resolution of the company.

(6) An office copy of any order made under this section pursuant to an application by a member of the company shall be lodged by the applicant with the Commission within 14 days after the making of the order.

(7) If default is made in complying with sub-section (6), the applicant is guilty of an offence.

PART X

PART X

RECEIVERS AND MANAGERS

321. In this Part, unless the contrary intention appears, a reference to a receiver, in relation to property of a corporation, includes a reference to a receiver and manager of property of a corporation. Interpretation.

322. This Part binds the Crown in right of South Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities. Crown to be bound.

323. (1) None of the following persons is qualified to be appointed, or shall act, as receiver of the property or part of the property of a company: Disqualification for appointment as receiver.

- (a) a mortgagee of any property of the company;
- (b) an auditor or an officer of the company;
- (c) an officer of any corporation that is a mortgagee of the property of the company;
- (d) a person who is not a registered liquidator.

(2) For the purposes of sub-section (1), a person shall be deemed to be an officer of the company if—

- (a) he is an officer of a related corporation;

or

- (b) except where the Commission, if it thinks fit in the circumstances of the case, directs that this paragraph shall not apply in relation to him—he has, at any time within the immediately preceding period of 12 months, been an officer or promoter of the company or of a related corporation.

(3) A reference in this section to an officer of a company or to an officer of a corporation does not include a reference to a person who is a receiver, appointed under an instrument, of the property, or part of the property, of the company or corporation.

(4) Nothing in paragraph (1) (d) applies to any corporation authorized by any Act or any law of the State to act as receiver of the property of a company.

(5) Nothing in this section disqualifies a person from acting as receiver of the property or part of the property of a company under an appointment validly made before the commencement of the Companies (Application of Laws) Act, 1982.

324. (1) A receiver, or any other authorized person, who, whether as agent for the company concerned or not, enters into possession or assumes control of any property of a company for the purpose of enforcing any charge is, notwithstanding any agreement to the contrary, but without prejudice to his rights against the company or any other person, liable for debts incurred by him in the course of the receivership, possession or control for services rendered, goods purchased or property hired, leased, used or occupied. Liability of receiver.

(2) Sub-section (1) shall not be construed so as to constitute the person entitled to the charge a mortgagee in possession.

(3) In any civil proceeding arising out of any act alleged to have been done by a person who enters into possession or assumes control of property

of a company, being a person who purports to be properly appointed as a receiver in respect of that property under powers contained in a charge but who has not been properly appointed as receiver in respect of that property, the court concerned may, if it is satisfied that the person entering into possession or assuming control believed on reasonable grounds that he had been properly appointed as receiver, order that—

- (a) the person who entered into possession or assumed control be relieved in whole or in part of any liability incurred by him that he would not have incurred if he had been properly appointed;

and

- (b) a person who purported to appoint as receiver the person entering into possession or assuming control be liable for any act done by the person entering into possession or assuming control to the extent that the person entering into possession or assuming control has been relieved of liability as mentioned in paragraph (a).

(4) A receiver of the property or part of the property of a company appointed under the powers contained in any instrument may apply to the Court for directions in relation to any matter arising in connection with the performance of his functions.

Power of Court to fix remuneration of receivers.

325. (1) The Court may, on application by the liquidator or the official manager of a company, or by the Commission, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver of the property or part of the property of the company.

(2) The power of the Court to make an order under this section—

- (a) extends to fixing the remuneration for any period before the making of the order or the application for the order;
- (b) is exercisable notwithstanding that the receiver has died or ceased to act before the making of the order or the application for the order;

and

- (c) where the receiver has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that fixed for that period—extends to requiring him or his personal representatives to account for the excess or such part of the excess as is specified in the order.

(3) The power conferred by paragraph (2) (c) shall not be exercised in respect of any period before the making of the application for the order unless, in the opinion of the Court, there are special circumstances making it proper for the power to be so exercised.

(4) The Court may from time to time, on an application made by the liquidator, the official manager, the receiver or the Commission, vary or amend an order made under this section.

Notification of appointment of receiver.

326. (1) If any person obtains an order for the appointment of a receiver of the property or part of the property of a company, or of the property or

part of the property within the State of a registered foreign company, or appoints such a receiver under any powers contained in an instrument, he shall, within 14 days after he has obtained the order or made the appointment, lodge notice of the fact with the Commission.

(1A) A person who has been appointed as a receiver of the property or part of the property of a company or registered foreign company shall, within 14 days after the date of his appointment, lodge with the Commission notice in the prescribed form of the address of his office and, in the event of a change in the situation of his office, shall, within 14 days after the change, lodge with the Commission notice in the prescribed form of the change.

(2) Where a person appointed as receiver of the property or part of the property of a company or registered foreign company ceases to act as such, he shall, within 14 days thereafter, lodge with the Commission notice that he has so ceased.

327. (1) Where a receiver of the property or part of the property of a corporation has been appointed, in every business letter, statement of account, invoice, order for goods, order for services, official notice, publication, bill of exchange, promissory note, cheque or other negotiable instrument, indorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument, receipt and letter of credit of, or purporting to be issued or signed by or on behalf of, the corporation, there shall be set out after the name of the corporation where it first appears a statement that a receiver, or a receiver and manager, as the case may be, has been appointed.

Statement that receiver appointed.

(2) If default is made in complying with this section, the corporation, any officer or liquidator of the corporation who is in default and any receiver who is in default, are each guilty of an offence.

Penalty: \$1,000.

328. (1) Where a receiver of the property or part of the property of a company is appointed—

Provisions as to information where receiver appointed.

- (a) the receiver shall forthwith serve on the company notice of his appointment;
- (b) the persons who were, at the date of the receiver's appointment, the directors and the secretary of the company shall, within 14 days after the company receives the notice referred to in paragraph (a), make out and submit to the receiver a report in the prescribed form as to the affairs of the company as at the date of the receiver's appointment;

and

- (c) the receiver shall, within one month after receipt of the report—
 - (i) lodge with the Commission a copy of the report and of any comments he sees fit to make relating to the report;
 - (ii) send to the company a copy of any such comments, or if he does not see fit to make any comment, a notice to that effect;

and

- (iii) where the receiver is appointed by or on behalf of the holders of debentures of the company, send to the trustees (if any) for those holders, a copy of the report and the comments (if any) lodged with the Commission under sub-paragraph (i).

(2) Where notice has been served on a company under paragraph (1) (a), the persons who were, at the date of the receiver's appointment, the directors and the secretary of the company may, whether before or after the expiration of the period specified in paragraph (1) (b) for the submission of the report, apply to the receiver or to the Court for an extension of the period within which the report is to be submitted and—

- (a) where application is made to the receiver—if the receiver believes that there are special reasons for so doing, he may, by notice in writing to those persons, extend that period until a specified date;

and

- (b) where application is made to the Court—if the Court believes that there are special reasons for so doing, the Court may, by order, extend that period until a specified date.

(3) Where, under sub-section (2), the persons who were, at the date of the receiver's appointment, the directors and the secretary of a company are granted an extension of the period within which a report as to the affairs of the company is to be submitted—

- (a) where the extension is granted by the receiver—the receiver shall forthwith lodge with the Commission a copy of the notice given by him to those persons;

or

- (b) where the extension is granted by the Court—the persons to whom an extension is granted shall forthwith lodge with the Commission a copy of the order of the Court.

(4) Sub-section (1) does not apply in relation to the appointment of a receiver to act with an existing receiver or in place of a receiver who has died or ceased to act, except that, where that sub-section applies to a receiver who dies or ceases to act before that sub-section has been fully complied with, the references in paragraphs (1) (b) and (c) to the receiver shall (subject to sub-section (5)) be read as including references to his successor and to any continuing receiver.

(5) Where the company is being wound up, this section and section 329 apply notwithstanding that the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

Receiver may
require reports.

329. (1) A receiver of the property or part of the property of a company may, by notice served personally or by post addressed to the last known address of the person, require one or more persons included in one or more of the following classes of persons to make out as required by the notice, verify by a statement in writing in the prescribed form, and submit to him, a report, containing such information as is specified in the notice as to the affairs of the company or as to such of those affairs as are specified in the notice, as at a date specified in the notice:

- (a) persons who are or have been officers of the company;
- (b) where the company was formed within one year before the date the receiver's appointment—persons who have taken part in the formation of the company;
- (c) persons who are in the employment of the company or have been in the employment of the company within one year before the date of the receiver's appointment and are, in the opinion of the receiver, capable of giving the information required;
- (d) persons who are, or have been within one year before the date of the receiver's appointment, officers of, or in the employment of, a corporation that is, or within that year was, an officer of the company to the affairs of which the report relates.

(2) The receiver may, in a notice under sub-section (1), specify the information that he requires as to affairs of a company by reference to information required by this Code or the regulations to be included in any other report, statement or notice under this Code.

(3) A person making a report and verifying it as required by sub-section (1) shall, subject to the regulations, be allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the report and the verification of the report as the receiver (or his successor) considers reasonable.

(4) A person who fails to comply with a requirement made under sub-section (1) is guilty of an offence.

(5) A reference in this section to the receiver's successor shall be read as including a reference to a continuing receiver.

330. (1) A receiver of the property or part of the property of a company, or of the property or part of the property within the State of a registered foreign company, shall, within one month after the expiration of the period of 6 months or such lesser period as the receiver determines from the date of his appointment and of every subsequent period of 6 months during which he acts as receiver and within one month after he ceases to act as receiver, lodge with the Commission an account in the prescribed form showing—

Lodging of
accounts of
receivers.

- (a) his receipts and his payments during each such period or, where he ceases to act as receiver, during the period from the end of the period to which the last preceding account related or from the date of his appointment, as the case requires, up to the date of his so ceasing to act;
- (b) in the case of the second account lodged under this sub-section and all subsequent accounts—the aggregate amount of receipts and payments during all preceding periods since his appointment;

and

- (c) where he has been appointed pursuant to the powers contained in any instrument—the amount (if any) owing under that instrument—
 - (i) in the case of the first account—at the time of his appointment and at the expiration of the period to which the account relates;

and

(ii) in the case of any other account—at the expiration of the period to which the account relates,

and his estimate of the total value, at the expiration of the period to which the account relates, of the property of the company or registered foreign company that is subject to the instrument.

(2) * * * * *

(3) The Commission may, of its own motion or on the application of the company or registered foreign company or a creditor of the company or registered foreign company, cause the accounts lodged in accordance with sub-section (1) to be audited by a registered company auditor appointed by the Commission and, for the purpose of the audit, the receiver shall furnish the auditor with such books and information as the auditor requires.

(4) Where the Commission causes the accounts to be audited upon the request of the company or registered foreign company or a creditor, the Commission may require the company, registered foreign company or creditor, as the case may be, to give security for the payment of the cost of the audit.

(5) The costs of an audit under sub-section (3) shall be fixed by the Commission and the Commission may if it thinks fit make an order declaring that, for the purposes of sub-section 324 (1), those costs shall be deemed to be a debt incurred by the receiver in the course of the receivership for services rendered and, where such an order is made, the receiver is liable for those costs in accordance with section 324 as if they were such a debt.

(6) A receiver who fails to comply with a requirement made under this section is guilty of an offence.

331. (1) Where—

(a) a receiver is appointed on behalf of the holders of any debentures of a company that are secured by a floating charge, or possession is taken or control is assumed, by or on behalf of the holders of any debentures of a company, of any property comprised in or subject to a floating charge;

and

(b) at the date of the appointment or of the taking of possession or assumption of control (in this section referred to as the “relevant date”)—

(i) the company has not commenced to be wound up voluntarily;

and

(ii) the company has not been ordered to be wound up by the Court,

the following provisions of this section have effect.

(2) The following debts or amounts shall be paid out of the property coming to the hands of the receiver or other person taking possession or assuming control in priority to any claim for principal or interest in respect of the debentures:

(a) first, any amount that in a winding up is payable in priority to unsecured debts pursuant to section 447;

Payments of certain debts out of property subject to floating charge in priority to claims under charge.

(b) second, if an auditor of the company had applied to the Commission under sub-section 282 (6) for consent to his or its resignation as auditor and the Commission had refused that consent before the relevant date—the reasonable fees and expenses of the auditor incurred during the period commencing on the date of the refusal of consent by the Commission and ending on the relevant date;

(c) subject to sub-sections (4) and (5), third, any debt or amount that in a winding up is payable in priority to other unsecured debts pursuant to paragraph 441 (e) or (g) or section 445.

(3) Debts or amounts payable pursuant to paragraph (2) (c) shall be paid in the same order of priority as is prescribed by Subdivision C of Division 4 of Part XII in respect of those debts and amounts.

(4) If an auditor of a company had applied to the Commission under sub-section 282 (6) for consent to his or its resignation as auditor and the Commission had, before the relevant date, refused that consent, a receiver shall, when property comes to his hands, before paying any debt or amount referred to in paragraph (2) (c), make provision out of that property for the reasonable fees and expenses of the auditor incurred after the relevant date but before the date on which the property comes to the hands of the receiver, being fees and expenses in respect of which provision has not already been made pursuant to this sub-section.

(5) If an auditor of the company applies to the Commission under sub-section 282 (6) for consent to his or its resignation as auditor and, after the relevant date, the Commission refuses that consent, the receiver shall, in relation to property that comes to his hands after the refusal of consent by the Commission, before paying any debt or amount referred to in paragraph (2) (c), make provision out of that property for the reasonable fees and expenses of the auditor incurred after the refusal of consent by the Commission but before the date on which the property comes to the hands of the receiver, being fees and expenses in respect of which provision has not already been made pursuant to this sub-section.

(6) A receiver shall make provision in respect of reasonable fees and expenses of an auditor in respect of a particular period as required by sub-section (4) or (5) whether or not the auditor has made a claim for fees and expenses for that period, but where the auditor has not made a claim, the receiver may estimate the reasonable fees and expenses of the auditor for that period and make provision in accordance with that estimate.

(7) For the purposes of this section the references in Subdivision C of Division 4 of Part XII to the relevant date shall be read as references to the date of the appointment of the receiver, or of possession being taken or control being assumed, as the case requires.

332. (1) If a receiver of the property or part of the property of a company—

Enforcement of
duty of receiver
to make returns.

(a) who has made default in making or lodging any return, account or other document or in giving any notice required by law fails to make good the default within 14 days after the service on him, by any member or creditor of the company or trustee for debenture holders, of a notice requiring him to do so;

or

- (b) who has been appointed under the powers contained in any instrument has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of, and to vouch, his receipts and payments and to pay over to the liquidator the amount properly payable to him,

the Court may, on an application made for the purposes of this sub-section, make an order directing the receiver to make good the default within such time as is specified in the order.

- (2) An application for the purposes of sub-section (1) may be made—

- (a) in a case to which paragraph (a) of that sub-section applies—by a member or creditor of the company or by a trustee for debenture holders;

and

- (b) in a case to which paragraph (b) of that sub-section applies—by the liquidator of the company.
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PART XI

PART XI

OFFICIAL MANAGEMENT

333. (1) In this Part—

Interpretation.

- (a) “special notice”, in relation to a meeting of creditors of a company, means notice of the meeting sent by post to each of the creditors and posted not less than 14 days and not more than 21 days before the date of the meeting;

and

- (b) a special resolution shall be deemed to have been passed at a meeting of creditors of a company if the resolution is agreed to by a majority in number of the creditors present and voting, either in person or by proxy, being a majority whose debts against the company amount in the aggregate to not less than 75% of the total amount of the debts of the creditors of the company present and voting, either in person or by proxy, at the meeting.

(2) A creditor of a company, being a corporation that is related to the company, is not entitled to vote as a creditor on a special resolution moved at a meeting of creditors of the company convened under this Part.

(3) Subject to sub-section (2), nothing in this Part affects the rights of a secured creditor of the company.

334. This Part binds the Crown in right of South Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Crown to be bound.

335. (1) Where it is resolved by the majority of the directors of a company present at a meeting of the directors specially convened for the purpose that the company is unable to pay its debts as and when they become due and payable, the company may, or, where the company is requested in writing to do so by a creditor of the company who has a judgment against the company unsatisfied to the extent of not less than \$1,000, the company shall, convene a meeting of its creditors in accordance with this section for the purpose of placing the company under official management and appointing an official manager of the company.

Power of company to call meeting of creditors to appoint official manager.

(2) A meeting of creditors of a company for the purposes of this section shall be convened by giving notice of the meeting in accordance with this section to the creditors of the company.

(3) The notice referred to in sub-section (2) shall be given by the company within—

- (a) 35 days after the passing of the resolution, or the receipt by the company of the request, referred to in sub-section (1);

or

- (b) such further period as the Commission allows where, in the opinion of the Commission, the company would not be able to give the notice within the time specified in paragraph (a).

(4) The company shall, not less than 7 days before the expiration of the period within which the notice referred to in sub-section (2) is required to be given, prepare a report in the prescribed form as to the affairs of the

company made up to a date not earlier than the date of the passing of the resolution, or the receipt by the company of the request, referred to in sub-section (1).

(5) Each director of the company shall furnish to the company a certificate under his hand certifying whether the report prepared in accordance with sub-section (4) does or does not, to the best of his knowledge, information and belief, give a true and fair view of the state of affairs of the company as at the date to which it is made up and, subject to sub-section (8), a company shall be deemed to have failed to comply with sub-section (4) unless each director has furnished to the company such a certificate.

(6) Where a director certifies that to the best of his knowledge, information and belief the report does not give a true and fair view of the state of affairs of the company, he shall also state in the certificate the grounds on which he formed that opinion.

(7) A director of a company shall not furnish a certificate under sub-section (5) concerning a report prepared in accordance with sub-section (4) unless he has made such enquiries as are reasonably necessary to determine whether the report does or does not give a true and fair view of the state of affairs of the company as at the date to which it is made up.

(8) Where the Commission is satisfied that it is impracticable for a company to obtain the certificate referred to in sub-section (5) from a director of the company, the Commission may exempt the company from the obligation to obtain the certificate from that director.

(9) For the purposes of sub-section (2), notice of a meeting of creditors of a company shall be given by—

(a) sending by post to each of the creditors a notice, in the prescribed form;

and

(b) publishing a copy of that notice in the State, and in each other State and each Territory in which the company carries on business or has carried on business at any time during the 2 years immediately preceding the passing of the resolution, or the receipt by the company of the request, referred to in sub-section (1), in a daily newspaper circulating generally in the State, or in that other State or in that Territory, as the case may be,

not less than 7 days, nor more than 14 days, before the day fixed for the holding of the meeting.

(10) Subject to sub-section (11), the company shall attach to every notice posted in accordance with sub-section (9)—

(a) a summary of the affairs of the company, in the prescribed form;

(b) a notice that the report that the company is required by sub-section (4) to prepare is available for inspection at the registered office of the company and that a copy of the report will be sent by post to any creditor who makes a request in writing for a copy of the report or will be delivered to any creditor who attends at the registered office of the company and requests a copy;

and

(c) a copy of each certificate furnished by a director of the company in accordance with sub-section (5).

(11) The company may attach to a notice posted in accordance with sub-section (9) a copy of the report prepared in accordance with sub-section (4) and, where it so attaches a copy of that report, the company is not required to attach the summary and notice referred to in paragraphs (10) (a) and (b).

(12) A meeting of creditors convened under this section shall be convened for a date, time and place convenient to the majority in value of the creditors.

(13) The creditors of the company present at the meeting who are entitled to vote on a special resolution moved at the meeting shall appoint a chairman of the meeting.

(14) The chairman so appointed shall at the meeting determine whether the date, time and place of the meeting are convenient to the majority in value of the creditors, and his decision is final.

(15) Within 7 days after the first notice convening the meeting is posted to any creditor, the company shall lodge with the Commission a copy of that notice and shall attach to the copy a certified copy of the report required to be prepared by the company under sub-section (4) and a certified copy of each of the certificates furnished by the directors under sub-section (5).

(16) If a company fails to comply with sub-section (1), (4), (10) or (15), or a request referred to in paragraph (10) (b), the company is, notwithstanding section 570, not guilty of an offence against this Code but any officer of the company who is in default is guilty of an offence.

(17) Any director of a company who fails to take all reasonable steps to secure compliance by the company with sub-section (4) is guilty of an offence.

(18) A director who contravenes, or fails to comply with, sub-section (5), (6) or (7) is guilty of an offence.

Penalty: \$1,000 or imprisonment for 3 months, or both.

336. (1) The directors of a company that has convened a meeting of creditors under section 335 shall appoint one of their number to attend the meeting.

Statement of affairs of company to be submitted to meeting of creditors of company.

(2) The director so appointed shall attend the meeting and shall—

(a) submit to the meeting the report prepared in accordance with sub-section 335 (4);

and

(b) disclose to the meeting the company's affairs and the circumstances leading up to the convening of the meeting.

(3) If default is made in complying with this section, any director of the company who is in default is guilty of an offence.

Penalty: \$1,000 or imprisonment for 3 months, or both.

337. (1) A meeting convened under section 335 may by resolution be adjourned from time to time to a time and date specified in the resolution

Power to adjourn meeting.

but shall not be adjourned to a date later than 21 days after the date for which the meeting was originally convened.

(2) Where a meeting is adjourned, the adjourned meeting shall, unless it is otherwise provided by the resolution by which it is adjourned, be held at the same place as the original meeting.

(3) Where a meeting is adjourned to a date later than 8 days after the passing of the resolution by which it is adjourned, the company shall cause notice of the time, date and place of the resumption of the meeting to be published in a daily newspaper circulating generally in the State at least 7 days before the date of the resumption of the meeting.

Power of creditors
to place company
under official
management.

338. (1) At a meeting of creditors of a company convened under section 335, the creditors may, by special resolution—

(a) resolve that the company be placed under official management for a period, commencing on the date of the passing of the resolution and ending not more than 3 years from that date, specified in the resolution;

(b) appoint a person named in the resolution who—

(i) has consented in writing to act as official manager of the company;

(ii) is not the auditor of the company;

(iii) is not an officer of a corporation that is a mortgagee of property of the company;

and

(iv) has furnished to the company a certificate under his hand stating that he is not an insolvent under administration,

to be the official manager of the company during the period of the official management;

and

(c) fix the amount of the salary or other remuneration of the official manager or delegate the fixing of the amount to a committee of management appointed under this Part.

(2) The company shall—

(a) within 7 days after the passing of the special resolution referred to in sub-section (1)—

(i) cause a notice in the prescribed form of the passing of the resolution to be lodged with the Commission;

and

(ii) send by post to each of the creditors and members of the company a notice in the prescribed form of the passing of the special resolution and the provisions of section 353;

and

(b) within 21 days after the passing of the special resolution, cause notice that the company has been placed under official man-

agement and of the full name of the official manager to be published in the *Gazette*.

(3) If the company fails to comply with sub-section (2), the company is, notwithstanding section 570, not guilty of an offence but any officer of the company who is in default is guilty of an offence.

(4) A creditor to whom the company owes, or a representative of a group of creditors to whom the company owes in the aggregate, more than 5% of the total unsecured debts of the company may, within 14 days after the appointment of a person as official manager of the company under sub-section (1) of this section or sub-section 355 (3), apply to the Court for an order terminating that appointment and, if in the opinion of the Court the person so appointed is not suitable to be the official manager of the company, the Court may make an order terminating his appointment and appointing as official manager a registered company auditor (other than the auditor of the company) who has consented in writing to act as official manager.

(5) Where under sub-section (4) the Court has made an order appointing a person to be the official manager of a company, the provisions of this Part apply to that person as if he had been appointed official manager of the company at a meeting of creditors under sub-section (1) on the date of the order.

(6) Where the Court makes an order under sub-section (4), the person obtaining the order shall—

(a) within 7 days after the making of the order, lodge with the Commission notice in the prescribed form of the making of the order and its date;

and

(b) within 7 days after the passing and entering of the order, lodge with the Commission an office copy of the order.

(7) A person who fails to comply with sub-section (6) is guilty of an offence.

339. (1) At a meeting of the creditors of a company held under this Part, the creditors may resolve that a committee of management be appointed for the purposes of this Part.

Appointment of
committee of
management.

(2) A committee of management of a company shall consist of 5 natural persons, of whom 3 shall be appointed by the creditors of the company by special resolution and 2 shall be appointed by the members of the company at a general meeting of the company.

(3) A person is not eligible to be appointed a member of a committee of management of a company unless he is—

(a) in the case of an appointment by the creditors of the company—

(i) a creditor of the company;

(ii) the attorney of a creditor of the company by virtue of a general power of attorney given by the creditor;

or

(iii) a person authorized in writing by a creditor of the company to be a member of the committee of management;

or

(b) in the case of an appointment by the members of the company—

- (i) a member of the company;
- (ii) the attorney of a member of the company by virtue of a general power of attorney given by the member;

or

- (iii) a person authorized in writing by a member of the company to be a member of the committee of management.

Notice of appointment and address of official manager.

340. (1) A person who has been appointed official manager of a company shall, within 14 days after the date of his appointment, lodge with the Commission notice in the prescribed form of his appointment as official manager and of the address of his office and, in the event of a change in the situation of his office, shall, within 14 days after the change, lodge with the Commission notice in the prescribed form of the change.

(2) A person shall, within 14 days after his resignation or removal from office as official manager of a company, lodge with the Commission notice in the prescribed form of his resignation or removal.

(3) A person who fails to comply with any of the provisions of this section is guilty of an offence.

Effect of resolution.

341. (1) Subject to section 353, where a special resolution placing a company under official management has been duly passed by the creditors of the company under sub-section 338 (1)—

- (a) the company is under official management for the period specified in the special resolution unless the official management is extended or earlier terminated under this Part;
- (b) the directors of the company cease to hold office;
- (c) the person appointed official manager of the company shall assume, and is responsible for, the management of the company and shall perform the duties, and may perform any of the functions and exercise any of the powers, of the directors of the company;

and

- (d) the affairs of the company shall be conducted subject to the provisions of this Part.

(2) The official manager shall be chairman of any meeting of the company, of its creditors or of the company and its creditors that is held or resumed while he holds office as official manager.

Six-monthly meetings of creditors and members.

342. (1) Subject to sub-section (2), within 2 months after the expiration of the period of 6 months commencing on the date of his appointment as official manager and of each subsequent period of 6 months, or, if the Commission, at any time before the expiration of any such period, requires or permits him to do so in respect of a lesser period specified by the Commission, within 2 months after the expiration of the period so specified, the official manager of a company shall—

- (a) prepare a statement showing the assets and liabilities of the company as at the last day of the period and a report containing

such other information as he thinks necessary to enable the creditors and members of the company to assess the financial position of the company as at the last day of the period;

- (b) convene a meeting of the creditors and members of the company to consider the statement and report;

and

- (c) cause the statement and report to be laid before the creditors and members at that meeting.

(2) Where under sub-section (1) the Commission has required or permitted the preparation of a statement and report in respect of a period of less than 6 months, the next period of 6 months shall commence at the expiration of that lesser period.

(3) The official manager of a company shall attach to each statement referred to in sub-section (1)—

- (a) a statement signed by him;

and

- (b) in the case of a company that is required by this Code to appoint a person to be its auditor—a statement signed by the auditor,

stating in each case whether or not, in the opinion of the person by whom the statement is signed, the statement referred to in sub-section (1) is drawn up so as to give a true and fair view of the affairs of the company.

(4) The official manager of the company shall cause copies of the statement and report referred to in this section to be kept and to be available for inspection by any creditor or member of the company at the registered office of the company.

(5) The official manager shall—

- (a) give written notice to every creditor and member of the company that the statement referred to in sub-section (1) has been made up when next sending to the creditors or members any report, notice of meeting, notice of call or dividend relating to the company;

and

- (b) in the notice inform creditors and members of the company at what address, and between what hours, the statement may be inspected.

(6) Within 7 days after a meeting is held under sub-section (1), the official manager shall lodge with the Commission a notice in the prescribed form of the holding of the meeting and of the date on which it was held, together with a copy of each statement and report laid before the creditors and members at that meeting.

(7) Where the statement referred to in sub-section (1) is not accompanied by a statement signed by a registered company auditor, the Commission may cause the statement referred to in sub-section (1) to be audited by a registered company auditor appointed by the Commission, and, for the purposes of the audit, the official manager shall furnish to the auditor such books and information as the auditor requires.

(8) The costs of an audit under sub-section (7) shall be fixed by the Commission and are part of the costs of the official management.

(9) An official manager who fails to comply with any provision of this section is guilty of an offence.

(10) An auditor of a company who fails to supply to the official manager at his request a statement required by the official manager for the purposes of compliance with sub-section (3) is guilty of an offence.

Stay of proceedings.

343. (1) Where a company is under official management, no action or other civil proceedings against the company in any court of the State shall, except with the leave of the Court and in accordance with such terms and conditions (if any) as the Court imposes, be commenced or proceeded with until the company ceases to be under official management.

(2) Where a recognized company is under official management in the State or Territory in which it is incorporated, no action or other civil proceeding against the recognized company in any court of the State shall, except with the leave of the Court and in accordance with such terms and conditions (if any) as the Court imposes, be commenced or proceeded with until the company ceases to be under official management in the State or Territory in which it is incorporated.

(3) At any time after a company has, in accordance with section 335, convened a meeting of its creditors for the purpose of placing the company under official management and before the passing of a special resolution by the creditors under sub-section 338 (1) resolving that the company be placed under official management, the company or any creditor of the company may, if any action or other civil proceeding against the company is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms and conditions as it thinks fit.

Power to extend period of official management.

344. (1) The official manager of a company shall convene a meeting of creditors of the company for a day not earlier than 7 months, and not later than one month, before the day on which the period of official management is due to expire for the purpose of considering whether or not the period of official management should be extended and, if the creditors think fit, passing a special resolution extending the period of official management for such further period not exceeding 12 months as is specified in the resolution.

(2) If, at a meeting held under section 342 not earlier than 7 months and not later than one month before the day on which the period of official management is due to expire, the creditors of the company consider whether or not the period of official management should be extended, the official manager shall be taken to have complied with sub-section (1).

(3) The meeting referred to in sub-section (1) shall be convened by the official manager by sending by post to each of the creditors, not less than 7 days, nor more than 14 days, before the day fixed for the holding of the meeting, a notice specifying the date, time, place and purpose of the meeting.

(4) The official manager shall, within 7 days after the passing of a special resolution under sub-section (1), lodge with the Commission a copy of that resolution.

Extension of period of official management.

345. Where a special resolution extending the period of official management of a company is passed at a meeting convened in accordance with section 344, the company continues under official management during the

period specified in the resolution unless the official management is further extended or is earlier terminated under this Part.

346. Notwithstanding the appointment of an official manager of a company and while the company is under official management, the provisions of this Code relating to the appointment and re-appointment of auditors and the rights and duties of auditors continue to apply to and in relation to the company and, in the application of those provisions to and in relation to the company, a reference to the directors of a company shall be read as a reference to the official manager of the company.

Appointment of official manager not to affect appointment and duties of auditor.

347. (1) Subject to the provisions of this Code, the official manager of a company shall—

Duties of official manager.

- (a) as soon after his appointment as is reasonably practicable, take into his custody or under his control all the property to which the company is or appears to be entitled;
- (b) subject to any direction given pursuant to paragraph (c), conduct the business and management of the company in such manner as he thinks most economical and most beneficial to the interests of the members and creditors of the company;
- (c) comply with any directions of the creditors of the company that are agreed to by special resolution at any meeting of creditors of which special notice has been given;
- (d) comply with all requirements of this Code applicable to the company or the directors of the company relating to the keeping of accounts and the lodging of annual returns and perform all such other duties as are so applicable and are imposed on the company or on the directors of the company by or under this Code;
- (e) if so directed by the committee of management of the company acting under sub-section 357 (6) or by a creditor or creditors of the company to whom the company owes not less than 10% in value of the total unsecured debts of the company, by notice sent by post to each of the creditors, convene a meeting of creditors of the company;

and

- (f) if a meeting of creditors held under sub-section 344 (1) does not resolve to extend the period of the official management—within 7 days after the conclusion of the meeting, by notice sent by post to each of the members of the company, convene a meeting of the members to be held on a date not later than 21 days after the conclusion of the meeting of creditors under sub-section 344 (1) for the purpose of—
 - (i) reporting to the members accordingly;
 and
 - (ii) enabling the members, if they think fit, to elect directors of the company to take office upon the termination of the period of official management.

(2) A meeting convened under paragraph (1) (f) shall be deemed to have been properly convened and to be empowered under the memorandum and articles of the company to appoint or elect directors, and directors so appointed or elected shall take office on the termination of the period of official management of the company.

(3) If at any time the official manager is of the opinion that the continuance of the official management of the company will not enable the company to pay its debts, he shall convene a meeting of the members of the company for the purpose of considering and, if the members think fit, passing a special resolution that the company be wound up voluntarily.

(4) Where the official manager convenes a meeting of members of the company under sub-section (3), the official manager shall—

(a) convene a meeting of the creditors of the company for the day, or the day next following the day, on which the meeting of members is proposed to be held;

(b) cause the notices of the meeting of creditors to be sent by post to the creditors on the same day as the sending of the notices of the meeting of the members;

and

(c) convene the meeting of creditors for a date, time and place convenient to the majority in value of the creditors and give the creditors at least 14 days' notice by post of the meeting.

(5) The official manager shall lay before the meeting of creditors convened in accordance with sub-section (4) a report in the prescribed form as to the affairs of the company made up to a date that is not more than 30 days before the day for which the meeting is convened.

(6) Where, at a meeting of members of a company convened under sub-section (3), the members pass a special resolution to the effect that the company be wound up voluntarily—

(a) the members shall, at that meeting, nominate a person to be liquidator for the purpose of winding up the affairs, and distributing the property, of the company;

and

(b) the creditors may, at the meeting of creditors of the company convened under sub-section (4), nominate a person to be liquidator for that purpose.

(7) A person nominated by the members of a company pursuant to sub-section (6) shall, subject to sub-sections (8) and (9), be the liquidator of the company.

(8) Where the members and creditors of a company nominate different persons to be the liquidator of the company, the person nominated by the creditors shall, subject to sub-section (9), be the liquidator of the company.

(9) Where the members and creditors of a company nominate different persons to be the liquidator of the company, the Court may, on the application of a member or creditor of the company made within 7 days after the date on which the nomination was made by the creditors, by order, direct that the person nominated by the members be the liquidator of the company or that the persons nominated by the members and creditors, respectively, be jointly the liquidators of the company.

(10) On the appointment of a liquidator the company ceases to be under official management.

(11) The person who, immediately before the appointment of the liquidator, was the official manager of the company shall, within 7 days after the holding of the later of the meetings referred to in sub-sections (3) and (4), lodge with the Commission a notice in the prescribed form of the holding of the meetings and the dates of the meetings, being a notice that has attached to it a copy of the report referred to in sub-section (5).

(12) A person who fails to comply with sub-section (1), (3), (4), (5) or (11) is guilty of an offence.

348. (1) A settlement, a conveyance or transfer of property, a charge on property, a payment made, or an obligation incurred, by a company which, if it had been made or incurred by a natural person, would, in the event of his becoming a bankrupt, be void as against the trustee in the bankruptcy, is, in the event of the company being placed under official management, void as against the official manager.

Undue preferences in the case of official management.

(2) Where—

(a) a creditor of a company has issued execution against the property of the company or has instituted proceedings to attach a debt due to the company or to enforce a charge, or a charging order, against property of the company;

and

(b) the creditor would, if the execution or proceedings had been issued or instituted in relation to a debt due by a natural person who subsequently became a bankrupt, be required to pay the amount (if any) received by the creditor as a result of the execution or proceedings to the trustee in the bankruptcy,

the creditor shall, in the event of the company being placed under official management, pay the amount (if any) received as a result of the execution or proceedings, less the taxed costs of the execution or proceedings, to the official manager.

(3) Where a creditor has paid to the official manager of a company an amount in accordance with sub-section (2), that creditor shall be taken to be an unsecured creditor of the company for the amount owed to him by the company as if the execution or proceedings had not been issued or instituted.

(4) For the purposes of this section, the date that corresponds with the date of presentation of the petition in bankruptcy in the case of a natural person and the date on which a person becomes a bankrupt is the date on which the company commences to be under official management.

349. (1) The official manager of a company may sell or otherwise dispose of any property of the company in the ordinary course of the business of the company.

Application and disposal of property during official management.

(2) The official manager of a company may sell or otherwise dispose of any property of the company otherwise than in the ordinary course of the business of the company if the aggregate of the value of that property and the price or prices received for other property previously sold or disposed of otherwise than in the ordinary course of the business of the company during the period of official management does not exceed \$5,000.

(3) The official manager of a company may, with the consent of the committee of management, sell or otherwise dispose of any property of the company otherwise than in the ordinary course of the business of the company if the aggregate of the value of that property and the price or prices received for any other property previously sold or disposed of otherwise than in the ordinary course of the business of the company during the period of official management does not exceed \$20,000.

(4) The official manager of a company may—

(a) with the leave of the Court;

or

(b) with the consent of the creditors given by a special resolution passed at a meeting of the creditors of which special notice has been given, being a notice that set out the intention to propose, as a special resolution, a resolution for the sale or disposal, or the mortgage or charge, of that property,

sell or otherwise dispose of, or mortgage or charge, any property of the company.

(5) The moneys of the company that become available to the official manager of the company during the period of the official management shall be applied by him in the following order:

(a) first, in the payment of the costs of the official management, including the remuneration of the official manager, the deputy official manager (if any) and the auditor of the company (if any) appointed in accordance with the provisions of Division 3 of Part VI;

(b) second, in discharge of the liabilities of the company incurred in the course of the official management;

and

(c) third, in discharge of any other liabilities of the company.

(6) Subject to sub-section (5), the liabilities of the company referred to in paragraph (5) (c) shall be discharged as if those liabilities were liabilities of a company being wound up, and the provisions of Part XII apply, as far as possible, to, and in relation to, the discharge of those liabilities.

Official manager
may apply to
Court for
directions.

350. (1) The official manager may apply to the Court for directions in relation to any matter arising out of the exercise of his powers or functions as official manager.

(2) An act done in accordance with a direction given by the Court on application made under sub-section (1) shall be deemed to have been properly done for the purposes of this Code.

Certain
provisions
applicable to
official
management.

351. (1) Where a company is under official management, the following provisions of this section have effect.

(2) A sum due to a member in his capacity as a member by way of dividends, profits or otherwise shall not be treated as a debt of the company payable to that member in the case of competition between himself and any other creditor who is not a member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the members among themselves.

(3) The Court may make such order for inspection of the books of the company by creditors and members as the Court thinks just, and any books in the possession, or in the custody or under the control, of the company may be inspected by creditors or members accordingly, but not further or otherwise.

(4) The provisions of sections 418, 419, 420 and 457 apply to and in relation to the company as if—

- (a) the company were being wound up;
 - (b) a reference in any of those provisions to the liquidator of the company were a reference to the official manager of the company;
 - (c) a reference in any of those provisions to contributories were a reference to members of the company;
- and
- (d) the reference in sub-section 457 (1) to a report made under section 418 were a reference to a report made under that section as applied by virtue of this sub-section.

352. (1) If at any time, on the application of the official manager or of any creditor or member of a company or of the Commission, it appears to the Court that the purpose for which the company was placed under official management has been fulfilled or that, for any reason, it is undesirable that the company should continue to be under official management, the Court may by order terminate the official management on the date specified in the order and, upon that date, the official manager ceases to be the official manager of the company.

Power of Court to terminate official management and give directions.

(2) The Court shall not make an order under sub-section (1) on an application by a person other than the Commission unless at least 7 days' notice in writing of the application has been given to the Commission.

(3) The Court may, on an application under sub-section (1), if the applicant or, where the Commission is not the applicant, the Commission so requests, grant leave to the person making the request to file an application for the winding up of the company.

(4) On making an order under sub-section (1), the Court may also give such directions as it considers fit for the resumption of the management and control of the company by its officers, including directions for the convening of a general meeting of members of the company to elect directors to take office upon the termination of the official management.

(5) The costs and expenses of any proceeding before the Court under this section and the costs and expenses incurred in convening a meeting of members of the company pursuant to an order of the Court under this section shall, if the Court so directs, form part of the costs of the official management of the company.

353. (1) Where a resolution has been passed under sub-section 338 (1) determining that a company be placed under official management—

Resolution to place company under official management effective, subject to appeal.

- (a) a creditor to whom the company owes, or a representative of a group of creditors to whom the company owes in the aggregate, an amount that exceeds 5% of the total unsecured debts of the company;

(b) a member holding, or any representative of a group of members holding collectively, not less than 10% of the paid up capital of the company;

or

(c) in the case of a company not having a share capital, any member holding, or any representative of a group of members holding collectively, not less than 10% of the total voting rights of members having a right to vote at all general meetings,

may apply to the Court for the variation or cancellation of the resolution at any time within a period of 14 days after the passing of the resolution and the Court may, if it is of the opinion that there is no reasonable prospect of the company being rehabilitated or that the resolution is not in the interests of the creditors and the members of the company, vary or cancel the resolution.

(2) Where the Court makes an order cancelling a resolution, the Court may give such directions as it considers necessary for the resumption of the management and control of the company by the persons who were officers of the company immediately before it was placed under official management.

(3) Upon the cancellation of a resolution by the Court under this section, the company ceases to be under official management and the person appointed official manager of the company ceases to hold office.

(4) Where the Court makes an order under this section varying a resolution, the resolution has effect, on and from the date of the order, as varied by the order.

(5) Where an order is made under this section, the acts of the official manager before the making of the order are as valid and binding on the company, and on the members and creditors of the company, as they would have been if the order had not been made.

Lodgment of
office copy of
Court order.

354. (1) Where the Court makes an order under section 352 (otherwise than on the application of the Commission) or an order under section 353, the person on whose application the order is made shall lodge with the Commission—

(a) within 7 days after the order is made—notice in the prescribed form of the making of the order and the date of the order;

and

(b) within 7 days of the passing and entering of the order—an office copy of the order.

(2) A person who fails to comply with sub-section (1) is guilty of an offence.

(3) Where the Commission is an applicant for an order under section 352, the Commission shall enter in its records particulars of the application and, after the passing and entering of the order, an office copy of the order, and sub-section 31 (2) applies in relation to the document containing those particulars and to the office copy as if they were documents lodged with the Commission.

Termination of
appointment and
release of official
manager.

355. (1) The appointment of a person as official manager of a company terminates where—

- (a) that person tenders his resignation in writing to either—
 - (i) the committee of management appointed pursuant to this Part;
 - or
 - (ii) a meeting of creditors of the company;
- (b) a special resolution that the appointment of the person be terminated is passed at a meeting of creditors of the company of which special notice stating that the meeting is convened for the purpose of considering such a resolution has been given;
- or
- (c) the Court makes an order that the appointment of the person be terminated.

(2) The appointment of a person as official manager of a company shall be terminated by the committee of management or, if there is no committee of management, by the Court on the application of any creditor or member of the company if—

- (a) the official manager becomes an insolvent under administration;
- (b) the official manager becomes incapable, by reason of mental infirmity, of managing his affairs;
- (c) having been appointed by an order of the Court under sub-section 338 (4), the official manager ceases to be a registered company auditor;

or

- (d) the official manager becomes the auditor of the company.

(3) Where a vacancy occurs in the office of official manager of a company, the committee of management may appoint, or if there is no committee of management, a meeting of creditors of the company convened for that purpose by any 2 of their number may by special resolution appoint, as official manager, a person who is qualified for appointment.

- (4) A person is qualified for appointment under sub-section (3) if—
 - (a) he has consented in writing to act as official manager of the company;
 - (b) he is not the auditor of the company;
 - (c) he is not an officer of a corporation that is a mortgagee of property of the company;

and

- (d) he has furnished to the committee of management or the chairman of the meeting of creditors, as the case may be, a certificate under his hand stating that he is not an insolvent under administration.

(5) A person appointed official manager under sub-section (3) shall assume, and is responsible for, the management of the company and shall perform the duties, and may perform any of the functions and exercise any of the powers, of the directors of the company.

(6) Where the appointment of an official manager terminates or is terminated, until a person is appointed official manager under sub-section

(3), the powers and functions of the official manager vest in, and the duties of the official manager shall be performed by—

- (a) the deputy official manager;
- (b) if there is no deputy official manager—the committee of management;

or

- (c) if there is no deputy official manager and no committee of management—a person appointed by the Court, on the application of a creditor of the company, to act as official manager until a person is appointed official manager under sub-section (3).

(7) A person who convenes a meeting of creditors of a company for the purpose of considering a resolution that the appointment of a person as official manager of the company be terminated shall give to the person who is the official manager not less than 14 days' written notice of the meeting and of the purpose for which it is being convened.

(8) Where a person who is an official manager of a company receives a notice given under sub-section (7), he shall—

- (a) before the date on which the meeting is to be held, prepare a report showing how the official management of the company has been conducted by him;
- (b) present the report to the meeting and give such explanations of that report as are reasonably requested by any creditor;

and

- (c) within 7 days after the holding of the meeting, lodge with the Commission a notice of the holding of the meeting—
 - (i) setting out the date on which the meeting was held;and
 - (ii) stating whether the resolution for the termination of the appointment of the person as official manager was passed,

together with a copy of the report prepared in accordance with paragraph (a).

(9) Where a person (other than a person who has been given notice of a meeting under sub-section (7)) ceases to be an official manager of a company (including a person who ceases to be an official manager by reason that his appointment is terminated by the Court under sub-section 338 (4))—

- (a) he shall, notwithstanding that he has ceased to be the official manager, within 14 days after the day on which he ceased to be the official manager, prepare a report showing how the official management was conducted by him and, for this purpose, he has a right of access to the books of the company;

and

- (b) he shall, within 28 days after the day on which he ceased to be the official manager, convene a meeting of all persons who were creditors of the company at the commencement of the official management and all persons who, on the day on which

the person ceased to be the official manager, were creditors of the company.

(10) Notice of the meeting referred to in paragraph (9) (b) shall be given to the creditors of the company by sending by post to each of the creditors, not less than 7 days, nor more than 14 days, before the date fixed for the holding of the meeting, a notice specifying the date, time, place and purpose of the meeting and a copy of the report prepared in accordance with paragraph (9) (a).

(11) At the meeting of creditors convened under paragraph (9) (b), the person who was the official manager of the company shall present his report to the meeting and shall give such explanations of that report as are reasonably requested by any creditor.

(12) Within 7 days after the holding of the meeting referred to in paragraph (9) (b), the person who was the official manager shall lodge with the Commission notice of the holding of the meeting and of the date on which it was held, together with a copy of the report prepared in accordance with paragraph (9) (a).

(13) At a meeting of creditors convened under paragraph (9) (b), 2 creditors constitute a quorum and, if a quorum is not present at the meeting, the person who was the official manager shall, within 7 days after the day for which the meeting was convened, lodge with the Commission—

(a) a notice stating that the meeting was duly convened and that no quorum was present;

and

(b) a copy of the report prepared in accordance with paragraph (9) (a).

(14) If the meeting is not held on the day for which it is convened under paragraph (9) (b), the person who was official manager shall, within 7 days after that day, lodge with the Commission—

(a) a notice stating that the meeting was not held on that day;

and

(b) a copy of the report prepared in accordance with paragraph (9) (a).

(15) The expenses incurred by a person who was an official manager of a company in connection with the preparation of a report in accordance with paragraph (8) (a) form part of the costs of the official management.

(16) The expenses incurred by a person who was official manager of a company in connection with the preparation of a report in accordance with paragraph (9) (a) and in relation to the convening and holding of the meeting in accordance with paragraph (9) (b) form part of the costs of the official management and shall be deemed to have been incurred during the period of the official management.

(17) Subject to sub-section (18), where a person ceases to be the official manager of a company (including a person who ceases to be an official manager by reason that his appointment is terminated by the Court under sub-section 338 (4)), the adoption by a meeting of creditors of the company of the report prepared by him under paragraph (8) (a) or paragraph (9) (a), as the case requires, and of his explanations, discharges him from all liability

in respect of any act or omission by him in the management of the company or otherwise in relation to his conduct as official manager.

(18) The adoption by a meeting of creditors of a company of a report prepared in accordance with paragraph (8) (a) or (9) (a) by a person who has ceased to be the official manager of the company and of any explanations of the person in relation to the report does not—

(a) discharge the person from the liabilities referred to in sub-section (17) if the adoption was obtained by fraud or by suppression or concealment of a material fact;

or

(b) discharge the person from a liability to which, by virtue of any law in force in the State other than this Code, he would be subject in respect of any negligence, default, breach of trust or breach of duty committed by him in relation to the company.

(19) If the report prepared by a person in accordance with paragraph (8) (a) or (9) (a) and the explanations of the report are not adopted by a meeting of creditors within 2 months after—

(a) in the case of a report prepared in accordance with paragraph (8) (a)—the date of the meeting to which the report was presented;

or

(b) in the case of a report prepared in accordance with paragraph (9) (a)—the date on which notice of the meeting convened in accordance with paragraph (9) (b) was given to the creditors of the company,

the person may apply to the Court for an order of release.

(20) If a person who was official manager of the company complies with sub-section (13), he may apply to the Court for an order of release.

(21) On an application under sub-section (19) or (20), the Court may, if it thinks fit, make an order releasing the applicant from liability for acts or omissions by him in the management of the company and such an order has the same effect as the adoption of a report and explanations has under sub-section (17).

(22) Where the Court makes an order under sub-section (21), it may by order direct that any costs or expenses incurred by the applicant in connection with the application shall form part of the costs of the official management and shall be deemed to have been incurred during the period of the official management.

(23) Where the Court makes an order under sub-section (21), the person who was the official manager shall lodge with the Commission an office copy of the order within 7 days after the passing and entering of the order.

Notification that corporation is under official management.

356. (1) Where a company is under official management or a corporation is under official management under the law in force in another State or in a Territory, in every business letter, statement of account, invoice, order for goods, order for services, official notice, publication, bill of exchange, promissory note, cheque or other negotiable instrument, indorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument, receipt and letter of credit of, or purporting to be issued or signed by or on

behalf of, the company or corporation, there shall be set out after the name of the company or corporation where it first appears the words "under official management".

(2) If default is made in complying with sub-section (1), the company or corporation and any officer of the company or corporation who is in default are each guilty of an offence.

Penalty: \$1,000.

357. (1) The functions of the committee of management of a company appointed pursuant to this Part are to assist and advise the official manager of the company in relation to any matters concerning the management of the company on which he requests the advice and assistance of the committee.

Functions of committee of management and appointment of deputy official manager.

(2) Either the committee of management of a company or a meeting of creditors of a company convened by the official manager—

(a) may appoint a person who—

(i) has consented in writing to act as deputy official manager of the company;

(ii) is not the auditor of the company;

(iii) is not an officer of a corporation that is a mortgagee of property of the company;

and

(iv) has furnished to the official manager a certificate under his hand stating that he is not an insolvent under administration,

to be a deputy official manager of the company;

(b) may remove the deputy official manager from office and may, if the committee of management or the meeting of creditors, as the case may be, considers it is necessary, appoint another person to be deputy official manager in his place;

and

(c) may determine the amount of the salary or other remuneration of the deputy official manager.

(3) In the absence of the official manager of a company, a deputy official manager shall, subject to any written directions given to him by the official manager, act as the official manager and, while so acting, has the powers, duties and functions of the official manager.

(4) A person who is appointed deputy official manager of a company shall, within 14 days after his appointment, lodge with the Commission a notice in the prescribed form of his appointment as deputy official manager and of the address of his office and, in the event of any change in the situation of his office, he shall, within 14 days after the change, lodge with the Commission notice in the prescribed form of the change.

(5) A person who ceases to be deputy official manager shall, within 14 days after ceasing to be deputy official manager, lodge with the Commission notice in the prescribed form of his ceasing to be deputy official manager.

(6) The committee of management of a company may, at any time and from time to time, direct the official manager of the company to convene a

meeting of the creditors of the company or a meeting of the members of the company or a meeting of both creditors and members of the company, and the official manager shall give effect to the direction.

(7) Subject to this section and the regulations, the provisions of sections 433 and 434 apply to and with respect to a committee of management of a company, the proceedings of and vacancies in a committee of management of a company, and the removal of members of the committee of management of a company, and so apply as if—

- (a) a reference in any of those provisions to the committee of inspection or to the committee were a reference to the committee of management;
- (aa) a reference in any of those provisions to a member of the committee were a reference to a member of the committee of management;
- (b) a reference in any of those provisions to the liquidator were a reference to the official manager of the company;

and

- (c) a reference in any of those provisions to a contributory were a reference to a member of the company.
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PART XII

WINDING UP

DIVISION 1—PRELIMINARY

DIVISION 1

358. This Part binds the Crown in right of South Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Crown to be bound.

359. (1) The winding up of a company may be either—

Modes of winding up.

(a) by the Court;

or

(b) voluntary.

(2) Unless the contrary intention appears, the provisions of this Code with respect to winding up apply to the winding up of a company in either of those modes.

360. (1) On a company being wound up, every present and past member is liable to contribute to the property of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up and for the adjustment of the rights of the contributories among themselves, subject to the following qualifications:

Liability as contributories of present and past members.

(a) subject to paragraph (b), a past member is not liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding up;

(b) where the company is a limited company and became a limited company within the period of 3 years immediately preceding the commencement of the winding up by virtue of a change of status pursuant to paragraph 69 (1) (a) or the corresponding provision of a previous law of the State, a past member of the company who was a member of the company at the time of the change of status—

(i) is liable notwithstanding paragraph (a) to contribute in respect of debts and liabilities contracted before the change of status;

and

(ii) if no person who was a member of the company at the time of the change of status is a member at the commencement of the winding up, is so liable to contribute notwithstanding paragraph (d) and whether or not the existing members have satisfied the contributions required to be made by them pursuant to this Code;

(c) a past member is not liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(d) subject to paragraph (b), a past member is not liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them pursuant to this Code;

- (e) in the case of a company limited by shares, no contribution is required from a member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member;
- (f) in the case of a company limited by guarantee, no contribution is, subject to sub-section (2), required from a member exceeding the amount undertaken to be contributed by him to the property of the company in the event of its being wound up;
- (g) notwithstanding paragraphs (e) and (f), where the company is a limited company and became a limited company by virtue of a change of status pursuant to paragraph 69 (1) (a) or the corresponding provision of a previous law of the State, the amount that a member of the company at the time of the change of status, or a person who at that time was a past member of the company, is liable to contribute in respect of the debts and liabilities of the company contracted before that time is unlimited;
- (h) where a company has changed its status pursuant to paragraph 69 (1) (e) or the corresponding provision of a previous law of the State, a person who, at the time the company applied for the change of status, was a past member of the company and did not thereafter again become a member of the company is not, if the company is wound up, liable to contribute to the property of the company more than he would have been liable to contribute if the company had not changed its status;
- (j) nothing in this Code invalidates any provision contained in a policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted or whereby the funds of the company are alone made liable in respect of the policy or contract;
- (k) a sum due to a member in his capacity as a member by way of dividends, profits or otherwise shall not be treated as a debt of the company payable to that member in a case of competition between himself and any other creditor who is not a member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) On the winding up of a company limited both by shares and by guarantee, every member is liable, in addition to the amount undertaken to be contributed by him to the property of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Nature of liability
of contributory.

361. The liability of a contributory is of the nature of a specialty debt according to the law of the State accruing due from him at the time when his liability commenced but payable at the times when calls are made for enforcing the liability.

Contributories in
case of death or
bankruptcy of
member.

362. (1) If a contributory dies, either before or after he has been placed on the list of contributories, his personal representatives are liable in due course of administration to contribute to the property of the company in discharge of his liability and are contributories accordingly, and, if they make default in paying any money ordered to be paid by them, proceedings

may be taken for administering the estate of the deceased contributory and for compelling payment, out of the assets of that estate, of the money due.

(2) If a contributory becomes an insolvent under administration or assigns his estate for the benefit of his creditors, either before or after he has been placed on the list of contributories—

(a) his trustee shall represent him for all the purposes of the winding up and shall be a contributory accordingly;

and

(b) there may be proved against his estate the estimated value of his liability to future calls as well as calls already made.

DIVISION 2—WINDING UP BY THE COURT

DIVISION 2

Subdivision A—General

363. (1) A company (whether or not it is being wound up voluntarily) may be wound up under an order of the Court on the application of—

Application for winding up.

- (a) the company;
- (b) a creditor, including a contingent or prospective creditor, of the company;
- (c) a contributory;
- (d) the liquidator;
- (e) the Commission pursuant to section 312 or 352;
- (f) the official manager of the company appointed pursuant to Part XI;
- (g) a person (other than the Commission) who has been granted leave under section 352;

or

(h) the Insurance Commissioner appointed under the *Insurance Act* 1973,

or of any 2 or more of those persons.

(2) An application under sub-section (1) in relation to a company may be made by the Insurance Commissioner if and only if—

(a) an inspector has been appointed to make an investigation in respect of the company under section 52 of the *Insurance Act* 1973;

and

(b) the liabilities of the company within the meaning of Part III of the *Insurance Act* 1973 exceed the assets of the company within the meaning of that Part of that Act.

(3) Notwithstanding anything in sub-section (1), the Court shall not hear the application if it is made by a contingent or prospective creditor

until such security for costs has been given as the Court thinks reasonable and a *prima facie* case for winding up has been established to the satisfaction of the Court.

Circumstances in which company may be wound up by Court.

- 364.** (1) The Court may order the winding up of a company if—
- (a) the company has by special resolution resolved that it be wound up by the Court;
 - (b) default is made by the company in lodging the statutory report or in holding the statutory meeting;
 - (c) the company does not commence business within a year from its incorporation or suspends its business for a whole year;
 - (d) except in the case of a company that is the wholly-owned subsidiary of a company within the meaning of this Code or of the corresponding law of a participating State or a participating Territory, the number of members is reduced, in the case of a proprietary company, below 2 or, in the case of any other company, below 5;
 - (e) the company is unable to pay its debts;
 - (f) directors have acted in affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatsoever that appears to be unfair or unjust to other members;
 - (g) the Commission has reported under Part VII that it is of the opinion, or an inspector appointed under Part VII has reported that he is of the opinion—
 - (i) that the company cannot pay its debts and should be wound up;
 or
 - (ii) that it is in the interests of the public, of the shareholders or of the creditors that the company should be wound up;
 - (h) where an application for the winding up of the company was made under paragraph 363 (1) (h)—the Court is of opinion that it is in the interests of the public, of the shareholders or of the creditors that the company should be wound up;
- or
- (j) the Court is of opinion that it is just and equitable that the company be wound up.
- (2) For the purposes of sub-section (1), if—
- (a) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding \$1,000 then due has served on the company a demand, signed by or on behalf of the creditor, requiring the company to pay the sum so due and the company has, for 3 weeks after the service of the demand, failed to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;
 - (b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part;

or

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

the company shall be deemed to be unable to pay its debts.

365. (1) Where, before the filing of the application, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution and, unless the Court on proof of fraud or mistake thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

Commencement
of winding up by
the Court.

(2) In any other case the winding up shall be deemed to have commenced at the time of the filing of the application for the winding up.

366. (1) The persons, other than the company itself or the liquidator of the company, on whose application any winding up order is made shall, at their own cost, prosecute all proceedings in the winding up until a liquidator has been appointed under this Part.

As to payment of
preliminary costs,
&c.

(2) The liquidator shall, unless the Court orders otherwise, reimburse the applicant out of the property of the company the taxed costs incurred by the applicant in any such proceedings.

(3) Where the company has no property or does not have sufficient property and, in the opinion of the Commission, a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation, the taxed costs or so much of them as is not reimbursed under sub-section (2) may be reimbursed by the Commission to an amount not exceeding \$1,000.

(4) Where any winding up order is made upon the application of the company or a liquidator of the company, the costs incurred shall, subject to any order of the Court, be paid out of the property of the company in like manner as if they were the costs of any other applicant.

367. (1) On hearing a winding up application the Court may dismiss the application with or without costs or adjourn the hearing conditionally or unconditionally or make any interim or other order that it thinks fit, but the Court shall not refuse to make a winding up order on the ground only that the property of the company has been mortgaged to an amount equal to or in excess of the value or amount of that property or that the company has no property.

Powers of Court
on hearing
application.

(2) The Court may, on the application coming on for hearing or at any time at the request of the applicant, the company or any person who has given notice that he intends to appear on the hearing of the application—

- (a) direct that any notices be given or any steps be taken before or after the hearing of the application;
- (b) dispense with any notices being given or steps being taken that are required by this Code, or by the rules, or by any prior order of the Court;
- (c) direct that oral evidence be taken on the application or any matter relating to the application;

- (d) direct a speedy hearing or trial of the application or of any issue or matter;
- (e) allow the application to be amended or withdrawn;
- and
- (f) give such directions as to the proceedings as the Court thinks fit.

(3) Where the application is made by members as contributories on the ground that it is just and equitable that the company should be wound up or that the directors have acted in a manner that appears to be unfair or unjust to other members, the Court, if it is of opinion that—

- (a) the applicants are entitled to relief either by winding up the company or by some other means;
- and
- (b) in the absence of any other remedy it would be just and equitable that the company should be wound up,

shall make a winding up order unless it is also of the opinion that some other remedy is available to the applicants and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(4) Notwithstanding any rule of law to the contrary, the Court shall not refuse to make an order for winding up on the application of a person referred to in paragraph 363 (1) (c) on the ground that, if the order were made, no property of the company would be available for distribution among the contributories.

(5) Where the application is made on the ground of default in lodging the statutory report or in holding the statutory meeting, the Court may, instead of making a winding up order, direct that the statutory report be lodged or that a meeting be called, and may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

(6) At any time after the filing of a winding up application and before a winding up order has been made, the company or any creditor or contributory may, where any action or other civil proceeding against the company is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

Avoidance of
dispositions of
property,
attachments, &c.

368. (1) Any disposition of property of the company, other than a disposition made by the liquidator pursuant to a power conferred on him by this Code or by an order of the Court, and any transfer of shares or alteration in the status of the members of the company made after the commencement of the winding up by the Court is, unless the Court otherwise orders, void.

(2) Notwithstanding sub-section (1), the Court may, where an application for winding up has been filed but a winding up order has not been made, by order—

- (a) validate the making, after the filing of the application, of a disposition of property of the company;
- or
- (b) permit the business of the company or a portion of the business of the company to be carried on, and such acts as are incidental

to the carrying on of the business or portion of the business to be done, during the period before a winding up order (if any) is made,

on such terms as it thinks fit.

(3) Any attachment, sequestration, distress or execution put in force against the property of the company after the commencement of the winding up by the Court is void.

369. Any application for winding up a company constitutes a *lis pendens* for the purposes of any law relating to the effect of a *lis pendens* upon purchasers or mortgagees. Application to be *lis pendens*.

370. (1) An applicant (other than the Commission) for the winding up of a company shall— Certain notices to be lodged with Commission.

(a) lodge with the Commission, not later than 10.30 a.m. on the next business day after the filing of the application, notice of the filing of the application and of the date on which the application was filed;

(b) after an order for winding up is made—lodge with the Commission, within 2 business days after the making of the order, notice of the making of the order, of the date on which the order was made and of the name and address of the liquidator;

and

(c) if the application is withdrawn or dismissed—lodge with the Commission, within 2 business days after the withdrawal or dismissal of the application, notice of the withdrawal or dismissal of the application and of the date on which the application was withdrawn or dismissed.

(2) The applicant shall, within 7 days after the passing and entering of a winding up order—

(a) except where the applicant is the Commission—lodge an office copy of the order with the Commission;

(b) serve an office copy of the order on the company or such other person as the Court directs;

and

(c) deliver to the liquidator an office copy of the order together with a statement that the order has been served as mentioned in paragraph (b).

(3) An applicant (other than the Commission) who fails to comply with sub-section (1) or (2) is guilty of an offence.

(4) Where the Commission is an applicant for the winding up of a company, the Commission shall enter in its records particulars of the application and, after the passing and entering of a winding up order, an office copy of the order, and sub-section 31 (2) applies in relation to the document containing those particulars and to the office copy as if they were documents lodged with the Commission.

371. (1) An order for winding up a company operates in favour of all the creditors and contributories of the company as if it had been made on the joint application of all the creditors and contributories.

(2) Where an order has been made for the winding up of a company, or a provisional liquidator has been appointed in respect of a company, no action or other civil proceeding may be commenced or proceeded with against the company except—

(a) by leave of the Court;

and

(b) in accordance with such terms as the Court imposes.

Subdivision B—Liquidators

372. (1) On an order being made for the winding up of a company, the Court may appoint an official liquidator to be liquidator of the company.

(2) The Court may appoint an official liquidator provisionally at any time after the filing of a winding up application and before the making of a winding up order or, where there is an appeal against a winding up order, before a decision in the appeal is made, and that liquidator has and may exercise such functions, powers and duties as are conferred on him by this Code or prescribed by the rules or as the Court specifies in the order appointing him.

373. (1) A liquidator appointed by the Court may resign or, on cause shown, be removed by the Court.

(2) A provisional liquidator is entitled to receive such remuneration by way of percentage or otherwise as is determined by the Court.

(3) A liquidator is entitled to receive such remuneration by way of percentage or otherwise as is determined—

(a) if there is a committee of inspection—by agreement between the liquidator and the committee of inspection;

or

(b) if there is no committee of inspection or the liquidator and the committee of inspection fail to agree—

(i) by a resolution passed at a meeting of creditors by a majority of the creditors present and voting, either in person or by proxy, being a majority whose debts against the company that have been admitted to proof amount in the aggregate to not less than 75% of the total amount of the debts of the creditors of the company present and voting, either in person or by proxy, that have been admitted to proof;

or

(ii) if no such resolution is passed—by the Court.

(4) A meeting of creditors for the purposes of sub-section (3) shall be convened by the liquidator by sending to each creditor a notice to which is attached a statement of all receipts and expenditure by the liquidator and of the amount of remuneration sought by him.

(5) Where the remuneration of a liquidator is determined in the manner specified in paragraph (3) (a), the Court may, on the application of—

- (a) a member or members whose shareholding or shareholdings represents or represent in the aggregate not less than 10% of the issued capital of the company;
 - (b) a creditor or creditors whose debts against the company that have been admitted to proof amount in the aggregate to not less than 10% of the total amount of the debts of the creditors of the company that have been admitted to proof;
- or
- (c) the Commission,

review the liquidator's remuneration and may confirm, increase or reduce that remuneration.

(6) Where the remuneration of a liquidator is determined in the manner specified in sub-paragraph (3) (b) (i) the Court may, on the application of the liquidator or of a member or members referred to in sub-section (5), review the liquidator's remuneration and may confirm, increase or reduce that remuneration.

(7) A vacancy in the office of a liquidator appointed by the Court shall be filled by the Court.

(8) If more than one liquidator is appointed by the Court, the Court shall declare whether anything that is required or authorized by this Code to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(9) Subject to this Code, the acts of a liquidator are valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

374. (1) Where a winding up order has been made or a provisional liquidator has been appointed, the liquidator or provisional liquidator shall take into his custody or under his control all the property to which the company is or appears to be entitled, and, if there is no liquidator, all the property of the company shall be in the custody of the Court.

Custody and vesting of company's property.

(2) The Court may, on the application of the liquidator, by order direct that all or any part of the property of the company shall vest in the liquidator and thereupon the property to which the order relates shall vest accordingly and the liquidator may, after giving such indemnity (if any) as the Court directs, bring, or may defend, any action or other legal proceeding that relates to that property or that it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

(3) Where an order is made under this section, the liquidator of the company to which the order relates shall, within 14 days after the making of the order, lodge with the Commission an office copy of the order.

375. (1) There shall be made out and verified by a statement in writing in the prescribed form, and submitted to the liquidator, by the persons who were, at the date of the winding up order or, if the liquidator specifies an earlier date, that earlier date, the directors and secretary of the company a report in the prescribed form as to the affairs of the company as at the date concerned.

Report as to company's affairs to be submitted to liquidator.

(2) The liquidator may, by notice in writing served personally or by post addressed to the last known address of the person, require one or more

persons included in one or more of the following classes of persons to make out as required by the notice, verify by a statement in writing in the prescribed form, and submit to him, a report, containing such information as is specified in the notice as to the affairs of the company or as to such of those affairs as are specified in the notice, as at a date specified in the notice:

- (a) persons who are or have been officers of the company;
- (b) where the company was formed within one year before the date of the winding up order—persons who have taken part in the formation of the company;
- (c) persons who are in the employment of the company or have been in the employment of the company within one year before the date of the winding up order and are, in the opinion of the liquidator, capable of giving the information required;
- (d) persons who are, or have been, within one year before the date of the winding up order, officers of, or in the employment of, a corporation that is, or within that year was, an officer of the company to the affairs of which the report relates;
- (e) a person who was a provisional liquidator of the company.

(3) The liquidator may, in a notice under sub-section (2), specify the information that he requires as to affairs of the company by reference to information required by this Code or the regulations to be included in any other report, statement or notice under this Code.

(4) A report referred to in sub-section (1) shall, subject to sub-section (6), be submitted to the liquidator not later than 14 days after the making of the winding up order.

(5) A person required to submit a report referred to in sub-section (2) shall, subject to sub-section (6), submit it not later than 14 days after the liquidator serves notice of the requirement.

(6) Where the liquidator believes there are special reasons for so doing, he may, on an application in writing made to him before the expiration of the time limited by sub-section (4) or (5) for the submission by the applicant of a report under sub-section (1) or (2), grant, by notice in writing, an extension of that time.

(7) A liquidator—

- (a) shall, within 7 days after receiving a report under sub-section (1) or (2), cause a copy of the report to be filed with the Court and a copy to be lodged with the Commission;

and

- (b) shall, where he gives a notice under sub-section (6), forthwith lodge a copy of the notice with the Commission.

(8) A person making or concurring in making a report required by this section and verifying it as required by this section shall, subject to the rules, be allowed, and shall be paid by the liquidator out of the property of the company, such costs and expenses incurred in and about the preparation and making of the report and the verification of that report as the liquidator considers reasonable.

(9) A person who, without reasonable excuse, fails to comply with a provision of this section other than sub-section (7) is guilty of an offence.

Penalty: \$2,500 or imprisonment for 6 months, or both.

(10) A person who, without reasonable excuse, fails to comply with sub-section (7) is guilty of an offence.

(11) In this section a reference to a liquidator includes a reference to a provisional liquidator.

376. A liquidator of a company shall, within 2 months, or such longer period (if any) as the Commission allows, after receiving a report referred to in sub-section 375 (1) or (2), lodge with the Commission a preliminary report—

Preliminary
report by
liquidator.

- (a) in the case of a company having a share capital—as to the amount of capital issued, subscribed and paid up;
 - (b) as to the estimated amounts of assets and liabilities of the company;
 - (c) if the company has failed—as to the causes of the failure;
- and
- (d) as to whether, in his opinion, further inquiry is desirable with respect to a matter relating to the promotion, formation or insolvency of the company or the conduct of the business of the company.

377. (1) The liquidator may, with the authority of the Court, of the committee of inspection or of a resolution of the creditors—

Powers of
liquidator.

- (a) carry on the business of the company so far as is necessary for the beneficial disposal or winding up of that business;
- (b) subject to the provisions of section 441, pay any class of creditors in full;
- (c) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company or whereby the company may be rendered liable;

and

- (d) compromise any calls, liabilities to calls, debts, liabilities capable of resulting in debts and any claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the property or the winding up of the company, on such terms as are agreed, and take any security for the discharge of, and give a complete discharge in respect of, any such call, debt, liability or claim.

(2) The liquidator may—

- (a) bring or defend any legal proceeding in the name and on behalf of the company;
- (b) appoint a solicitor to assist him in his duties;
- (c) sell or otherwise dispose of, in any manner, all or any part of the property of the company;

- (d) do all acts and execute in the name and on behalf of the company all deeds, receipts and other documents and for that purpose use when necessary the company's common or official seal;
- (e) subject to the *Bankruptcy Act* 1966, prove in the bankruptcy of any contributory or debtor of the company or under any deed executed under that Act;
- (f) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company;
- (g) obtain credit, whether on the security of the property of the company or otherwise;
- (h) take out letters of administration of the estate of a deceased contributory or debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor, or his estate, that cannot be conveniently done in the name of the company;
- (j) compromise any debt due to the company other than calls and liabilities for calls and other than a debt where the amount claimed by the company to be due to it exceeds \$20,000;
- (k) appoint an agent to do any business that the liquidator is unable to do himself;

and

- (l) do all such other things as are necessary for winding up the affairs of the company and distributing its property.

(3) The authority of the Court or committee of inspection or a resolution of the creditors is not required for the carrying on of the business of the company by the liquidator in accordance with paragraph (1) (a) during the 4 weeks next after the date of the winding up order.

(4) For the purpose of enabling the liquidator to take out letters of administration or recover money as mentioned in paragraph (2) (h) the money due shall be deemed to be due to the liquidator himself.

(5) The exercise by the liquidator of the powers conferred by this section is subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

Settlement of list
of contributories
and application of
property.

378. (1) As soon as practicable after making a winding up order, the liquidator—

- (a) shall settle a list of contributories;
- (b) may rectify the register of members in all cases where rectification is required pursuant to this Part;

and

- (c) shall cause the property of the company to be collected and applied in discharge of its liabilities.

(2) Notwithstanding the provisions of sub-section (1), where it appears to the liquidator that it will not be necessary to make calls on or adjust the rights of contributories, the liquidator may dispense with the settlement of a list of contributories.

(3) In settling the list of contributories the liquidator shall distinguish between persons who are contributories in their own right and persons who are contributories by virtue of representing, or being liable for the debts of, other persons.

(4) The list of contributories, when settled in accordance with the regulations, is *prima facie* evidence of the liabilities of the persons named in the list as contributories.

379. (1) Subject to this Part, the liquidator shall, in the administration of the property of the company and in the distribution of the property among its creditors, have regard to any directions given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and, in case of conflict, any directions so given by the creditors or contributories override any directions given by the committee of inspection.

Exercise and control of liquidator's powers.

(2) The liquidator may convene general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and he shall convene meetings at such times as the creditors or contributories by resolution direct or whenever requested in writing to do so by not less than one-tenth in value of the creditors or contributories.

(3) The liquidator may apply to the Court for directions in relation to any particular matter arising under the winding up.

(4) Subject to this Part, the liquidator shall use his own discretion in the management of affairs and property of the company and the distribution of its property.

380. (1) A liquidator shall, in the manner and at the times prescribed by the rules, pay the money received by him into such bank and account as are prescribed by the rules or specified by the Court.

Payment by liquidator into bank.

(2) If a liquidator retains for more than 10 days a sum exceeding \$500, or such other amount as the Court in any particular case authorizes him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest at the rate of 20% per annum on the amount so retained in excess computed from the expiration of the 10 days until he has complied with the provisions of sub-section (1), and is liable—

- (a) to disallowance of all or such part of his remuneration as the Court thinks just;
- (b) to be removed from his office by the Court;
- and
- (c) to pay any expenses occasioned by reason of his default.

(3) A liquidator who pays any sums received by him as liquidator into a bank or account other than the bank or account prescribed or specified under sub-section (1) is guilty of an offence.

381. When the liquidator—

- (a) has realized all the property of the company or so much of that property as can in his opinion be realized without needlessly protracting the winding up, and has distributed a final dividend (if any) to the creditors and adjusted the rights of the contri-

Release of liquidators and dissolution of company.

butories among themselves and made a final return (if any) to the contributories;

or

(b) has resigned or has been removed from his office,

he may apply to the Court—

(c) for an order that he be released;

or

(d) for an order that he be released and that the company be dissolved.

As to orders for
release or
dissolution.

382. (1) The Court—

(a) may cause a report on the accounts of the liquidator to be prepared by the auditor appointed by the Commission under section 422 or by some other registered company auditor appointed by the Court;

(b) on the liquidator complying with all the requirements of the Court—shall take into consideration the report and any objection against the release of the liquidator that is made by the auditor or by any creditor, contributory or other person interested;

and

(c) shall either grant or withhold the release accordingly.

(2) Where the release of a liquidator is withheld and the Court is satisfied that the liquidator has been guilty of default, negligence, breach of trust or breach of duty, the Court may order the liquidator to make good any loss that the company has sustained by reason of the default, negligence, breach of trust or breach of duty and may make such other order as it thinks fit.

(3) An order of the Court releasing the liquidator discharges him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release operates as a removal from office.

(5) Where the Court has made—

(a) an order that the liquidator be released;

or

(b) an order that the liquidator be released and that the company be dissolved,

the liquidator shall, within 14 days after the making of the order, lodge an office copy of the order with the Commission.

(6) Where an order is made that the company be dissolved, the company is, from the date of the order, dissolved accordingly.

Subdivision C—General Powers of Court

383. (1) At any time during the winding up of a company, the Court

Power to stay or
terminate winding
up.

may, on the application of the liquidator or of a creditor or contributory, make an order staying the winding up either indefinitely or for a limited time or terminating the winding up on a date specified in the order.

(2) On such an application, the Court may, before making an order, direct the liquidator to furnish a report with respect to a relevant fact or matter.

(3) Where the Court has made an order terminating the winding up, the Court may give such directions as it thinks fit for the resumption of the management and control of the company by its officers, including directions for the convening of a general meeting of members of the company to elect directors of the company to take office upon the termination of the winding up.

(4) The costs of proceedings before the Court under this section and the costs incurred in convening a meeting of members of the company in accordance with an order of the Court under this section shall, if the Court so directs, form part of the costs, charges and expenses of the winding up.

(5) Where an order is made under this section, the company shall lodge an office copy of the order with the Commission within 14 days after the making of the order.

384. (1) The Court may require any contributory, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer to the liquidator or provisional liquidator forthwith or within such time as the Court directs any money, property or books in his hands to which the company is *prima facie* entitled.

Delivery of
property to
liquidator.

(2) The Court may make an order directing any contributory for the time being on the list of contributories to pay to the company in the manner directed by the order any money due from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call pursuant to this Code and may—

(a) in the case of an unlimited company—allow to the contributory by way of set-off any money due to him or to the estate that he represents from the company on any independent dealing or contract but not any money due to him as a member of the company in respect of any dividend or profit;

and

(b) in the case of a limited company—make to any director whose liability is unlimited or to his estate the like allowance,

and, in the case of any company whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

(3) The Court may, either before or after it has ascertained the sufficiency of the property of the company—

(a) make calls on all or any of the contributories for the time being on the list of contributories, to the extent of their liability, for payment of any money that the Court considers necessary to satisfy the debts and liabilities of the company and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves;

and

(b) make an order for payment of any calls so made,

and, in making a call, may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

(4) The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into a bank named in the order to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(5) All moneys and securities paid or delivered into any bank pursuant to this Division are subject in all respects to orders of the Court.

(6) An order made by the Court under this section is, subject to any right of appeal, conclusive evidence that the money (if any) thereby appearing to be due or ordered to be paid is due, and all other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

Appointment of
special manager.

385. (1) The liquidator may, if satisfied that the nature of the property or business of the company, or the interests of the creditors or contributories generally, requires or require the appointment of a special manager of the property or business of the company other than himself, apply to the Court, and the Court may appoint a special manager of the property or business to act during such time as the Court directs with such powers, including any of the powers of a receiver or manager, as are entrusted to him by the Court.

(2) The special manager—

(a) shall give such security and account in such manner as the Court directs;

(b) shall receive such remuneration as is fixed by the Court;

and

(c) may at any time resign by notice in writing addressed to the liquidator or may, on cause shown, be removed by the Court.

Claims of
creditors and
distribution of
property.

386. (1) The Court may fix a date on or before which creditors are to prove their debts or claims or after which they will be excluded from the benefit of any distribution made before those debts are proved.

(2) The Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it.

(3) The Court may, in the event of the property being insufficient to satisfy the liabilities, make an order as to the payment out of the property of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks just.

Inspection of
books by creditors
and
contributories.

387. The Court may make such order for inspection of the books of the company by creditors and contributories as the Court thinks just, and any books in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

388. The Court, at any time before or after making a winding up order, on proof of probable cause for believing that a contributory is about to leave the State or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting affairs of the company, may cause the contributory to be arrested and held in custody and his books and movable personal property to be seized and safely kept until such time as the Court orders.

Power to arrest absconding contributory.

389. (1) Provision may be made by rules or regulations for enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Part in respect of—

Delegation to liquidator of certain powers of Court.

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (b) the paying, delivery, conveyance, surrender or transfer of money, property or books to the liquidator;
- (c) the making of calls and the adjusting of the rights of contributories among themselves and the distribution of any surplus among the persons entitled to it;

and

(d) the fixing of a time within which debts and claims must be proved, to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court.

(2) Notwithstanding anything contained in rules or regulations made for the purposes of sub-section (1), a liquidator shall not—

- (a) make any call without either the special leave of the Court or the sanction of the committee of inspection;
- or
- (b) distribute any surplus among the persons entitled to it without the special leave of the Court.

390. Any powers conferred on the Court by this Code are in addition to, and not in derogation of, any existing powers of instituting proceedings against any contributory or debtor of the company or the property of any contributory or debtor for the recovery of any call or other sums.

Powers of Court cumulative.

DIVISION 3—VOLUNTARY WINDING UP

DIVISION 3

Subdivision A—Introductory

391. Where an application has been filed with the Court for the winding up of a company on the ground that it is unable to pay its debts, the company is not, without the leave of the Court, entitled to resolve that it be wound up voluntarily.

Limitation on right to wind up voluntarily.

392. (1) Subject to section 391, a company may be wound up voluntarily if the company so resolves by special resolution.

Circumstances in which company may be wound up voluntarily.

(2) A company shall—

- (a) within 7 days after the passing of a resolution for voluntary winding up, lodge a printed copy of the resolution with the Commission;

and

(b) within 21 days after the passing of the resolution, cause notice of the resolution to be published in the *Gazette*.

(3) If the company fails to comply with the provisions of sub-section (2), the company and any officer of the company who is in default are each guilty of an offence.

Commencement
of winding up.

393. A voluntary winding up commences at the time of the passing of the resolution for voluntary winding up.

Effect of
voluntary winding
up.

394. (1) The company shall, from the commencement of the winding up, cease to carry on its business except so far as is in the opinion of the liquidator required for the beneficial disposal or winding up of that business, but the corporate state and corporate powers of the company, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

(2) Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members, made after the commencement of the winding up are void.

Declaration of
solvency.

395. (1) Where it is proposed to wind up a company voluntarily, the directors of the company, or, in the case of a company having more than 2 directors, a majority of the directors, may, before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a written declaration to the effect that they have made an inquiry into the affairs of the company and that, at a meeting of directors, they have formed the opinion that the company will be able to pay its debts in full within a period not exceeding 12 months after the commencement of the winding up.

(2) There shall be attached to the declaration a statement of affairs of the company showing, in the prescribed form—

(a) the property of the company, and the total amount expected to be realized from that property;

(b) the liabilities of the company;

and

(c) the estimated expenses of winding up,

made up to the latest practicable date before the making of the declaration.

(3) A declaration so made has no effect for the purposes of this Code unless—

(a) the declaration is made at the meeting of directors referred to in sub-section (1);

(b) the declaration is lodged with the Commission before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out or such later date as the Commission, whether before, on or after the first-mentioned date, allows;

and

- (c) the resolution for voluntary winding up is passed within the period of 5 weeks after the making of the declaration or within such further period after the making of that declaration as the Commission, whether before or after the expiration of that period of 5 weeks, allows.

(4) A director who makes a declaration under this section (including a declaration that has no effect for the purposes of this Code by reason of sub-section (3)) without having reasonable grounds for his opinion that the company will be able to pay its debts in full within the period stated in the declaration is guilty of an offence.

Penalty: \$5,000 or imprisonment for one year, or both.

(5) If the company is wound up pursuant to a resolution for voluntary winding up passed within the period of 5 weeks after the making of the declaration or, if pursuant to paragraph (3) (c) the Commission has allowed a further period after the expiration of that period of 5 weeks, within that further period, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed, unless the contrary is shown, that a director who made the declaration did not have reasonable grounds for his opinion.

—————

Subdivision B—Provisions applicable only to Members' Voluntary Winding Up

396. (1) The company in general meeting shall appoint a liquidator or liquidators for the purpose of winding up the affairs and distributing the property of the company and may fix the remuneration to be paid to him or them. Liquidators.

(2) On the appointment of a liquidator, all the powers of the directors cease except so far as the liquidator, or the company in general meeting with the consent of the liquidator, approves the continuance of any of those powers.

(3) If a vacancy occurs by death, resignation or otherwise in the office of a liquidator, the company in general meeting may fill the vacancy by the appointment of a liquidator and fix the remuneration to be paid to him, and for that purpose a general meeting may be convened by any contributory or, if there were 2 or more liquidators, by the continuing liquidators.

(4) The meeting shall be held in the manner provided by this Code or by the articles or in such manner as is, on application by any contributory or by the continuing liquidators, determined by the Court.

397. (1) Where a declaration has been made under section 395 and the liquidator is at any time of the opinion that the company will not be able to pay or provide for the payment of its debts in full within the period stated in the declaration, he shall forthwith convene a meeting of the creditors. Duty of liquidator to call creditors' meeting in case of insolvency.

(2) The liquidator shall send to each creditor with the notice convening the meeting a list setting out the names of all creditors, the addresses of

those creditors and the estimated amounts of their claims, as shown in the records of the company.

(3) Unless the Court otherwise orders, nothing in sub-section (2) requires the liquidator to send, to a creditor whose debt does not exceed \$200, a list of creditors referred to in that sub-section, but the notice convening the meeting that is sent to a creditor to whom the liquidator is not required to send such a list shall specify a place at which copies of the list referred to in that sub-section can be obtained on request made orally or in writing and, where such a creditor so requests, the liquidator shall forthwith comply with the request.

(4) The liquidator shall lay before the meeting a statement of the assets and liabilities of the company and the notice convening the meeting shall draw the attention of the creditors to the right conferred upon them by sub-section (5).

(5) The creditors may, at the meeting convened under sub-section (1), appoint some other person to be liquidator for the purpose of winding up the affairs and distributing the property of the company instead of the liquidator appointed by the company.

(6) If the creditors appoint some other person under sub-section (5), the winding up shall thereafter proceed as if the winding up were a creditors' voluntary winding up.

(7) The liquidator or, if another person is appointed by the creditors to be liquidator, the person so appointed shall, within 7 days after a meeting has been held pursuant to the provisions of sub-section (1), lodge with the Commission a notice in the prescribed form.

(8) Where the liquidator has convened a meeting under sub-section (1) and the creditors do not appoint a liquidator instead of the liquidator appointed by the company, the winding up shall thereafter proceed as if the winding up were a creditors' voluntary winding up, but the liquidator is not required to convene an annual meeting of creditors at the end of the first year from the commencement of the winding up if the meeting held under sub-section (1) was held less than 3 months before the end of that year.

Subdivision C—Provisions applicable only to Creditors' Voluntary Winding Up

Meeting of
creditors.

398. (1) The company shall cause a meeting of the creditors of the company to be convened for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2) The company shall convene a meeting at a date, time and place convenient to the majority in value of the creditors and shall—

- (a) give to the creditors at least 7 days' notice by post of the meeting;
- (b) send to each creditor with the notice—
 - (i) a summary of the affairs of the company in the prescribed form;

and

- (ii) a list setting out the names of all creditors, the addresses of those creditors and the estimated amounts of their claims, as shown in the records of the company;
- (c) lodge with the Commission, not less than 7 days before the date fixed for the holding of the meeting, a copy of the notice given under paragraph (a) and of the documents that accompanied that notice in accordance with paragraph (b);

and

- (d) publish, not less than 7 days, nor more than 14 days, before the day fixed for the holding of the meeting, a copy of the notice given or to be given under paragraph (a) in the State and in each other State and each Territory in which the company carries on business or has carried on business at any time during the 2 years immediately preceding that day, in a daily newspaper circulating generally in the State, or in that other State or in that Territory, as the case may be.

(3) Unless the Court otherwise orders, nothing in sub-section (2) requires the company to send, to a creditor whose debt does not exceed \$200, a list of creditors referred to in sub-paragraph (2) (b) (ii), but the notice convening the meeting that is sent to a creditor to whom the company is not required to send such a list shall specify a place at which copies of the list referred to in that sub-paragraph can be obtained on request made orally or in writing and, where such a creditor so requests, the company shall forthwith comply with the request.

(4) If the company fails to comply with sub-section (1) or (2), the company is, notwithstanding section 570, not guilty of an offence against this Code, but any officer of the company who is in default is guilty of an offence.

Penalty: \$1,000 or imprisonment for 3 months, or both.

(5) The directors of the company shall—

- (a) cause to be laid before the meeting of creditors a report in the prescribed form, and verified by all the directors, as to the affairs of the company, made up to the latest practicable date before the notices of the meeting were sent;

and

- (b) appoint one of their number to attend the meeting.

Penalty: \$1,000 or imprisonment for 3 months, or both.

(6) The director so appointed and a secretary shall attend the meeting and disclose to the meeting the affairs of the company and the circumstances leading up to the proposed winding up.

Penalty: \$1,000 or imprisonment for 3 months, or both.

(6A) The directors of the company shall, not later than 7 days after the report referred to in paragraph (5) (a) is laid before the meeting of creditors as mentioned in that paragraph, lodge a copy of the report with the Commission.

Penalty: \$1,000 or imprisonment for 3 months, or both.

(7) The creditors may appointment one of their number or the director appointed under sub-section (5) to preside at the meeting.

(8) The chairman shall, at the meeting, determine whether the meeting has been held at a date, time and place convenient to the majority in value of the creditors and his decision is final.

(9) At a meeting of creditors held under this section the creditors may determine the matters referred to in paragraphs 432 (1) (a) and (b) and, where the creditors so determine those matters, a meeting of the creditors for the purposes of section 432 shall be deemed to have been held and the determinations shall be deemed to have been made under that section.

Power to adjourn meeting.

399. (1) A meeting convened under section 398 may by resolution be adjourned from time to time to a time and date specified in the resolution but shall not be adjourned to a date later than 21 days after the date for which the meeting was originally convened.

(2) Where a meeting is adjourned, the adjourned meeting shall, unless it is otherwise provided by the resolution by which it is adjourned, be held at the same place as the original meeting.

(3) Where a meeting is adjourned to a date later than 8 days after the passing of the resolution by which it is adjourned, the company shall cause notice of the date, time and place of the resumption of the meeting to be published, in a daily newspaper circulating generally in the State, at least 7 days before the date of the resumption of the meeting.

(4) If the meeting of the company is adjourned and the resolution for winding up is passed at an adjourned meeting, any resolution passed at the meeting of the creditors has effect as if it had been passed immediately after the passing of the resolution for winding up.

Liquidators.

400. (1) The company shall, and the creditors may, at their respective meetings nominate a person to be liquidator for the purpose of winding up the affairs and distributing the property of the company and, if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator but, if no person is nominated by the creditors, the person nominated by the company shall be liquidator.

(2) Notwithstanding the provisions of sub-section (1), where different persons are nominated, any director or member may, within 7 days after the date on which the nomination was made by the creditors, apply to the Court for an order directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors.

(3) The committee of inspection, or, if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator.

(4) On the appointment of a liquidator, the powers of the directors cease except so far as the committee of inspection, or, if there is no such committee, the creditors, approve the continuance of any of those powers.

(5) If a liquidator, other than a liquidator appointed by or by the direction of the Court, dies, resigns or otherwise vacates his office, the creditors may fill the vacancy and, for the purpose of so doing, a meeting of the creditors may be convened by any 2 of their number.

Execution and civil proceedings.

401. (1) Any attachment, sequestration, distress or execution put in force against the property of the company after the commencement of a creditors' voluntary winding up is void.

(2) After the commencement of the winding up, no action or other civil proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court imposes.

(3) The Court may require any contributory, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith or within such time as the Court directs to the liquidator any money, property or books in his hands to which the company is *prima facie* entitled.

402. (1) Any attachment, sequestration, distress or execution put in force against the property of a recognized company after the commencement of a creditors' voluntary winding up under the corresponding law of the State or Territory in which the company is incorporated is void.

Execution and civil proceedings against recognized companies.

(2) After the commencement of that winding up, no action or other civil proceeding shall be proceeded with or commenced against the recognized company except by leave of the Supreme Court of that State or Territory and subject to such terms as that Court imposes.

Subdivision D—Provisions applicable to every Voluntary Winding Up

403. Subject to the provisions of this Code as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities equally and, subject to that application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

Distribution of property of company.

404. If from any cause there is no liquidator acting, the Court may appoint a liquidator.

Appointment of liquidator.

405. The Court may, on cause shown, remove a liquidator and appoint another liquidator.

Removal of liquidator.

406. Any member or creditor, or the liquidator, may at any time before the dissolution of the company apply to the Court to review the amount of the remuneration of the liquidator, and the decision of the Court is final and conclusive.

Review of liquidator's remuneration.

407. (1) The acts of a liquidator are valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Acts of liquidator valid, &c.

(2) A conveyance, assignment, transfer, mortgage, charge or other disposition of a company's property made by a liquidator is, notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator, valid in favour of any person taking such property in good faith and for value and without actual knowledge of the defect or irregularity.

(3) A person making or permitting a disposition of property to a liquidator shall be protected and indemnified in so doing notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator that is not then known to that person.

(4) For the purposes of this section, a disposition of property shall be taken as including a payment of money.

408. (1) The liquidator may—

- (a) in the case of a members' voluntary winding up, with the approval of a special resolution of the company or, in the case of a creditors' voluntary winding up, with the approval of the Court or the committee of inspection or, if there is no such committee, a meeting of creditors, exercise any of the powers given by paragraphs 377 (1) (b), (c) and (d) to a liquidator in a winding up by the Court;
 - (b) exercise any of the other powers by this Code given to the liquidator in a winding up by the Court;
 - (c) exercise the power under section 378 of a liquidator appointed by the Court to settle a list of contributories;
 - (d) exercise the power of the Court of making calls;
 - (e) exercise the power of the Court of fixing a time within which debts and claims must be proved;
- or
- (f) convene a general meeting of the company for the purpose of obtaining the sanction of the company by special resolution in respect of any matter or for any other purpose he thinks fit.

(2) A list of contributories settled in accordance with paragraph (1) (c) is *prima facie* evidence of the liability of the persons named in the list to be contributories.

(3) The liquidator shall pay the debts of the company and adjust the rights of the contributories among themselves.

(4) When several liquidators are appointed, any power given by this Code may be exercised by such one or more of them as is determined at the time of their appointment, or in default of such determination, by any number not less than 2.

409. (1) Where it is proposed that the whole or part of the business or property of a company (in this section referred to as the "company") be transferred or sold to another corporation (in this section referred to as the "corporation"), the liquidator of the company, may, with the sanction of a special resolution of the company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, debentures, policies or other like interests in the corporation for distribution among the members of the company or may enter into any other arrangement whereby the members of the company may, in lieu of or in addition to receiving cash, shares, debentures, policies or other like interests, participate in the profits of or receive any other benefit from the corporation, and any such transfer, sale or arrangement is binding on the members of the company.

(2) If a member of the company who did not vote in favour of the special resolution expresses his dissent from the resolution in writing addressed to the liquidator and left at the office of the liquidator within 7 days after the passing of the resolution, he may require the liquidator either

to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in the manner provided by this section.

(3) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved and be raised by the liquidator in such manner as is determined by special resolution.

(4) A special resolution is not invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators but, if an order for winding up the company by the Court is made within a year after the passing of the resolution, the resolution is not valid unless sanctioned by the Court.

(5) For the purposes of an arbitration under this section, the law relating to commercial arbitration applies as if there were a submission for reference to 2 arbitrators, one to be appointed by each party, and the appointment of an arbitrator may be made under the hand of the liquidator or, if there is more than one liquidator, under the hands of any 2 or more of the liquidators, and the Court may give any directions necessary for the initiation and conduct of the arbitration and any such direction is binding on the parties.

(6) In the case of a creditors' voluntary winding up, the powers of the liquidator under this section shall not be exercised except with the approval of the Court or the committee of inspection.

410. (1) If the winding up continues for more than one year, the liquidator shall—

Annual meeting
of creditors.

(a) in the case of a members' voluntary winding up—convene a general meeting of the company;

or

(b) in the case of a creditors' voluntary winding up—convene a general meeting of the company and a meeting of the creditors,

within 3 months after the end of the first year from the commencement of the winding up and the end of each succeeding year, and shall lay before the meeting or each meeting an account of his acts and dealings and of the conduct of the winding up during that first year or that succeeding year, as the case may be.

(2) The liquidator shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

411. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account showing how the winding up has been conducted and the property of the company has been disposed of and, when the account is so made up, he shall convene a general meeting of the company, or, in the case of a creditors' voluntary winding up, a meeting of the company and the creditors, for the purpose of laying before it the account and giving any explanation of the account.

Final meeting and
dissolution.

(2) The meeting shall be convened by an advertisement published in the *Gazette* at least one month before the meeting specifying the date, time, place and purpose of the meeting.

(3) The liquidator shall, within 7 days after the meeting, lodge with the Commission a return of the holding of the meeting and of its date with a copy of the account attached to the return.

(4) At a meeting of the company, 2 members constitute a quorum and, at a meeting of the company and of the creditors, 2 members and 2 creditors constitute a quorum and, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return mentioned in sub-section (3), lodge a return (with account attached) stating that the meeting was duly convened and that no quorum was present and, upon such a return being lodged, the provisions of that sub-section as to the lodging of the return shall be deemed to have been complied with.

(5) Subject to sub-section (6), on the expiration of the period of 3 months after the lodging of the return with the Commission the company is dissolved.

(6) On the application of the liquidator or of any other party who appears to the Court to be interested, the Court may, before the expiration of the period of 3 months referred to in sub-section (5), by order, declare that sub-section (5) is not to apply in relation to the company and specify the date on which the company is to be dissolved and, where the Court makes such an order, the company is dissolved on the date specified in the order.

(7) The person on whose application an order of the Court under this section is made shall, within 14 days after the making of the order, lodge with the Commission an office copy of the order and, if he fails so to do, he is guilty of an offence.

Arrangement,
when binding on
creditors.

412. (1) An arrangement entered into between a company about to be or in the course of being wound up and its creditors is, subject to sub-section (4)—

(a) binding on the company if sanctioned by a special resolution;

and

(b) binding on the creditors if a resolution in favour of the arrangement is passed at a meeting of creditors by a majority of the creditors present and voting, either in person or by proxy, being a majority whose debts against the company amount in the aggregate to not less than 75% of the total amount of the debts of the creditors of the company present and voting, either in person or by proxy.

(2) A creditor shall be accounted a creditor for value for such sum as upon an account fairly stated, after allowing the value of security or liens held by him and the amount of any debt or set-off owing by him to the company, appears to be the balance due to him.

(3) A dispute with regard to the value of any such security or lien or the amount of any such debt or set-off may be settled by the Court on the application of the company, the liquidator or the creditor.

(4) A creditor or contributory may, within 3 weeks after the completion of the arrangement, appeal to the Court in respect of the arrangement, and the Court may confirm, set aside or modify the arrangement and make such further order as it thinks just.

Application to
Court to have
questions
determined or
powers exercised.

413. (1) The liquidator, or any contributory or creditor, may apply to the Court—

(a) to determine any question arising in the winding up of a company;
or

(b) to exercise all or any of the powers that the Court might exercise if the company were being wound up by the Court.

(2) The Court, if satisfied that the determination of the question or the exercise of power will be just and beneficial, may accede wholly or partially to any such application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

414. All proper costs, charges and expenses of and incidental to the winding up (including the remuneration of the liquidator) are payable out of the property of the company in priority to all other claims. Costs.

DIVISION 4—PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP DIVISION 4
Subdivision A—General

415. In sections 416, 417 and 419 to 423 (inclusive), unless the contrary intention appears, “liquidator” includes a provisional liquidator. Interpretation.

416. A liquidator shall keep proper books in which he shall cause to be made entries or minutes of proceedings at meetings and of such other matters as are prescribed, and any creditor or contributory may, unless the Court otherwise orders, personally or by his agent inspect them. Books to be kept by liquidator.

417. (1) Subject to this section, a person shall not consent to be appointed, and shall not act, as liquidator of a company unless he is— Disqualification of liquidators.

(a) a registered liquidator;

or

(b) registered as a liquidator of that company under sub-section 20 (3).

(2) Subject to this section, a person shall not, except with the leave of the Court, seek to be appointed, or act, as liquidator of a company—

(a) if the person, or a corporation in which the person is a substantial shareholder for the purposes of Division 4 of Part IV or the provisions of the law of a participating State or participating Territory that correspond with that Division, is indebted in an amount exceeding \$5,000 to the company or to a related corporation;

(b) if he is, otherwise than in his capacity as liquidator, a creditor of the company or of a related corporation in an amount exceeding \$5,000;

or

(c) if—

(i) he is an officer of the company (otherwise than by reason of being a liquidator of the company or of a related corporation);

- (ia) he is an officer of any corporation that is a mortgagee of property of the company;
 - (ii) he is an auditor of the company;
 - (iii) he is a partner or employee of an auditor of the company;
 - (iv) he is a partner, employer or employee of an officer of the company;
- or
- (v) he is a partner or employee of an employee of an officer of the company.

(3) The reference in paragraph (2) (a) to indebtedness to a corporation does not, in relation to indebtedness of a natural person, include a reference to indebtedness of that person to a corporation that is a prescribed corporation for the purposes of Division 4 of Part VI where—

- (a) the indebtedness arose as a result of a loan made to that person by the corporation in the ordinary course of its ordinary business;

and

- (b) the amount of that loan was used by that person to pay the whole or part of the purchase price of premises that are used by that person as his principal place of residence.

(4) Sub-section (1) and paragraph (2) (c) do not apply to a members' voluntary winding up of a proprietary company that is an exempt proprietary company or is a subsidiary of a public company.

(5) Paragraph (2) (c) does not apply to a creditors' voluntary winding up if, by a resolution carried by a majority of the creditors in number and value present and voting, either in person or by proxy, at a meeting of which 7 days' notice has been given to every creditor stating the purpose of the meeting, it is determined that that paragraph shall not so apply.

(6) For the purposes of sub-section (2), a person shall be deemed to be an officer or auditor of a company if—

- (a) he is an officer or auditor of a related corporation;

or

- (b) except where the Commission, if it thinks fit in the circumstances of the case, directs that this paragraph shall not apply in relation to him—he has, at any time within the immediately preceding period of 2 years, been an officer, auditor or promoter of the company or of a related corporation.

(6A) Nothing in paragraph (1) (a) or sub-section (8) applies to any corporation authorized by any Act or any law of the State to act as liquidator or, as the case may be, official liquidator of a company.

(7) A person shall not consent to be appointed, and shall not act, as liquidator of a company if he is an insolvent under administration.

(8) A person shall not consent to be appointed, and shall not act, as liquidator of a company that is being wound up by order of the Court unless he is an official liquidator.

(9) A person shall not be appointed as liquidator of a company unless he has, before his appointment, consented in writing to act as liquidator of the company.

Penalty: \$1, 000 or imprisonment for 3 months, or both.

418. (1) If it appears to the liquidator of a company, in the course of a winding up of the company, that—

Reports by
liquidator.

- (a) a past or present officer, or a member or contributory, of the company may have been guilty of an offence under any law of the Commonwealth or of a State or Territory in relation to the company;
- (b) a person who has taken part in the formation, promotion, administration, management or winding up of the company—
 - (i) may have misapplied or retained, or may have become liable or accountable for, any money or property of the company;
 - or
 - (ii) may have been guilty of any negligence, default, breach of duty or breach of trust in relation to the company;
- or
- (c) the company may be unable to pay its unsecured creditors more than 50 cents in the dollar,

the liquidator shall—

- (d) forthwith report the matter to the Commission and state in the report whether he proposes to make an application for an examination or order under section 541;

and

- (e) furnish the Commission with such information, and give to it such access to and facilities for inspecting and taking copies of any documents, as the Commission requires.

(2) The liquidator may also, if he thinks fit, lodge with the Commission further reports specifying any other matter that, in his opinion, it is desirable to bring to the notice of the Commission.

(3) If it appears to the Court, in the course of a winding up of a company, that a past or present officer, or a contributory or member, of the company or a person who has taken part in the formation, promotion, administration, management or winding up of the company, has been guilty of an offence in relation to the company and that the liquidator has not made a report to the Commission with respect to the matter, the Court may, on the application of a person interested in the winding up or of its own motion, direct the liquidator to make such a report.

419. (1) A liquidator is not, in the absence of malice on his part, liable to any action for defamation at the suit of any person in respect of any statement that he makes in the course of his duties as liquidator, whether the statement is made orally or in writing.

Liquidators to
enjoy qualified
privilege in
certain
circumstances.

(2) This section does not limit or affect any other right, privilege or immunity that a liquidator or other person has as defendant in an action for defamation.

420. (1) If—

- (a) it appears to the Court or to the Commission that a liquidator has not faithfully performed or is not faithfully performing his

Supervision of
liquidators.

duties or has not observed or is not observing any of the prescribed requirements or the requirements of the Court;

or

- (b) a complaint is made to the Court or to the Commission by any person with respect to the conduct of a liquidator in connection with the performance of his duties,

the Court or the Commission, as the case may be, may inquire into the matter and, where the Court or the Commission so inquires, the Court may take such action as it thinks fit.

(2) The Commission may report to the Court any matter that in its opinion is a misfeasance, neglect or omission on the part of the liquidator and the Court may order the liquidator to make good any loss that the estate of the company has sustained thereby and may make such other order or orders as it thinks fit.

(3) The Court may at any time require a liquidator to answer any inquiry in relation to the winding up and may examine him or any other person on oath or affirmation concerning the winding up and may direct an investigation to be made of the books of the liquidator.

Notice of
appointment and
address of
liquidator.

421. (1) A liquidator shall, within 14 days after his appointment, lodge with the Commission notice in the prescribed form of his appointment and of the address of his office and, in the event of any change in the situation of his office, shall, within 14 days after the change, lodge with the Commission notice in the prescribed form of the change.

(2) A liquidator shall, within 14 days after his resignation or removal from office, lodge with the Commission notice of the resignation or removal in the prescribed form.

Liquidator's
accounts.

422. (1) A liquidator shall, within one month after the expiration of the period of 6 months from the date of his appointment and of every subsequent period of 6 months during which he acts as liquidator and within one month after he ceases to act as liquidator, lodge with the Commission—

- (a) an account in the prescribed form and verified by a statement in writing showing—

- (i) his receipts and his payments during each such period or, where he ceases to act as liquidator, during the period from the end of the period to which the last preceding account related or from the date of his appointment, as the case requires, up to the date of his so ceasing to act;

and

- (ii) in the case of the second account lodged under this subsection and all subsequent accounts—the aggregate amount of receipts and payments during all preceding periods since his appointment;

and

- (b) in the case of a liquidator other than a provisional liquidator—a statement in the prescribed form relating to the position in the winding up, verified by a statement in writing.

(2) The Commission may cause the account and, where a statement of the position in the winding up has been lodged, that statement to be audited by a registered company auditor, who shall prepare a report on the account and the statement (if any).

(3) For the purposes of the audit under sub-section (2) the liquidator shall furnish the auditor with such books and information as the auditor requires.

(4) Where the Commission causes an account, or an account and a statement, to be audited under sub-section (2)—

(a) the Commission shall furnish to the liquidator a copy of the report prepared by the auditor;

and

(b) sub-section 30 (2) applies in relation to the report prepared by the auditor as if it were a document required to be lodged with the Commission.

(5) The liquidator shall give notice that the account has been made up to every creditor and contributory when next forwarding any report, notice of meeting, notice of call or dividend.

(6) The costs of an audit under this section shall be fixed by the Commission and form part of the expenses of winding up.

423. (1) If any liquidator who has made any default in lodging or making any application, return, account or other document, or in giving any notice that he is by law required to lodge, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the Court may, on the application of any contributory or creditor of the company or the Commission, make an order directing the liquidator to make good the default within such time as is specified in the order.

Liquidator to
make good
defaults.

(2) Any order made under sub-section (1) may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in sub-section (1) prejudices the operation of any law imposing penalties on a liquidator in respect of any such default.

424. (1) Where a corporation is being wound up, in every business letter, statement of account, invoice, order for goods, order for services, official notice, publication, bill of exchange, promissory note, cheque or other negotiable instrument, indorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument, receipt and letter of credit of, or purporting to be issued or signed by or on behalf of, the corporation, there shall be set out after the name of the corporation where it first appears the words "in liquidation".

Notification that
a corporation is
in liquidation.

(2) If default is made in complying with this section, the corporation and any officer of the corporation or liquidator who is in default are each guilty of an offence.

Penalty: \$1,000.

425. (1) Where a company is being wound up, all books of the company and of the liquidator that are relevant to affairs of the company at or subsequent to the commencement of the winding up of the company are, as between the contributories of the company, *prima facie* evidence of the truth of all matters purporting to be recorded in those books.

(2) If a company has been wound up, the liquidator shall retain the books referred to in sub-section (1) for a period of 5 years from the date of dissolution of the company and, subject to section 262A of the *Income Tax Assessment Act 1936* of the Commonwealth as amended and in force for the time being, may, at the expiration of that period, destroy them.

(3) Notwithstanding sub-section (2) but subject to sub-section (4), when a company has been wound up, the books referred to in sub-section (1) may be destroyed within a period of 5 years after the dissolution of the company—

(a) in the case of a winding up by the Court—in accordance with the directions of the Court given pursuant to an application of which not less than 14 days notice has been given to the Commission;

(b) in the case of a members' voluntary winding up—as the company by resolution directs;

and

(c) in the case of a creditors' voluntary winding up—as the committee of inspection directs, or, if there is no such committee, as the creditors of the company direct.

(4) The liquidator is not entitled to destroy books as mentioned in paragraph (3) (b) or (c) unless the Commission consents to the destruction of those books.

426. (1) Whenever the cash balance standing to the credit of a company that is in the course of being wound up is in excess of the amount that, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, is required for the time being to answer demands in respect of the property of the company, the liquidator, if so directed in writing by the committee of inspection, or, if there is no committee of inspection, the liquidator himself, may, unless the Court on application by any creditor thinks fit to order otherwise and so orders, invest the sum or any part of the sum—

(a) in any manner in which trustees are for the time being authorized by law to invest trust funds;

(b) on deposit with a corporation that is declared, pursuant to paragraph 97 (7) (b), to be an authorized dealer in the short term money market;

or

(c) on deposit at interest with any bank,

and any interest received in respect of that money so invested forms part of the property of the company.

(2) Whenever any part of the money so invested is, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, required to answer any demands in respect of the property of the company, the committee of inspection may direct, or, if there is no

committee of inspection, the liquidator may arrange for, the sale or realization of such part of the securities as is necessary.

427. (1) Where a liquidator of a company has in his hands or under his control—

(a) any amount being a dividend that has or other moneys that have remained unclaimed for more than 6 months after the date when the dividend or other moneys became payable;

or

(b) after making a final distribution, any unclaimed or undistributed amount of moneys arising from the property of the company,

he shall forthwith pay those moneys to the Treasurer of South Australia.

(2) The Court may at any time on the application of the Commission—

(a) order a liquidator of a company to submit to it an account, verified by affidavit, of any unclaimed or undistributed funds, dividends or other moneys in his hands or under his control;

(b) direct an audit of accounts submitted to it in accordance with paragraph (a);

and

(c) direct a liquidator of a company to pay any moneys referred to in paragraph (a) to the Treasurer of South Australia.

(3) Where a liquidator of a company pays moneys to the Treasurer of South Australia pursuant to sub-section (1) or to an order of the Court made under paragraph (2) (c), the liquidator is entitled to a receipt for the moneys so paid and the giving of that receipt discharges the liquidator from any liability in respect of those moneys.

(4) For the purposes of this section the Court may exercise all the powers conferred by this Code with respect to the discovery and realization of the property of a company and the provisions of this Code with respect to the exercise of those powers apply, with such adaptations as are prescribed, to proceedings under this section.

(5) The provisions of this section do not, except as expressly declared in this Code, deprive a person of any other right or remedy to which he is entitled against the liquidator or another person.

(6) Where, at the expiration of a period of 6 years after the date on which unclaimed moneys were paid to the credit of the Companies Liquidation Account, those moneys have not been paid out of the Account in accordance with this section, those moneys shall be paid to the Consolidated Account.

(7) Where a person claims to be entitled to any moneys paid to the credit of the Companies Liquidation Account, the Treasurer of South Australia shall, if he is satisfied that the person is entitled to that money, direct payment of that money to be made to him out of the Companies Liquidation Account or, if the money has been paid to the Consolidated Account in accordance with sub-section (6), direct payment to the person of an equivalent

Unclaimed
property to be
paid to Treasurer
of South
Australia.

amount, which shall be paid out of moneys appropriated by the Parliament for the purpose.

(8) A person who is dissatisfied with the decision of the Treasurer of South Australia in respect of a claim made by the person in accordance with sub-section (7) may appeal to the Court and the Court may confirm, disallow or vary the decision of the Treasurer of South Australia.

(9) Where a person claims to be entitled to moneys that have been paid to another person in accordance with this section, the Treasurer of South Australia is not under any liability to that first-mentioned person in respect of those moneys, but, if the first-mentioned person is entitled to those moneys, he may recover those moneys from the other person.

(10) Where a person claims to be entitled to moneys, being moneys an amount equivalent to which has been paid to another person in accordance with sub-section (7) out of moneys appropriated by the Parliament for the purpose, the Treasurer of South Australia is not under any liability to that first-mentioned person in respect of those moneys, but, if the first-mentioned person is entitled to those moneys, he may recover that equivalent amount from the other person.

Companies
Liquidation
Account.

428. (1) There shall be a Trust Account to be known as the Companies Liquidation Account.

(2) Moneys deposited with the Treasurer of South Australia under section 427 shall be paid to the credit of the Companies Liquidation Account.

(3) Moneys standing to the credit of the Companies Liquidation Account may be expended for the purpose of making payments in accordance with section 427.

(4) * * * * *

Expenses of
winding up where
property
insufficient.

429. (1) Subject to this section, a liquidator is not liable to incur any expense in relation to the winding up of a company unless there is sufficient available property.

(2) The Court or the Commission may, on the application of a creditor or a contributory, direct a liquidator to incur a particular expense on condition that the creditor or contributory indemnifies the liquidator in respect of the recovery of the amount expended and, if the Court or the Commission so directs, gives such security to secure the amount of the indemnity as the Court or the Commission thinks reasonable.

(3) Nothing in this section shall be taken to relieve a liquidator of any obligation to make a report under section 418 or to lodge a document with the Commission under any provision of this Code by reason only that he would be required to incur expense in order to perform that obligation.

Resolutions
passed at
adjourned
meetings of
creditors and
contributories.

430. Subject to sub-section 399 (4), where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

Meetings to
ascertain wishes
of creditors or
contributories.

431. (1) The Court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence and may, if it thinks fit for the purposes of ascertaining those wishes, direct meetings of the creditors or contributories to be convened, held and conducted in such manner as the

Court directs, and may appoint a person to act as chairman of any such meeting and to report the result of the meeting to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Code or the articles.

Subdivision B—Committees of Inspection

432. (1) The liquidator of a company shall, if so requested by a creditor or contributory, convene separate meetings of the creditors and contributories for the purpose of determining—

Convening of meetings by liquidator for appointment of committee of inspection.

(a) whether a committee of inspection should be appointed;

and

(b) where a committee of inspection is to be appointed—

(i) the numbers of members to represent the creditors and the contributories, respectively;

and

(ii) the persons who are to be members of the committee representing creditors and contributories, respectively.

(2) If there is a difference between the determination of the meeting of creditors and the determination of the meeting of contributories, the Court may resolve the difference and make such order as it thinks proper.

(3) A person is not eligible to be appointed a member of a committee of inspection unless he is—

(a) in the case of an appointment by creditors of the company—

(i) a creditor of the company;

(ii) the attorney of a creditor of the company by virtue of a general power of attorney given by the creditor;

or

(iii) a person authorized in writing by a creditor of the company to be a member of the committee of inspection;

or

(b) in the case of an appointment by the contributories of the company—

(i) a contributory of the company;

(ii) the attorney of a contributory of the company by virtue of a general power of attorney given by the contributory;

or

(iii) a person authorized in writing by a contributory of the company to be a member of the committee of inspection.

433. (1) A committee of inspection shall meet at such times and places as its members from time to time appoint.

(2) The liquidator or a member of the committee may convene a meeting of the committee.

(3) A committee may act by a majority of its members present at a meeting, but shall not act unless a majority of its members are present.

434. (1) A member of a committee may resign by notice in writing signed by him and delivered to the liquidator.

(2) If a member of a committee—

(a) becomes an insolvent under administration;

or

(b) is absent from 5 consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be,

his office becomes vacant.

(3) A member of the committee who represents creditors may be removed by a resolution at a meeting of creditors of which 7 days' notice has been given stating the object of the meeting, and a member of the committee who represents contributories may be removed by a resolution at a meeting of contributories of which such notice has been given.

(4) A meeting referred to in sub-section (3) may appoint a person to fill a vacancy caused by the removal of a member of the committee.

(5) A vacancy in the committee may be filled by the appointment of a person by a resolution at a meeting of the creditors or of the contributories, as the case may be, of which 7 days' notice has been given.

(6) A vacancy in the committee that is not filled as provided by sub-section (4) or (5) may be filled by the appointment of a person by the committee and a person so appointed represents the creditors, or the contributories, as the case may be.

(7) Notwithstanding a vacancy in the committee, the continuing members of the committee may act provided they are not less than 2 in number.

435. (1) A member of a committee of inspection shall not, while acting as such a member, except as provided by this Code or with the leave of the Court—

(a) make an arrangement for receiving, or accept, from the company or any other person, in connection with the winding up, a gift, remuneration or pecuniary or other consideration or benefit;

(b) directly or indirectly derive any profit or advantage from a transaction, sale or purchase for or on account of the company or any gift, profit or advantage from a creditor;

or

(c) directly or indirectly become the purchaser of any property of the company.

(2) A transaction entered into in contravention of sub-section (1) may be set aside by the Court on the application of a creditor or member of the company.

436. Where there is no committee of inspection, the Court may, on the application of the liquidator, do any thing and give any direction or permission that is by this Part authorized or required to be done or given by the committee.

Subdivision C—Proof and Ranking of Claims

437. In this Subdivision, “relevant date” means—

Interpretation.

(a) in the case of a company ordered to be wound up by the Court that has not previously commenced to be wound up voluntarily—the date of the winding up order;

and

(b) in any other case—the date of the commencement of the winding up.

438. (1) In every winding up, subject in the case of insolvent companies to the application in accordance with the provisions of this Code of the *Bankruptcy Act 1966*, all debts payable on a contingency and all claims against the company (present or future, certain or contingent, ascertained or sounding only in damages) are admissible to proof against the company, a just estimate being made so far as possible of the value of such debts or claims as are subject to any contingency or sound only in damages or for some other reason do not bear a certain value.

Proofs of debts.

(2) Subject to sections 204 and 441, in the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and debts provable and the valuation of annuities and future and contingent liabilities as are in force for the time being under the *Bankruptcy Act 1966*, in relation to the estates of bankrupt persons, and all persons who in any such case would be entitled to prove for and receive dividends out of the property of the company may come in under the winding up and make such claims against the company as they respectively are entitled to by virtue of this section.

439. (1) The amount of a debt of a company (including a debt that is for or includes interest) is to be computed for the purposes of the winding up as at the relevant date.

Computation of debts.

(2) Sub-section (1) does not apply to an amount required to be paid under sub-section 442 (1).

440. Except as otherwise provided by this Code, all debts proved in a winding up rank equally and, if the property of the company is insufficient to meet them in full, they shall be paid proportionately.

Debts proved to rank equally except as otherwise provided.

441. Subject to the following provisions of this Subdivision, in the winding up of a company the following debts shall be paid in priority to all other unsecured debts:

Priority payments.

(a) first, the costs, charges and expenses of the winding up, including the taxed costs of an applicant payable under section 366, the remuneration of the liquidator and the costs of any audit carried out under section 422;

- (b) if the winding up was preceded by the appointment of a provisional liquidator—second, the costs, charges and expenses properly and reasonably incurred by the provisional liquidator during the period of his appointment and the remuneration of the provisional liquidator;
- (c) where the winding up commences within 2 months after the end of a period of official management of the company—third, the costs, charges and expenses of and incidental to the official management properly and reasonably incurred by the official manager during the period of official management, including the remuneration of the official manager, of any deputy official manager and of any auditor appointed in accordance with Division 3 of Part VI;
- (d) where the winding up commences within 2 months after the end of a period of official management of the company—fourth, debts of the company properly and reasonably incurred by the official manager in the conduct by him of the business of the company during the period of official management;
- (e) fifth, wages in respect of services rendered to the company by employees before the relevant date, but not exceeding \$2,000 in respect of any one employee;
- (f) sixth, all amounts due in respect of injury compensation, being compensation the liability for which arose before the relevant date;
- (g) seventh, all amounts due on or before the relevant date to or in respect of an employee of the company (whether remunerated by salary, wages, commission or otherwise), in respect of leave of absence, being amounts due by virtue of an industrial instrument;
- (h) eighth—
 - (i) all amounts of rates, being rates that are, or are in the nature of, municipal or other local rates (other than rates imposed by an Act of the Commonwealth or a law of the Australian Capital Territory) that were due and payable at the relevant date and the liability for which accrued within the 12 months that next preceded that date;
 - (ii) all amounts of income tax that were assessed under any Act or Act of any other State or law of a Territory other than the Australian Capital Territory before the relevant date, not exceeding in the whole one year's assessment;
 - (iii) all amounts of land tax that were assessed under any Act or Act of any other State or law of a Territory other than the Australian Capital Territory before the relevant date, not exceeding in the whole one year's assessment;
 - (iv) all amounts of pay-roll tax (other than pay-roll tax imposed by an Act of the Commonwealth) that were due and payable at the relevant date;

or

(v) all amounts that were due and payable, at the relevant date—

(A) by way of repayment of any advance made to the company;

or

(B) in respect of goods supplied or services rendered to the company,

under any Act or Act of any other State or law of a Territory other than the Australian Capital Territory relating to or providing for the improvement, development or settlement of land or the aid, development or encouragement of mining;

and

(j) ninth, any amount that, pursuant to an order under section 309 of this Code or under section 33 of the *Securities Industry (South Australia) Code*, the company was at the relevant date under an obligation to pay.

442. (1) Where, after the relevant date, an order is made under section 309 of this Code or under section 33 of the *Securities Industry (South Australia) Code* against a company that is being wound up, the amount that, pursuant to the order, the company is liable to pay is admissible to proof against the company and—

Orders under section 309 or under section 33 of Securities Industry (South Australia) Code.

(a) where all the debts that, under section 441, have priority over all unsecured debts have not been paid at the time when the amount is admitted to proof—shall be paid in priority to all other unsecured debts except those having priority under section 441;

and

(b) where all the debts that, under section 441, have priority over all other unsecured debts have been paid at the time when the amount is admitted to proof—shall be paid in priority to all other unsecured debts that, at that time, have not been paid.

(2) Where a copy of an order referred to in sub-section (1) against a company is served on the liquidator of the company and the liquidator has not admitted to proof the amount that, pursuant to the order, the company is liable to pay, the liquidator—

(a) shall serve notice on the Commission that he has not admitted that amount to proof;

and

(b) shall not make a payment or further payment out of the property of the company (other than payments of debts that, under section 441, have priority over all other unsecured debts) until the expiration of 7 days after service of that notice.

443. (1) Where a contract of employment with a company being wound up was subsisting immediately before the relevant date, the employee under the contract is, whether or not he is a person referred to in sub-section (2), entitled to payment under section 441 as if his services with the company had been terminated by the company on the relevant date.

(2) Where, for the purposes of the winding up of a company, a liquidator employs a person whose services with the company had been terminated by reason of the winding up, that person shall, for the purpose of calculating any entitlement to payment for leave of absence, be deemed, while the liquidator employs him for those purposes, to be employed by the company.

(3) Subject to sub-section (4), where, after the relevant date, an amount in respect of long service leave or extended leave becomes due to a person referred to in sub-section (2) in respect of the employment so referred to, the amount is a cost of the winding up.

(4) Where, at the relevant date, the length of qualifying service of a person employed by a company that is being wound up is insufficient to entitle him to any amount in respect of long service leave or extended leave but, by the operation of sub-section (2) he becomes entitled to such an amount after that date, that amount—

(a) is a cost of the winding up to the extent of an amount that bears to that amount the same proportion as the length of his qualifying service after that relevant date bears to the total length of his qualifying service;

and

(b) shall, to the extent of the balance of that amount, be deemed to be an amount referred to in paragraph 441 (g).

Debts of a class
to rank equally.

444. After provision is made for the costs, charges and expenses referred to in paragraph 441 (a), the debts of a class referred to in each of the remaining paragraphs of section 441 rank equally between themselves and shall be paid in full, unless the property of the company is insufficient to meet them, in which case they shall be paid proportionately.

Advances in
respect of wages
and leave of
absence.

445. Where a payment has been made by a company on account of wages, or in respect of leave of absence under an industrial instrument, being a payment made out of money advanced by a person for the purpose of making the payment, the person by whom the money was advanced has, in the winding up of the company, the same right of priority of payment in respect of the money so advanced and paid, but not exceeding the amount by which the sum in respect of which the person who received the payment would have been entitled to priority in the winding up has been diminished by reason of the payment, as the person who received the payment would have had if the payment had not been made.

Priority of
employees' claims
over floating
charges.

446. So far as the property of a company available for payment of creditors other than secured creditors is insufficient to meet payment of—

(a) any debt referred to in paragraphs 441 (e) and (g);

(b) any amount that pursuant to sub-section 443 (3) or (4) is a cost of the winding up, being an amount that, if it had been payable on or before the relevant date, would have been a debt referred to in paragraph 441 (e) or (g);

and

- (c) any amount in respect of which a right of priority is given by section 445,

payment of that debt or amount shall be made in priority over the claims of a chargee in relation to a floating charge created by the company and may be made accordingly out of any property comprised in or subject to that charge.

447. (1) Where a company is, under a contract of insurance entered into before the relevant date, insured against liability to third parties, then, if such a liability is incurred by the company (whether before or after the relevant date) and an amount in respect of that liability has been or is received by the company or the liquidator from the insurer, the amount shall, after deducting any expenses of or incidental to getting in that amount, be paid by the liquidator to the third party in respect of whom the liability was incurred to the extent necessary to discharge that liability, or any part of that liability remaining undischarged, in priority to all payments in respect of the debts mentioned in section 441.

Insurance against liabilities to third parties.

(2) If the liability of the insurer to the company is less than the liability of the company to the third party, sub-section (1) does not limit the rights of the third party in respect of the balance.

(3) This section has effect notwithstanding any agreement to the contrary.

448. (1) Notwithstanding anything in section 441, paragraph 441 (f) does not apply in relation to the winding up of a company in any case where—

Provisions relating to injury compensation.

- (a) the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company and the right to the injury compensation has, on the reconstruction or amalgamation, been preserved to the person entitled to it;

or

- (b) the company has entered into a contract with an insurer in respect of any liability for injury compensation.

(2) Where injury compensation is payable by way of periodical payments, the amount of that compensation shall, for the purposes of paragraph 441 (f), be taken to be the lump sum for which those periodical payments could, if redeemable, be redeemed under the law under which the periodical payments are made.

449. Where a company has given security for the payment or repayment of any amount to which paragraph 441 (h) relates, that paragraph applies only in relation to the balance of any such amount remaining due after deducting from the first-mentioned amount the net amount realized from the security.

Priority where security given for payment of taxes.

450. Where in any winding up—

- (a) property has been recovered under an indemnity for costs of litigation given by certain creditors, or has been protected or

Power of Court to make orders in favour of certain creditors.

preserved by the payment of moneys or the giving of indemnity by creditors;

or

- (b) expenses in relation to which a creditor has indemnified a liquidator have been recovered,

the Court may make such orders, as it deems just with respect to the distribution of that property and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risk assumed by them.

Subdivision D—Effect on other Transactions

Undue preference.

451. (1) A settlement, a conveyance or transfer of property, a charge on property, a payment made, or an obligation incurred, by a company that, if it had been made or incurred by a natural person, would, in the event of his becoming a bankrupt, be void as against the trustee in the bankruptcy, is, in the event of the company being wound up, void as against the liquidator.

(2) For the purposes of sub-section (1), the date that corresponds with the date of presentation of the petition in bankruptcy in the case of a natural person is—

(a) in the case of a winding up by the Court—

- (i) where, before the filing of the application for the winding up, a resolution has been passed by the company for winding up the company voluntarily—the date upon which the resolution to wind up the company voluntarily is passed;
- (ii) where the company is under official management at the time of the filing of the application for the winding up or had been under official management at any time within the period of 6 months before the filing of the application—the date of the commencement of the official management;

or

- (iii) in any other case—the date of the filing of the application for the winding up;

and

(b) in the case of a voluntary winding up—

- (i) where the company is under official management at the time when the resolution to wind up the company voluntarily is passed or had been under official management at any time within the period of 6 months before the passing of that resolution—the date of the commencement of the official management;

or

- (ii) in any other case—the date upon which the resolution to wind up the company voluntarily is passed.

(3) For the purposes of this section, the date that corresponds with the date on which a person becomes a bankrupt is the date on which the winding up of the company commences or is deemed to have commenced.

(4) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors is void.

452. A floating charge on the undertaking or property of the company created within 6 months before the commencement of the winding up is, unless it is proved that the company immediately after the creation of the charge was solvent, invalid except to the amount of any moneys paid to the company at the time of or subsequently to the creation of and in consideration for the charge together with interest on that amount at the rate of 8 per cent per annum or at such other rate as is prescribed.

Effect of floating charge.

453. (1) Where any property, business or undertaking has been acquired by a company for a cash consideration within a period of 4 years before the commencement of the winding up of the company—

Liquidator's right to recover in respect of certain transactions.

- (a) from a promoter of the company or a spouse of such a promoter, or from a relative of such a promoter or spouse;
- (b) from a person who was, at the time of the acquisition, a director of the company, from a spouse of such a director, or from a relative of such a person or spouse;
- (c) from a corporation that was, at the time of the acquisition, related to the company;

or

- (d) from a person who was, at the time of the acquisition, a director of a corporation that was related to the company, from a spouse of such a person, or from a relative of such a person or spouse,

the liquidator may recover from the person or corporation from which the property, business or undertaking was acquired any amount by which the cash consideration for the acquisition exceeded the value of the property, business or undertaking at the time of its acquisition.

(2) Where any property, business or undertaking has been sold by a company for a cash consideration within a period of 4 years before the commencement of the winding up of the company—

- (a) to a promoter of the company or a spouse of such a promoter, or to a relative of such a promoter or spouse;
- (b) to a person who was, at the time of the sale, a director of the company, to a spouse of such a director, or to a relative of such a person or spouse;
- (c) to a corporation that was, at the time of the sale, related to the company;

or

- (d) to a person who was, at the time of the sale, a director of a corporation that was related to the company, to a spouse of such a director, or to a relative of such a person or spouse,

the liquidator may recover from the person or corporation to which the property, business or undertaking was sold any amount by which the value

of the property, business or undertaking at the time of the sale exceeded the cash consideration.

(3) For the purposes of this section, the value of the property, business or undertaking includes the value of any goodwill, profits or gain that might have been made from the property, business or undertaking.

(4) In this section, "cash consideration" means any consideration payable otherwise than by the issue of shares in the company.

(5) Where—

(a) a disposition of property is made by a company within the period of 6 months before the commencement of the winding up of the company;

(b) the disposition of property confers a preference upon a creditor of the company;

and

(c) the disposition of property has the effect of discharging an officer of the company from a liability (whether under a guarantee or otherwise and whether contingent or otherwise),

the liquidator—

(d) in a case to which paragraph (e) does not apply—may recover from that officer an amount equal to the value of the relevant property, as the case may be;

or

(e) where the liquidator has recovered from the creditor in respect of the disposition of the relevant property—

(i) an amount equal to part of the value of the relevant property;

or

(ii) part of the relevant property,

may recover from that officer an amount equal to the amount by which the value of the relevant property exceeds the sum of any amounts recovered as mentioned in sub-paragraph (i) and the amount of the value of any property recovered as mentioned in sub-paragraph (ii).

(6) Where—

(a) a liquidator recovers an amount of money from an officer of a company in respect of a disposition of property to a creditor as mentioned in sub-section (5);

and

(b) the liquidator subsequently recovers from that creditor an amount equal to the whole or part of the value of the property disposed of,

the officer may recover from the liquidator an amount equal to the amount so recovered or the value of the property so recovered.

Disclaimer of
onerous property.

454. (1) Subject to this section, where part of the property of a company consists of—

(a) land burdened with onerous covenants;

(b) shares in corporations;

(c) property that is unsaleable or is not readily saleable;

or

(d) unprofitable contracts,

the liquidator of the company may, on behalf of the company, subject to sub-section (2), notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised an act of ownership in relation to it, by writing signed by him, disclaim the property.

(2) The power of the liquidator under sub-section (1) may only be exercised within 12 months after the commencement of the winding up or such further period as is allowed by the Court but, where the property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power may be exercised at any time within 12 months after the property has come to his knowledge or such further period as is allowed by the Court.

(3) The disclaimer operates to terminate, as from the date of the disclaimer, the rights, interests and liabilities of the company and the property of the company in or in respect of the property disclaimed but does not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(4) The Court may, before or on granting leave to disclaim, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, as the Court thinks just and may make such other order in the matter as the Court thinks just.

(5) Where a disclaimer in respect of property is made, the liquidator shall, as soon as practicable, give notice of the disclaimer—

(a) to every person who, to the knowledge of the liquidator, has an interest in the property;

and

(b) in the case of property the transfer or transmission of which is required by a law to be registered—to the registrar or other person who has the function under that law of registering the transfer or transmission of that property.

(6) A liquidator is not entitled to disclaim a lease without the leave of the Court unless—

(a) he has, in accordance with the regulations, given to the lessor and, if the company has sublet the whole or part of the leased property or has charged the lease, to each sublessee or chargee 28 days' notice in writing of his intention to disclaim the lease;

and

(b) no person to whom the liquidator has given such a notice has, within 28 days after it was given to him, required the liquidator, in accordance with the regulations, to apply to the Court for leave to disclaim the lease.

(7) The Court may, in relation to an application for leave to disclaim a lease under this section, make such orders with respect to fixtures, improvements and other matters arising out of the lease, as the Court thinks proper.

(8) Where—

(a) an application in writing has been made to the liquidator by a person interested in property requiring him to decide whether he will disclaim the property;

and

(b) the liquidator has, for a period of 28 days after the receipt of the application, or for such extended period as is allowed by the Court, declined or neglected to disclaim the property,

the liquidator is not entitled to disclaim the property under this section and, in the case of a contract, he shall be deemed to have adopted it.

(9) The Court may, on the application of a person who is, as against the company, entitled to the benefit or subject to the burden of a contract made with the company, make an order—

(a) discharging the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as the Court thinks proper;

or

(b) rescinding the contract on such terms as to restitution by or to either party, or otherwise, as the Court thinks proper.

(10) Amounts payable pursuant to an order under sub-section (9) may be proved as a debt in the winding up.

(11) The Court may, on application by a person either claiming an interest in, or being under a liability not discharged by this Code in respect of, disclaimed property, and after hearing such persons as it thinks proper, make an order for the vesting of the property in, or delivery of the property to, a person entitled to it or a person in whom, or to whom, it seems to the Court to be proper that it should be vested or delivered, or a trustee for that person.

(12) A person aggrieved by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the extent of any loss he has suffered by reason of the disclaimer and may prove the loss as a debt in the winding up.

(13) For the purpose of determining whether property of a company is of a kind to which sub-section (1) applies, the liquidator may, by notice served on a person claiming to have an interest in the property, require the person to furnish to the liquidator within such period, not being less than 14 days, as is specified in the notice, a statement of the interest claimed by him and the person shall comply with the requirement.

455. (1) Where—

(a) a creditor has issued execution against property of a company, or instituted proceedings to attach a debt due to a company or to enforce a charge or a charging order against property of a company, within 6 months immediately before the commencement of the winding up;

and

(b) the company commences to be wound up,

the creditor shall pay to the liquidator an amount equal to the amount (if any) received by the creditor as a result of the execution, attachment or enforcement of the charge or the charging order, less an amount in respect of the costs of the execution, attachment or enforcement of the charge or the charging order, being an amount agreed between the creditor and the liquidator or, if no agreement is reached, an amount equal to the taxed costs of that execution, attachment or enforcement.

(2) Where the creditor has paid to the liquidator an amount in accordance with sub-section (1), he may prove in the winding up for his debt as an unsecured creditor as if the execution or attachment or the enforcement of the charge or the charging order, as the case may be, had not taken place.

(3) Subject to sub-sections (4) and (5), where a creditor of a company receives—

(a) notice in writing of an application to the Court for the winding up of the company;

or

(b) notice in writing of the convening of a meeting of the company to consider a resolution that the company be wound up voluntarily,

it is not competent for the creditor to take any action, or any further action, as the case may be, to attach a debt due to the company or to enforce a charge or a charging order against property of the company.

(4) Sub-section (3) does not affect the right of a creditor to take action or further action if—

(a) in a case to which paragraph (3) (a) applies—the application has been withdrawn or dismissed;

or

(b) in a case to which paragraph (3) (b) applies—the meeting of the company has refused to pass the resolution.

(5) Sub-section (3) does not prevent a creditor from performing a binding contract for the sale of property entered into before he received a notice referred to in that sub-section.

(6) Notwithstanding anything contained in this subdivision, a person who purchases property in good faith—

(a) under a sale by the sheriff in consequence of the issue of execution against property of a company that, after the sale, commences to be wound up;

or

(b) under a sale in consequence of the enforcement by a creditor of a charge or a charging order against property of a company that, after the sale, commences to be wound up,

acquires a good title to it as against the liquidator or the company.

(7) In this section—

“charge” means a charge created by a law upon registration of a judgment in a registry;

“charging order” means a charging order made by a court in respect of a judgment.

PART XII
DIVISION 4Duties of sheriff
after receiving
notice of
application.

456. (1) Subject to this section, where a sheriff—

(a) receives notice in writing of an application to the Court for the winding up of a company;

or

(b) receives notice in writing of the convening of a meeting of a company to consider a resolution that the company be wound up voluntarily,

it is not competent for the sheriff to—

(c) take any action to sell property of the company pursuant to any process of execution issued by or on behalf of a creditor;

or

(d) pay to the creditor by whom or on whose behalf the process of execution was issued or to any person on his behalf the proceeds of the sale of property of the company that has been sold pursuant to such a process or any moneys seized, or paid to avoid seizure or sale of property of the company, under such a process.

(2) Sub-section (1) does not affect the power of the sheriff to take any action or make any payment if—

(a) in a case to which paragraph (1) (a) applies—the application has been withdrawn or dismissed;

or

(b) in a case to which paragraph (1) (b) applies—the meeting of the company has refused to pass the resolution.

(3) Subject to this section, where the registrar or other appropriate officer of a court to which proceeds of the sale of property of a company or other moneys have been paid by a sheriff pursuant to a process of execution issued by or on behalf of a creditor of the company—

(a) receives notice in writing of an application to the Court for the winding up of the company;

or

(b) receives notice in writing of the convening of a meeting of the company to consider a resolution that the company be wound up voluntarily,

any of those proceeds or moneys not paid out of court shall not be paid to the creditor or to any person on behalf of the creditor.

(4) Sub-section (3) does not prevent the making of a payment if—

(a) in a case to which paragraph (3) (a) applies—the application has been withdrawn or dismissed;

or

(b) in a case to which paragraph (3) (b) applies—the meeting of the company has refused to pass the resolution.

(5) Where a company is being wound up, the liquidator may serve notice in writing of that fact on a sheriff or the registrar or other appropriate officer of a court.

(6) Upon such a notice being so served—

(a) the sheriff shall deliver or pay to the liquidator—

(i) any property of the company in his position under a process of execution issued by or on behalf of a creditor;

and

(ii) any proceeds of the sale of property of the company or other moneys in his possession, being proceeds of the sale of property sold, whether before or after the commencement of the winding up, pursuant to such a process or moneys seized, or paid to avoid seizure or sale of property of the company, whether before or after the commencement of the winding up, under such a process;

or

(b) the registrar or other officer of the court shall pay the liquidator any proceeds of the sale of property of the company or other moneys in court, being proceeds of sale or other moneys paid into court, whether before or after the commencement of the winding up, by a sheriff pursuant to a process of execution issued by or on behalf of a creditor,

as the case requires.

(7) Where—

(a) property is, or proceeds of the sale of property or other moneys are, required by sub-section (6) to be delivered or paid to a liquidator;

or

(b) a sheriff has, pursuant to sub-section (1), refrained from taking action to sell property of a company, being land, and that company is being wound up under an order made on the application referred to in that sub-section,

the costs of the execution are a first charge on that property or on those proceeds of sale or other moneys.

(8) For the purpose of giving effect to the charge referred to in sub-section (7), the sheriff, registrar or other officer may retain, on behalf of the creditor entitled to the benefit of the charge, such amount from the proceeds of sale or other moneys referred to in that sub-section as he thinks necessary for the purpose.

(9) The Court may, if in a particular case it considers it is proper to do so—

(a) permit a sheriff to take action to sell property or make a payment that the sheriff could not, by reason of sub-section (1), otherwise validly take;

or

(b) permit the making of a payment the making of which would, by reason of sub-section (3), otherwise be prohibited.

Subdivision E—Offences

Prosecution of
delinquent
officers and
members.

457. (1) Where a report is made under section 418, the Commission may, if it thinks fit, investigate the matter but, if it appears to the Commission that the case is not one in which it ought to institute a prosecution, it shall inform the liquidator accordingly, and thereupon the liquidator may himself institute a prosecution in relation to any offence referred to in the report.

(2) Where the Commission decides to institute a prosecution against a person following a report to the Commission under section 418, the Commission may, by notice in writing given before or after the institution of the prosecution, require an officer of the company to which the matter reported to the Commission relates (not being an officer who is, or, in the opinion of the Commission, is likely to be, a defendant in the proceedings or is or has been a duly qualified legal practitioner acting for such a person) to give all assistance in connection with the prosecution or proposed prosecution that he is reasonably able to give.

(3) Where a person is required pursuant to sub-section (2) to give assistance in connection with a prosecution or proposed prosecution, the person shall not—

(a) without reasonable excuse, refuse or fail to comply with the requirement;

or

(b) in purported compliance with the requirement, furnish information or make a statement that is false or misleading in a material particular.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(4) A person is not excused from furnishing information or producing a document pursuant to a requirement made of him under sub-section (2) on the ground that the information or document might tend to incriminate him but, where the person claims before furnishing information that the information might tend to incriminate him, the information is not admissible in evidence against him in criminal proceedings other than proceedings under this section.

(5) For the purposes of sub-section (2), “officer”, in relation to a company, means an officer as defined in sub-section 5 (1) and includes—

(a) a person who has at any time been an officer as so defined;

and

(b) a person who acts, or has at any time acted, as banker, solicitor, auditor or in any other capacity for the company.

(6) The Commission may direct that the whole or any part of any costs and expenses properly incurred by the liquidator in proceedings brought by him under this section shall be defrayed out of moneys of the Commission.

(7) Subject to any direction given under sub-section (6) and to any charges on the property of the company and any debts to which priority is given by this Code, all such costs and expenses shall be payable out of that property as part of the costs of winding up.

Subdivision F—Dissolution

458. (1) Where a company has been dissolved pursuant to sub-section

Power of Court to
declare
dissolution of
company void.

382 (6) or 411 (5), the Court may at any time, on application of the liquidator of the company or of any other person who appears to the Court to be interested, make an order declaring the dissolution to have been void, and the Court may by the order give such directions and make such provisions (including directions and provisions relating to the re-transmission of property vested in the Commission under section 461) as seem just for placing the company and all other persons in the same position as nearly as may be as if the company had not been dissolved.

(2) The person on whose application the order was made shall, within 14 days after the making of the order or such further time as the Court allows, lodge with the Commission an office copy of the order.

459. (1) Where the Commission has reasonable cause to believe that a company is not carrying on business or is not in operation, it may send to the company by post a letter to that effect and stating that, if an answer showing cause to the contrary is not received within one month from the date of the letter, a notice will be published in the *Gazette* with a view to cancelling the registration of the company.

Power of
Commission to
deregister defunct
company.

(2) Unless the Commission receives an answer within one month from the date of the letter to the effect that the company is carrying on business or is in operation, it may publish in the *Gazette* and send to the company in the prescribed manner a notice that, at the expiration of 3 months from the date of that notice, the registration of the company mentioned in the notice will, unless cause is shown to the contrary, be cancelled and the company will be dissolved.

(3) If in any case where a company is being wound up the Commission has reasonable cause to believe that—

- (a) no liquidator is acting;
- (b) the affairs of the company are fully wound up and for a period of 6 months the liquidator has been in default in lodging any return required to be made by him;

or

- (c) the affairs of the company have been fully wound up under Division 2 and there is no property or the property available is not sufficient to pay the costs of obtaining an order of the Court dissolving the company,

it may publish in the *Gazette* and send to the company or the liquidator (if any) a notice to the same effect as that referred to in sub-section (2).

(4) At the expiration of the time mentioned in a notice sent by the Commission under sub-section (2) or (3), the Commission may, unless cause to the contrary is previously shown, by notice in writing published in the *Gazette*, cancel the registration of the company and, on the publication in the *Gazette* of the last-mentioned notice, the company is dissolved, but—

- (a) the liability (if any) of every officer and member of the company continues and may be enforced as if the company had not been dissolved;

and

- (b) nothing in this sub-section affects the power of the Court to wind up a company the registration of which has been cancelled.

(5) If the Commission is satisfied that the registration of a company was cancelled as the result of an error on the part of the Commission, the Commission may reinstate the registration of the company, and thereupon the company shall be deemed to have continued in existence as if its registration had not been cancelled.

(6) If a person is aggrieved by the cancellation of the registration of a company, the Court, on an application made by the person at any time within 15 years after the cancellation, may, if satisfied that the company was, at the time of the cancellation, carrying on business or in operation or otherwise satisfied that it is just that the registration of the company be reinstated, order the reinstatement of the registration of the company and, upon an office copy of the order being lodged with the Commission, the company shall be deemed to have continued in existence as if its registration had not been cancelled, and the Court may by the order give such directions and make such provisions (including directions and provisions relating to the re-transfer of property vested in the Commission under section 461) as seem just for placing the company and all other persons in the same position as nearly as may be as if the registration of the company had not been cancelled.

(7) Where the registration of a company is reinstated pursuant to subsection (5) or (6), the Commission shall cause notice of that fact to be published in the *Gazette*.

(8) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last-known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office or, if no office has been registered, to the care of some officer of the company, or, if there is no officer of the company whose name and address are known to the Commission, may be sent to each of the persons who subscribed the memorandum of the company addressed to him at the address mentioned in the memorandum.

Commission to
act as
representative of
defunct company
in certain events.

460. (1) Where, after a company has been dissolved (whether before or after the commencement of the Companies (Application of Laws) Act, 1982) it is proved to the satisfaction of the Commission—

(a) that the company, if it still existed, would be legally or equitably bound to carry out, complete or give effect to some dealing, transaction or matter;

and

(b) that, in order to carry out, complete or give effect to that dealing, transaction or matter, some purely administrative act, not being of a discretionary kind, should have been done by or on behalf of the company, or should be done by or on behalf of the company if the company still existed,

the Commission may, as representing the company or its liquidator under the provisions of this section, do that act or cause that act to be done.

(2) The Commission may execute or sign any relevant instrument or document adding a memorandum stating that it has done so pursuant to this section, and any such execution or signature has the same force, validity and effect as if the company, if it still existed, had duly executed the instrument or document.

Outstanding
property of
defunct company
to vest in
Commission.

461. (1) Where, after a company has been dissolved, there remains any outstanding property, whether within or outside the State but not including

unpaid capital, whether called or uncalled, which was vested in the company, to which the company was entitled, or over which the company had a disposing power, at the time when it was dissolved, but which was not got in, realized upon or otherwise disposed of or dealt with by the company or its liquidator, the estate and interest in the property, at law or in equity, of the company or its liquidator at the time when the company was dissolved, together with all claims, rights and remedies that the company or its liquidator then had in respect of the property vests by force of this section in the Commission.

(2) Where any claim, right or remedy of the liquidator may under this Code be made, exercised or availed of only with the approval or concurrence of the Court or some other person, the Commission may, for the purposes of this section, make, exercise or avail itself of that claim, right or remedy without such approval or concurrence.

(3) Where a company is dissolved, then, notwithstanding that the books of the company vest in the Commission by reason of sub-section (1), the person who was the last director of the company or the persons who were the last directors of the company before the company was dissolved shall retain the books of the company (other than any books of the company that any liquidator of the company is required to retain under sub-section 425 (2)) for a period of 3 years after the date on which the company was dissolved.

462. (1) Upon proof to the satisfaction of the Commission that there is vested in it by force of section 461 any estate or interest in property, whether solely or together with any other person, of a beneficial nature and not merely held in trust, the Commission may get in, sell or otherwise dispose of, or deal with, that estate or interest or any part of that estate or interest as it sees fit.

Outstanding
interests in
property, how
disposed of.

(2) The power of the Commission under sub-section (1) to sell or otherwise dispose of, or deal with, any such estate or interest may be exercised either solely or together with any other person, by public auction, public tender or private contract and in such manner, for such consideration and upon such terms and conditions as the Commission thinks fit, and includes power to rescind any contract and resell or otherwise dispose of, or deal with, that property as the Commission thinks expedient, and power to make, execute, sign and give such contracts, instruments and documents as the Commission thinks necessary.

(3) There is payable to the Treasurer of South Australia in respect of the exercise of the powers conferred upon the Commission by sub-sections (1) and (2), out of any income derived from, or the proceeds of sale or other disposition of, the estate or interest concerned, such commission as is prescribed.

(4) The Commission shall apply any moneys received by it in the exercise of any power conferred on it by this Subdivision in defraying the costs and expenses of and incidental to the exercise of that power and in making payments authorized by this Subdivision, and shall pay the remainder (if any) of the moneys to the Treasurer of South Australia.

(5) The Treasurer of South Australia shall pay all moneys paid to him under this section into the Consolidated Account.

(6) A person making a claim in respect of any money paid to the Treasurer of South Australia under sub-section (4) may apply to the Court

PART XII
DIVISION 4

for an order for payment of an amount to him and the Court, if satisfied that an amount should be paid to him, shall make an order for the payment accordingly.

(7) Upon the making of an order under sub-section (6) for payment of an amount to a person, or, where the Treasurer of South Australia is otherwise of the opinion that an amount should be paid to a person out of money paid to the Treasurer of (South Australia) under this section, the Treasurer of South Australia shall pay that amount to that person out of moneys lawfully available for the purpose.

(8) The provisions of this section do not deprive a person of another right or remedy to which he is entitled against the liquidator or another person.

Liability of
Commission and
Crown as to
property vested in
Commission.

463. Property vested in the Commission by operation of this Subdivision is liable and subject to all charges, claims and liabilities imposed on or affecting that property by reason of any law as to rates, taxes, charges or any other matter or thing to which the property would have been liable or subject had the property continued in the possession, ownership or occupation of the company, but there shall not be imposed, on the Commission or the Crown any duty, obligation or liability whatsoever to do or suffer any act or thing required by any such law to be done or suffered by the owner or occupier other than the satisfaction or payment of any such charges, claims or liabilities out of the property of the company so far as it is, in the opinion of the Commission, properly available for and applicable to such a payment.

Accounts.

464. The Commission shall—

- (a) keep a record of any property coming to its possession or under its control or to its knowledge vested in it by force of this Subdivision and of its dealings with that property;
 - (b) keep accounts of all moneys arising from those dealings and of how they have been disposed of;
- and
- (c) keep all accounts, vouchers, receipts and papers relating to that property and those moneys.

DIVISION 5

DIVISION 5—RECIPROCITY WITH PARTICIPATING STATES AND PARTICIPATING TERRITORIES

Recognition and
enforcement in
the State of order
made in a
participating State
or participating
Territory in
relation to a
recognized
company or
recognized foreign
company.

465. If an office copy of an order made by the Supreme Court of a participating State or of a participating Territory under the corresponding law of that State or Territory for or in connection with the winding up of a recognized company or a recognized foreign company is filed by the liquidator with the Registrar of the Supreme Court of the State, the order has effect and may be enforced in all respects in the State as if it were an order of the Court made under this Code in relation to a company incorporated under this Code.

Exercise by the
Court of powers
or functions in
relation to a
recognized
company or
recognized foreign
company.

466. Where—

- (a) the proper officer of the Supreme Court of a participating State or of a participating Territory furnishes to the Registrar of the

Supreme Court of the State a request in writing for that last-mentioned Court to exercise or perform a power or function under this Part in relation to a recognized company or recognized foreign company that is being wound up under the corresponding law of that participating State or participating Territory, being a power or function of a kind that that last-mentioned Court may exercise or perform under this Part in relation to a company incorporated under this Code;

or

- (b) a liquidator of a recognized company or recognized foreign company that is being wound up under the corresponding law of a participating State or participating Territory makes an application to the Supreme Court of the State for the Court to exercise or perform a power or function under this Part in relation to that company, being a power or function of a kind that that Court may exercise or perform on the application of the liquidator of a company that is being wound up under this Part,

the Supreme Court of the State may exercise or perform the power or function accordingly.

467. The Registrar of the Court may furnish to the proper officer of the Supreme Court of a participating State or of a participating Territory a request in writing for that last-mentioned Court to exercise or perform in that State or Territory a power or function under the corresponding law of that State or Territory in relation to a company or a registered foreign company that is being wound up under this Part and, where such a request is given effect to, any act or thing done by the Supreme Court of the participating State or participating Territory pursuant to the request has effect for the purposes of this Code as if it had been done by the Court under this Code.

Power of Registrar to request Supreme Court of a participating State or participating Territory to exercise or perform powers or functions.

468. The liquidator of a recognized company, or of a recognized foreign company, that is being wound up under the law of a participating State or participating Territory may, for the purposes of the winding up of affairs of the company in the State, exercise any power or perform any function under this Part of a kind that may be exercised or performed under this Part by a liquidator of a company incorporated under this Code.

Powers and functions in the State of liquidators of recognized companies or recognized foreign companies.

DIVISION 6—WINDING UP OF BODIES OTHER THAN COMPANIES

DIVISION 6

469. (1) This Division applies to the following bodies:

Application.

- (a) a foreign company that is, or is required to be, registered as a foreign company under Division 5 of Part XIII;

and

- (b) a partnership, association or other body (whether corporate or unincorporate) that consists of more than 5 members.

(2) The provisions of this Division have effect in addition to, and not in derogation of, sub-sections 518 (10), (12) and (13) and any provisions

contained in this Code or any other law with respect to the winding up of bodies, and the Court or liquidator may exercise any powers or do any act in the case of bodies to which this Division applies that might be exercised or done by it or him in the winding up of companies.

Winding up of
bodies to which
this Division
applies.

470. (1) Subject to this Division, a body to which this Division applies may be wound up under this Part, and this Part applies accordingly to such a body with such adaptations as are necessary, including the following adaptations:

- (a) the principal place of business of such a body in the State shall, for all the purposes of the winding up, be deemed to be the registered office of the body;
- (b) no such body shall be wound up voluntarily under this Part;
- (c) the circumstances in which the body may be wound up are as follows:
 - (i) if the body has been dissolved, has ceased to have a place of business in the State, has a place of business in the State only for the purpose of winding up its affairs or has ceased to carry on business in the State;
 - (ii) if the body is unable to pay its debts;
 - (iii) if the Court is of opinion that it is just and equitable that the body should be wound up;

or

- (iv) in the case of a foreign company, if the Commission has reported under Part VII that it is of opinion or an inspector appointed under that Part has reported that he is of opinion—

- (A) that the foreign company cannot pay its debts and should be wound up;

or

- (B) that is in the interests of the public, or of the shareholders or of the creditors of the foreign company, that the foreign company should be wound up.

(2) For the purposes of sub-paragraph (1) (c) (ii), a body shall be deemed to be unable to pay its debts if—

- (a) a creditor, by assignment or otherwise, to whom the body is indebted in a sum exceeding \$1,000 then due has served on the body, by leaving at its principal place of business in the State or by delivering to the secretary or a director or executive officer of the body or by otherwise serving in such manner as the Court approves or directs, a demand, signed by or on behalf of the creditor, requiring the body to pay the sum so due and the body has, for 3 weeks after the service of the demand, failed to pay the sum or to secure or compound for it to the satisfaction of the creditor;
- (b) an action or other proceeding has been instituted against any member for any debt or demand due or claimed to be due from the body or from him in his capacity as a member and,

notice in writing of the institution of the action or proceeding having been served on the body by leaving it at its principal place of business in the State or by delivering it to the secretary or a director or executive officer of the body or by otherwise serving it in such manner as the Court approves or directs, the body has not, within 10 days after service of the notice, paid, secured or compounded for the debt or demand or procured the action or proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against the action or proceeding and against all costs, damages and expenses to be incurred by him by reason of the action or proceeding;

- (c) execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the body or any member of the body as such, or any person authorized to be sued as nominal defendant on behalf of the body, is returned unsatisfied;

or

- (d) it is otherwise proved to the satisfaction of the Court that the body is unable to pay its debts.

(3) A body incorporated outside the State may be wound up under this Division notwithstanding that it is being wound up or has been dissolved or has otherwise ceased to exist as a body corporate under or by virtue of the laws of the place under which it was incorporated.

(4) For the purposes of this section, a body to which this Division applies shall be regarded as carrying on business in the State in circumstances in which a foreign company would be regarded for the purposes of section 510 as carrying on business within the State and shall not be regarded as carrying on business within the State in circumstances in which a foreign company would not be regarded for the purposes of section 510 as carrying on business within the State and the question whether a body to which this Division applies has ceased to carry on business shall be determined accordingly.

471. (1) On a body to which this Division applies being wound up, every person—

- (a) who is liable to pay or contribute to the payment of—

- (i) any debt or liability of the body;
- (ii) any sum for the adjustment of the rights of the members among themselves;

or

- (iii) the costs and expenses of winding up;

or

- (b) where the body has been dissolved in the place in which it was formed or incorporated—who immediately before the dissolution was so liable,

is a contributory and every contributory is liable to contribute to the property of the body all sums due from him in respect of any such liability.

(2) On the death or bankruptcy of any contributory, the provisions of this Code with respect to the personal representatives of deceased contri-

Contributories in winding up of a body to which this Division applies.

butories and the assignees and trustees of bankrupt contributories, respectively, apply.

Power of Court to stay or restrain proceedings.

472. (1) The provisions of this Code with respect to staying and restraining actions and other civil proceedings against a company at any time after the filing of an application for winding up and before the making of a winding up order extend, in the case of a body to which this Division applies where the application to stay or restrain is by a creditor, to actions and other civil proceedings against any contributory of the body.

(2) Where an order has been made for winding up a body to which this Division applies, no action or other civil proceeding shall be proceeded with or commenced against any contributory of the body in respect of any debt of the body except by leave of the Court and subject to such terms as the Court imposes.

DIVISION 7

DIVISION 7—MISCELLANEOUS

Outstanding property of defunct body formed within Australia.

473. (1) This section applies to a body that is—

- (a) a recognized company;
- (b) a foreign company incorporated or formed in Australia or an external Territory;

or

- (c) a body referred to in paragraph 469 (1) (b) incorporated or formed in Australia or an external Territory.

(2) Where, after a body to which this section applies has been dissolved, there remains in the State any outstanding property, not including unpaid capital, whether called or uncalled, which was vested in the body, to which the body was entitled, or over which the body had a disposing power at the time when it was dissolved, but which was not got in, realized upon or otherwise disposed of or dealt with by the body or its liquidator, the estate and interest in the property, at law or in equity, of the body or its liquidator at the time when the body was dissolved, together with all claims, rights and remedies that the body or its liquidator then had in respect of the property, vests by force of this section in such person as is entitled to the property according to the law of the place of incorporation or formation of the body.

Outstanding property of defunct body formed outside Australia.

474. (1) This section applies to a body that is—

- (a) a foreign company incorporated or formed outside Australia and the external Territories;

or

- (b) a body referred to in paragraph 469 (1) (b) incorporated or formed outside Australia and the external Territories.

(2) Where, after a body to which this section applies has been dissolved, there remains in the State any outstanding property, not including unpaid capital, whether called or uncalled, which was vested in the body, to which the body was entitled, or over which the body had a disposing power, at

the time when it was dissolved, but which was not got in, realized upon or otherwise disposed of or dealt with by the body or its liquidator, the estate and interest in the property, at law or in equity, of the body, or its liquidator at the time when the body was dissolved, together with all claims, rights and remedies that the body or its liquidator then had in respect of the property, vests by force of this section in the Commission.

(3) Where any claim, right or remedy of a liquidator may under this Code be made, exercised or availed of only with the approval or concurrence of the Court or some other person, the Commission may, for the purposes of this section, make, exercise or avail itself of the claim, right or remedy without such approval or concurrence.

(4) Section 462 applies in relation to property that vests in the Commission under this section in like manner as it applies in relation to an estate or interest in property referred to in section 462.

(5) Sections 463 and 464 apply in relation to property that vests in the Commission under this section in like manner as they apply in relation to property referred to in sections 463 and 464.

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PART XIII

PART XIII

VARIOUS TYPES OF COMPANIES

DIVISION 1

DIVISION 1—NO LIABILITY COMPANIES

Application of Code to no liability companies.

475. Subject to this Division and except as otherwise expressly provided in this Code, the provisions of this Code relating to public companies, other than sections 360, 361 and 362, section 377 (so far as it relates to calls), paragraphs 378 (1) (a) and (b), sub-sections 378 (2), (3) and (4) and sub-section 384 (3), apply to no liability companies.

Shareholder not liable to calls or contributions.

476. The acceptance of a share in a no liability company, whether by original allotment or by transfer, does not constitute a contract on the part of the person accepting it to pay any calls in respect of the share or any contribution to the debts and liabilities of the company and such a person is not liable to be sued for any calls or contributions but he is not entitled to a dividend upon any such share upon which a call is due and unpaid.

Dividends payable on shares held irrespective of amount paid up on shares.

477. Subject to any provisions of the articles relating to preferred, deferred or other special classes of shares, dividends that are payable to the shareholders in a no liability company are payable to the persons entitled to those dividends in proportion to the shares held by them respectively, irrespective of the amount paid up or credited as paid up on the shares.

Calls, when due.

478. (1) The calls upon shares in a no liability company shall be so made that they are payable not less than 14 days from the day on which the call is made, and no subsequent call shall be made until after the expiration of 7 days from the day upon which the call made immediately before it is payable.

(2) When a call is made, notice of the amount of the call, of the day when it is payable and of the place for payment shall, not less than 7 days before that day, be sent by post to the holder of shares on which the call is made.

Forfeiture of shares.

479. (1) Any share in a no liability company upon which a call is unpaid at the expiration of 14 days after the day for its payment is thereupon forfeited without any resolution of directors or other proceedings and shall, subject to this Division, be offered for sale by public auction not more than 6 weeks after the date on which the call is payable.

(2) The sale shall be advertised not less than 14 and not more than 21 days before the day appointed for the sale in a daily newspaper circulating generally throughout the State.

(3) Where a sale is not held owing to error or inadvertence, the sale, if it is held in due course as soon as practicable after the discovery of the error or inadvertence, is not invalid.

(4) If there is any failure to comply with the provisions of this section, the company and any officer of the company who is in default are each guilty of an offence.

(5) At any such sale, a share forfeited for non-payment of any call may, if the company in accordance with its articles or by ordinary resolution so determines, be offered for sale and sold credited as paid up to the sum of the amount paid up on the share at the time of forfeiture and the amount of the call and the amount of any other calls becoming payable on or before the date of the sale.

(6) The proceeds of the sale shall be applied in payment of—

- (a) first, the expenses of the sale;
- (b) second, any expenses necessarily incurred in respect of the forfeiture;

and

- (c) third, the calls then due and unpaid,

and the balance (if any) shall be paid to the member whose share has been so sold on his delivering to the company the share certificate that relates to the forfeited share.

480. (1) The directors may, in the case of a share advertised for sale as forfeited for non-payment of a call, fix a reserve price not exceeding the sum of the amount of the call due and unpaid on the share at the time of forfeiture and the amount of any other calls becoming payable on or before the date of the sale.

Provisions as to sale of forfeited shares.

(2) If a bid at least equal to the reserve price so fixed is not made for the share, the share may be withdrawn from sale.

(3) A share so withdrawn from sale or a share for which no bid is received at the sale shall be held by the directors in trust for the company and shall be disposed of in such manner as the company, in accordance with its articles or by resolution, determines, but, at any meeting of the company, no person is entitled to any vote in respect of the shares so held by the directors in trust.

(4) Unless otherwise specifically provided by resolution, the shares to be so disposed of shall first be offered to shareholders for a period of 14 days before being disposed of in any other manner.

481. A call does not have any effect upon any forfeited share that is held by or in trust for the company pursuant to this Division, but such a share, when it is re-issued or sold by the company, may be credited as paid up to such amount as the company, in accordance with its articles or by resolution, determines.

As to shares held by or in trust for company.

482. (1) When forfeited shares are sold for non-payment of any call, the sale is valid although the specific numbers of the shares are not advertised.

Sale of shares on non-payment of calls valid although specific numbers not advertised.

(2) In every advertisement, it is sufficient to give notice of the intended sale of forfeited shares by advertising to the effect that all shares on which a call remains unpaid will be sold.

483. (1) An intended sale of forfeited shares that has been duly advertised may be postponed for not more than 21 days from the advertised date of sale or from any date to which the sale has duly been postponed, but so that no such intended sale shall be postponed to a date more than 90 days from the first date fixed for the intended sale.

Postponement of sale.

(2) The date to which the sale is postponed shall, in respect of every postponement, be advertised in a daily newspaper circulating generally in the State.

484. (1) Notwithstanding anything in this Division, if a share belonging to a person has been forfeited, he may, at any time up to or on the day

Redemption of forfeited shares.

immediately before the day upon which it is intended to sell the share, redeem the share by payment to the company of—

(a) all calls due on the share;

and

(b) if the company so requires—

(i) a portion, calculated on a *pro rata* basis, of all expenses incurred by the company in respect of the forfeiture;

and

(ii) a portion, calculated on a *pro rata* basis, of all costs and expenses of any proceeding that has been taken in respect of the forfeiture.

(2) Upon such a payment, the person is entitled to the share as if the forfeiture had not been incurred.

Office to be open
the day before
sale.

485. On the day immediately before the day appointed for the sale of a forfeited share, the registered office of the company shall be open during the hours for which it is by this Code required to be open and accessible to the public.

Distribution of
surplus where
cessation of
business upon
winding up.

486. (1) If, on the winding up of a no liability company, there remains any surplus, the surplus shall be distributed amongst the parties entitled to it in proportion to the shares held by them respectively irrespective of the amounts paid up or credited as paid up on the shares.

(2) A member who is in arrears in payment of any call, but whose shares have not been actually forfeited, is not entitled to share in such a distribution until the amount owing in respect of the call has been fully paid and satisfied.

Distribution of
surplus where
cessation of
business within
12 months.

487. (1) If a no liability company ceases to carry on business within 12 months of its incorporation, shares issued for cash rank on a winding up, to the extent of the capital contributed by subscribing shareholders, in priority to those issued to vendors or promoters or both for consideration other than cash.

(2) In sub-section (1), “no liability company” includes a company that, having been incorporated as a no liability company, changes its status under section 69.

As to rights
attaching to
preference shares
issued to
promoters.

488. (1) Notwithstanding anything in the memorandum or articles of a no liability company, the holders of any shares issued to vendors or promoters are not entitled to any preference on the winding up of the company.

(2) In sub-section (1), “no liability company” includes a company that, having been incorporated as a no liability company, changes its status under section 69.

Restrictions on
tribute
arrangements.

489. (1) Without the sanction of a special resolution of the company, the directors of a no liability company shall not—

(a) let the whole or portion of a mine or claim on tribute;

or

(b) make any contract for working any land on tribute.

(2) Sub-section (1) does not preclude the directors of a no liability company from letting the whole or portion of a mine or claim on tribute, or making any contract for working any land on tribute, for any period not exceeding 3 months, without the sanction of such a resolution, if no such letting or contract has been made within the period of 2 years immediately preceding the proposed letting or contract.

DIVISION 2—INVESTMENT COMPANIES

DIVISION 2

490. (1) In this Division, unless the contrary intention appears—

Interpretation.

“investment company” means a corporation for the time being declared by order of the Commission pursuant to sub-section (3) to be an investment company;

“net tangible assets”, in relation to a corporation, means tangible property at book values, less total liabilities at book values and less any aggregate amount by which the book values of the marketable securities held by the corporation exceed their market values;

“relevant provision of this Division” means any of the provisions of sections 491 to 498 (inclusive).

(2) A reference in a relevant provision of this Division to an investment company shall be construed as a reference to an investment company to which that provision applies.

(3) The Commission may, by order in writing published in the *Gazette*, declare to be an investment company any corporation (being a company or a foreign company, that is, or is required to be, registered as a foreign company under Division 5) that is engaged primarily in the business of investment in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control.

(4) Where the Commission makes an order declaring a corporation to be an investment company, the Commission may, if it thinks fit, specify in the order the relevant provisions of this Division that are to apply to that investment company.

(5) If, in an order declaring a corporation to be an investment company, the Commission specifies relevant provisions of this Division that are to apply to that corporation, any relevant provisions of this Division that are not so specified do not apply to the corporation.

(6) If the Commission does not, in an order declaring a corporation to be an investment company, specify relevant provisions of this Division that are to apply to the corporation, every provision of this Division applies to the corporation.

491. (1) An investment company shall not borrow an amount if that amount, or the sum of that amount and amounts previously borrowed by it and not repaid, exceeds an amount equivalent to 50% of its net tangible assets.

Restriction on borrowing by investment companies.

(2) An investment company shall not borrow an amount otherwise than by the issue of debentures if that amount, or the sum of that amount and amounts previously borrowed by it otherwise than by the issue of debentures and not repaid, exceeds an amount equivalent to 25% of its net tangible assets.

(3) In sub-section (2), "debentures" does not include a debenture—

(a) that is redeemable, except at the option of the borrower exercised not earlier than 2½ years after the date of issue of the debenture, within less than 5 years after that date;

or

(b) that is issued to a bank as security for an overdraft.

Restriction on investments of investment companies.

492. (1) An investment company shall not invest an amount in a corporation if that amount, or the sum of that amount and amounts previously invested by it in that corporation and still so invested, exceeds an amount equivalent to 10% of the net tangible assets of the investment company.

(2) An investment company shall not hold more than 5% of the subscribed ordinary share capital of a corporation.

Restriction on underwriting by investment companies.

493. (1) An investment company shall not underwrite any issue of authorized securities to an amount that, when added to the amount or amounts (if any) to which it has previously underwritten a current issue or issues of other authorized securities (not being an amount or amounts in respect of which the underwriting obligation has been discharged), exceeds an amount equivalent to 40% of its net tangible assets.

(2) An investment company shall not underwrite any issue of non-authorized securities to an amount that, when added to the amount or amounts (if any) to which it has previously underwritten a current issue or issues of other non-authorized securities (not being an amount or amounts in respect of which the underwriting obligation has been discharged), exceeds an amount equivalent to 20 % of its net tangible assets.

(3) Where—

(a) an investment company has underwritten any issue of securities and, in relation to the underwriting, has not contravened subsection (1) or (2);

and

(b) the investment company, as a result of the underwriting, invests in a corporation contrary to section 492,

the investment company shall be deemed not to have contravened a provision of that section by reason of so investing in the corporation if, at the expiration of 12 months after so investing—

(c) the amount invested by it in the corporation does not exceed an amount equivalent to 10% of the net tangible assets of the investment company;

and

(d) it does not hold more than 5% of the subscribed ordinary share capital of the corporation.

(4) This section extends to and in relation to subunderwriting as if the subunderwriting were underwriting.

(5) In this section—

“authorized securities” means securities in which, by any Act, Act of the Commonwealth or of another State, law of a Territory or Act of New Zealand, trustees are authorized to invest trust funds in their hands;

“non-authorized securities” means securities other than authorized securities.

494. (1) An investment company shall not issue a prospectus or permit a prospectus to be issued on its behalf unless the prospectus specifies—

Special requirements as to articles and prospectus.

(a) the type of security in which, in accordance with the objects of the company, the company may invest;

and

(b) whether it is among the objects of the company to invest within Australia or outside Australia or both.

(2) After the expiration of 3 months after an investment company has been declared to be an investment company, the investment company shall not borrow or invest any moneys, or underwrite or subunderwrite any issue of securities, unless the articles of the company specify the matters referred to in paragraphs (1) (a) and (b).

495. (1) An investment company shall not purchase, or (after the expiration of 3 years after it is declared to be an investment company) hold, any shares in or debentures of—

Investment company not to hold shares in other investment companies.

(a) any other investment company;

or

(b) any corporation incorporated in any other State or in a Territory, or in New Zealand, that is for the time being declared by order of the Commission pursuant to sub-section (2) to be a corporation to which this paragraph applies.

(2) The Commission may, by order published in the *Gazette*, declare a corporation that is engaged primarily in the business of investment in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control to be a corporation to which paragraph (1) (b) applies.

496. (1) An investment company shall not, for the purpose of profit, buy or sell, or deal in, any raw materials or manufactured goods, whether in existence or not, otherwise than by investing in companies trading in such materials or goods.

Investment company not to speculate in commodities.

(2) Sub-section (1) does not apply to or in relation to—

(a) any buying, selling or dealing by an investment company pursuant to a contract entered into by the investment company before it was declared to be an investment company;

or

(b) the selling of or the dealing in raw materials or manufactured goods acquired by the investment company—

(i) before it was so declared;

or

(ii) pursuant to a contract entered into before it was so declared.

Balance-sheets
and accounts.

497. (1) An investment company shall state under separate headings in every balance-sheet of the company, in addition to any other matters required to be stated in that balance-sheet—

(a) the investments of the company in any securities other than relevant securities;

and

(b) the manner in which the investments of the company have been valued.

(2) In sub-section (1), “relevant securities”, means—

(a) government, municipal and other public debentures, stocks and bonds;

(b) shares in a corporation;

(c) options in respect of shares in a corporation;

and

(d) debentures of a corporation.

(3) An investment company shall attach to every such balance-sheet—

(a) a complete list of all purchases and sales of securities by the company during the period to which the accounts relate together with a statement of the total amount of brokerage paid or charged by the company during that period and the proportion of that brokerage paid to any stock or share broker, or any employee or nominee of any stock or share broker, who is an officer of the company;

and

(b) a complete list of all the investments of the company as at the date of the balance-sheet showing the descriptions and quantities of those investments.

(4) An investment company shall show separately in the profit and loss account, in addition to any other matters required to be shown in that profit and loss account, income from underwriting (including subunderwriting).

Investment
fluctuation
reserve.

498. (1) The net profits and losses of an investment company from the purchase and sale of securities shall be respectively credited and debited by the company to a reserve account to be kept by it and to be called the “investment fluctuation reserve”.

(2) The investment fluctuation reserve is not available for the payment of dividends.

(3) The investment fluctuation reserve is available for the payment of income tax payable in respect of profits made on the sale of securities.

Penalties.

499. (1) If default is made by an investment company in complying with any of the provisions of this Division, the investment company and

any officer of the investment company who is in default are each guilty of an offence.

(2) A transaction entered into by the company is not invalid by reason only of such a default.

Penalty: \$5,000.

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DIVISION 3—COMPANIES CARRYING ON BUSINESS OUTSIDE
THE STATE

DIVISION 3

500. (1) In this Division, “company” means—

Interpretation.

(a) a company incorporated pursuant to this Code or pursuant to a corresponding previous law of the State;

or

(b) a foreign company that is formed outside Australia and the external Territories and is registered under Division 5.

(2) A reference in this Division to a company carrying on business within a State or a Territory includes a reference to a company establishing or using a share transfer office or share registration office in the State or Territory or administering, managing or otherwise dealing with property situated in the State or Territory as an agent, legal personal representative or trustee, whether by servants or agents or otherwise.

(3) Notwithstanding sub-section (2), a company shall not be regarded as carrying on business within a State or Territory for the reason only that, within that State or Territory, it—

(a) is or becomes a party to an action or suit or an administrative or arbitration proceeding or effects settlement of an action, suit or other proceeding or of a claim or dispute;

(b) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;

(c) maintains a bank account;

(d) effects a sale through an independent contractor;

(e) solicits or procures an order that becomes a binding contract only if the order is accepted outside the State or Territory;

(f) creates evidence of a debt, or creates a charge on property;

(g) secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts;

(h) conducts an isolated transaction that is completed within a period of 31 days, but not being one of a number of similar transactions repeated from time to time;

or

(j) invests any of its funds or holds any property.

501. (1) A company that has established a place of business or commenced to carry on a business within a participating State or participating Territory shall—

Notification of
principal office in
participating State
or Territory.

PART XIII
DIVISION 3

- (a) within one month after doing so;
- or
- (b) in the case of a foreign company—within one month after doing so or becoming registered as a foreign company, whichever is the later,

lodge with the Commission notice in the prescribed form of the situation of its principal office in that State or Territory.

(2) A company that has established a place of business or commenced to carry on business within a participating State or participating Territory may lodge with the Commission notice in the prescribed form of the hours (being not less than 3) between 9 a.m. and 5 p.m. each day (Saturdays, Sundays and holidays excepted) during which the principal office of the company in that State or Territory is open and accessible to the public.

(3) Where a company has lodged with the Commission a notice in writing of the situation of its principal office in a participating State or participating Territory, the Commission shall, on being requested to do so, issue a certificate in the prescribed form under its common seal stating that the company has a principal office in that State or Territory and specifying the address of that office.

(4) A certificate issued under sub-section (3) is *prima facie* evidence in all courts of the particulars stated in the certificate.

Notice to be given of change or alteration in principal office in participating State or Territory.

502. (1) Notice in the prescribed form of any change or alteration in the situation of the principal office of a company in a participating State or participating Territory shall be lodged by the company with the Commission not later than 7 days after the day on which the change or alteration occurs.

(2) Where a notice has been lodged by a company under sub-section 501 (2) in relation to a participating State or participating Territory, notice in the prescribed form of any change of the hours during which the principal office of the company in that State or Territory is open and accessible to the public shall be lodged by the company with the Commission not later than 7 days after the day on which the change occurs.

Notice to be lodged of cessation of business in participating State or Territory.

503. If a company ceases to have a place of business or to carry on business in a participating State or a participating Territory, it shall, within 7 days after so ceasing, lodge with the Commission notice of that fact.

Offences.

504. If a company fails to comply with a provision of this Division, the company and any officer of the company who is in default are each guilty of an offence.

DIVISION 4

DIVISION 4—RECOGNIZED COMPANIES AND RECOGNIZED FOREIGN COMPANIES

Interpretation.

505. (1) A reference in this Division to a recognized company or a recognized foreign company carrying on business within the State includes a reference to such a company establishing or using a share transfer office or share registration office in the State or administering, managing or oth-

erwise dealing with property situated in the State as an agent, legal personal representative or trustee, whether by servants or agents or otherwise.

(2) Notwithstanding sub-section (1), a recognized company or a recognized foreign company shall not be regarded as carrying on business within the State for the reason only that, within the State, it—

- (a) is or becomes a party to an action or suit or an administrative or arbitration proceeding or effects settlement of an action, suit or other proceeding or of a claim or dispute;
 - (b) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;
 - (c) maintains a bank account;
 - (d) effects a sale through an independent contractor;
 - (e) solicits or procures an order that becomes a binding contract only if the order is accepted outside the State;
 - (f) creates evidence of a debt or creates a charge on property;
 - (g) secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts;
 - (h) conducts an isolated transaction that is completed within a period of 31 days, but not being one of a number of similar transactions repeated from time to time;
- or
- (j) invests any of its funds or holds any property.

506. A recognized company or a recognized foreign company has power to hold land in the State.

Power to hold land.

507. (1) A recognized company or a recognized foreign company that has established a place of business or commenced to carry on business within the State shall have a principal office within the State to which all communications and notices may be addressed, which shall be open and accessible to the public—

Recognized company or recognized foreign company to have a principal office.

- (a) where a notice in relation to the State has been lodged by the company with the Commission under the provision of the law of the State or Territory in which the company is incorporated or registered as a foreign company that corresponds with sub-section 501 (2)—for the hours specified in the later of that notice or a notice lodged with the Commission under the provision of the law of that State or Territory that corresponds with sub-section 502 (2);

or

- (b) in any other case—for not less than 5 hours between 10 a.m. and 4 p.m. each day (Saturdays, Sundays and holidays excepted),

and at which a representative of the company is present at all times when the office is open to the public.

(2) A certificate issued under the provision of the law of a participating State or participating Territory that corresponds with sub-section 501 (3) is *prima facie* evidence in all courts of the particulars stated in the certificate.

PART XIII
DIVISION 4

Name of
recognized
company or
recognized foreign
company to be
reserved or
registered.

508. (1) A recognized company or a recognized foreign company shall not establish a place of business or carry on business within the State unless the name of the company is reserved or registered under Division 2 of Part III.

(2) A recognized company or a recognized foreign company shall not use in the State any name other than the name reserved or registered in respect of that company under Division 2 of Part III or a name registered under any other law of the State.

(3) If a recognized company or a recognized foreign company contravenes this section, the recognized company or recognized foreign company and any officer of the recognized company or recognized foreign company who is in default are each guilty of an offence.

Penalty: \$1,000 or imprisonment for 3 months, or both.

Publication of
name, &c., of
recognized
company or
recognized foreign
company.

509. (1) There shall appear in legible characters on every relevant document of a recognized company or recognized foreign company (other than a banking corporation) that is issued, signed or published in the State —

(a) the name of the recognized company or recognized foreign company and the State or Territory where it is incorporated or registered as a foreign company;

and

(b) in the case of a recognized foreign company the liability of the members of which is limited (unless the last word of its name is the word "Limited" or the abbreviation "Ltd.")—notice of the fact that the liability of its members is limited,

and, if default is made in complying with this sub-section, the recognized company or recognized foreign company is guilty of an offence.

Penalty: \$1,000.

(2) If an officer of a recognized company or recognized foreign company, or any person on behalf of a recognized company or recognized foreign company—

(a) issues or publishes in the State, or authorizes the issue or publication in the State, of any business letter, statement of account, order for goods, order for services, official notice or publication of the recognized company or recognized foreign company that does not comply with the requirements of subsection (1);

or

(b) signs or issues in the State, or authorizes to be signed or issued in the State, on behalf of the recognized company or recognized foreign company, any bill of exchange, promissory note, cheque or other negotiable instrument, indorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument, or any receipt or letter of credit, that does not comply with the requirements of sub-section (1),

he is guilty of an offence.

Penalty: \$1,000.

(3) If an officer of a recognized company or a recognized foreign company or any person on behalf of a recognized company or a recognized foreign

company signs or issues in the State, or authorizes to be signed or issued in the State, on behalf of the recognized company or recognized foreign company, any bill of exchange, promissory note, cheque or other negotiable instrument, indorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument, or any letter of credit, that does not comply with the requirements of sub-section (1), he is liable to the holder of the instrument or letter of credit for the amount due on it unless that amount is paid by the recognized company or recognized foreign company, as the case may be.

(4) A recognized company or recognized foreign company (other than a banking corporation) shall paint or affix and keep painted or affixed on the outside of every office or place in the State in which its business is carried on, in a conspicuous position and in letters easily legible—

- (a) its name and the State or Territory where it is incorporated, or registered as a foreign company;
- (b) in the case of a recognized foreign company the liability of the members of which is limited (unless the last word of its name is the word “Limited” or the abbreviation “Ltd.”)—notice of the fact that the liability of its members is limited;

and

- (c) in the case of the office or place that is the principal office in the State—the words “Principal Office”,

and, if default is made in complying with this sub-section, the recognized company or recognized foreign company is guilty of an offence.

Penalty: \$1,000.

(5) In this section, “relevant document”, in relation to a recognized company or a recognized foreign company, means a business letter, statement of account, invoice, order for goods, order for services, official notice, publication, bill of exchange, promissory note, cheque or other negotiable instrument, indorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument, receipt and letter of credit of or purporting to be issued or signed by or on behalf of the recognized company or recognized foreign company.

DIVISION 5—FOREIGN COMPANIES OTHER THAN RECOGNIZED FOREIGN
COMPANIES

DIVISION 5

510. (1) In this Division, unless the contrary intention appears—

Interpretation.

“agent”, in relation to a foreign company, means a person named in a memorandum of appointment or power of attorney lodged in relation to the company under paragraph 512 (2) (e) or sub-section 514 (5);

“foreign company” means a foreign company other than a recognized foreign company.

(2) A reference in this Division to a foreign company carrying on business within the State includes a reference to such a company establishing or using a share transfer office or share registration office in the State or

administering, managing or otherwise dealing with property situated in the State as an agent, legal personal representative or trustee, whether by servants or agents or otherwise.

(3) Notwithstanding sub-section (2), a foreign company shall not be regarded as carrying on business within the State for the reason only that, within the State, it—

- (a) is or becomes a party to an action or suit or an administrative or arbitration proceeding or effects settlement of an action, suit or proceeding or of a claim or dispute;
 - (b) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;
 - (c) maintains a bank account;
 - (d) effects a sale through an independent contractor;
 - (e) solicits or procures an order that becomes a binding contract only if the order is accepted outside the State;
 - (f) creates evidence of a debt, or creates a charge on property;
 - (g) secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts;
 - (h) conducts an isolated transaction that is completed within a period of 31 days, but not being one of a number of similar transactions repeated from time to time;
- or
- (j) invests any of its funds or holds any property.

Power of foreign companies to hold land.

511. A foreign company registered under this Division has power to hold land in the State.

Unregistered foreign company not to establish place of business or carry on business in the State.

512. (1) A foreign company shall not establish a place of business, or commence to carry on business, within the State unless it is registered under this Division.

(2) Subject to this Division, if a foreign company lodges with the Commission for registration under this Division—

- (a) a certified copy of the certificate of its incorporation or registration in its place of incorporation or formation or a document of similar effect;
- (b) a certified copy of its constituent documents;
- (c) a list of its directors or the members of its committee of management, council or other governing body by whatever name called, containing particulars with respect to those directors or members that are equivalent to the particulars that are required by this Code to be contained in the register of the directors, principal executive officers and secretaries of a company incorporated under this Code;
- (d) where the list referred to in paragraph (c) includes directors, or members of a committee of management, council or other governing body, who are—
 - (i) resident in the State;

and

- (ii) members of a local board of directors, committee of management, council or other governing body,
a memorandum duly executed by or on behalf of the foreign company stating the powers of those local directors or members;
 - (e) a memorandum of appointment or power of attorney under the seal of the foreign company or executed on its behalf in such manner as to be binding on the company stating the name and address, or names and addresses, of one or more persons resident in the State, not including a foreign company, a recognized foreign company or a recognized company, authorized to accept on its behalf service of process and any notices required to be served on the company;
 - (f) in relation to each existing charge on property of the foreign company that would be a registrable charge within the meaning of Division 9 of Part IV if the foreign company were a registered foreign company, the documents required to be lodged by sub-section 201 (4);
 - (fa) notice of the address of its registered office or, if there is no registered office, of its principal place of business, in its place of incorporation or formation;
 - (g) notice of the address of its registered office in the State;
- and
- (h) a statement in writing in the prescribed form made by the agent of the company,

the Commission shall register the company under this Division by entering the name of the company in a register to be kept by the Commission for the purposes of this Division.

513. (1) A registered foreign company shall have a registered office within the State to which all communications and notices may be addressed and which shall be open and accessible to the public—

Registered office
of registered
foreign company.

- (a) where a notice has been lodged by the foreign company with the Commission under sub-section (2)—for such hours (being not less than 3) between 9 a.m. and 5 p.m. each day (Saturdays, Sundays and holidays excepted) as are specified in the later of that notice or a notice lodged by the foreign company with the Commission under sub-section 515 (3);
- or
- (b) in any other case—for not less than 5 hours between 10 a.m. and 4 p.m. each day (Saturdays, Sundays and holidays excepted),

and at which a representative of the company is present at all times when the office is open to the public.

(2) A registered foreign company may lodge with the Commission notice in writing of the hours (being not less than 3) between 9 a.m. and 5 p.m. each day (Saturdays, Sundays and holidays excepted) during which the registered office of the foreign company in the State is open and accessible to the public.

514. (1) Where a memorandum of appointment or power of attorney lodged with the Commission pursuant to paragraph 512 (2) (e) is executed by a person on behalf of the foreign company concerned, a copy of the deed or document by which that person is authorized to execute the memorandum of appointment or power of attorney, verified, by a statement in writing in the prescribed form, to be a true copy, shall be lodged with the Commission and the copy shall for all purposes be regarded as an original.

(2) An agent of a registered foreign company, until he ceases to be such in accordance with sub-section (4)—

- (a) continues to be the agent of the company;
- (b) is answerable for the doing of all such acts, matters and things as are required to be done by the company by or under this Code or the corresponding law of a participating State or participating Territory;

and

- (c) is personally liable to all penalties imposed on the company for any contravention of any of the provisions of this code or of such a corresponding law unless he satisfies the court hearing the matter that he should not be so liable.

(3) A registered foreign company or its agent may lodge with the Commission notice in writing stating that the agent has ceased to be the agent or will cease to be the agent on a date specified in the notice.

(4) An agent in respect of whom a notice has been lodged under sub-section (3) ceases to be an agent on the expiration of a period of 21 days after the date of lodgment of the notice or on the date of the appointment of another agent the memorandum of whose appointment has been lodged in accordance with sub-section (5), whichever is the earlier, but, if the notice states a date on which he is to so cease and the date is later than the expiration of that period, on that date.

(5) Where—

- (a) an agent of a registered foreign company ceases to be the agent and the company is then without an agent in the State;

and

- (b) the company is carrying on business or has a place of business in the State or in a participating State or participating Territory,

the company shall, within 21 days after the agent ceases to be such, appoint an agent and lodge a memorandum of his appointment in accordance with paragraph 512 (2) (e) and a statement in writing in accordance with paragraph 512 (2) (h) and, if not already lodged pursuant to sub-section (1) of this section, a copy of the deed, document or power of attorney referred to in that sub-section verified in accordance with that sub-section.

(6) On the registration of a foreign company under this Division or the lodging with the Commission of particulars of a change or alteration in a matter referred to in paragraph 515 (2) (e), the Commission shall issue, under its common seal, a certificate of the registration of the company in the prescribed form, and a certificate so issued is *prima facie* evidence in all courts of the particulars mentioned in the certificate.

515. (1) Notice of any change or alteration in the situation of the registered office of a registered foreign company in the State shall be lodged

by the registered foreign company with the Commission not later than 7 days after the day on which the change occurred.

(2) Where any change or alteration is made in—

- (a) any of the constituent documents of a registered foreign company or any other instrument lodged with the Commission in relation to such a company;
- (b) the directors of a registered foreign company;
- (c) the agent or agents of a registered foreign company or the name or address of any agent;
- (d) the situation of the registered office of a registered foreign company in its place of incorporation or formation;
- (e) the name of a registered foreign company;

or

- (f) the powers of any directors resident in the State who are members of a local board of directors of the foreign company,

the foreign company shall, within one month, or within such further period as the Commission in special circumstances allows, after the change or alteration, lodge with the Commission notice in writing giving particulars of the change or alteration and such documents as the regulations require.

(3) Where a notice has been lodged by a registered foreign company under sub-section 513 (2), notice in the prescribed form of any change of the hours during which the registered office of the foreign company in the State is open and accessible to the public shall be lodged by the registered foreign company with the Commission not later than 7 days after the day on which the change occurs.

516. (1) Subject to this section, a registered foreign company shall, at least once in every calendar year and at intervals of not more than 15 months, lodge with the Commission a copy of its balance-sheet made up to the end of its last financial year, and a copy of its profit and loss account for its last financial year, in such form and containing such particulars and including copies of such documents as the company is required to prepare by the law for the time being applicable to that company in the place of its incorporation or formation, together with a statement in writing in the prescribed form verifying that the copies are true copies of the documents so required.

Balance-sheets
and other
documents.

(2) The Commission may, whether before or after the expiration of the period within which a registered foreign company is required by sub-section (1) to lodge a copy of a balance-sheet and a copy of a profit and loss account and other documents, extend the period within which the balance-sheet and the profit and loss account and the other documents are required to be lodged.

(3) The Commission may, if it is of the opinion that the balance-sheet, the profit and loss account and the other documents referred to in sub-section (1) do not sufficiently disclose the company's financial position—

- (a) require the company to lodge a balance-sheet;
- (b) require the company to lodge an audited balance-sheet;
- (c) require the company to lodge a profit and loss account;

or

(d) require the company to lodge an audited profit and loss account, within such period, in such form, containing such particulars and including such documents as the Commission by notice in writing to the company requires, but this sub-section does not authorize the Commission to require a balance-sheet or a profit and loss account to contain any particulars or include any documents that would not be required to be furnished if the company were a public company within the meaning of this Code.

(4) The registered foreign company shall comply with the requirements set out in the notice.

(5) Where a registered foreign company is not required by the law of the place of its incorporation or formation to prepare a balance-sheet, the company shall prepare and lodge with the Commission a balance-sheet, or, if the Commission so requires, an audited balance-sheet, within such period, in such form and containing such particulars and including such documents as the company would have been required to prepare if the company were a public company incorporated under this Code.

(6) Where a registered foreign company is not required by the law of the place of its incorporation or formation to prepare a profit and loss account, the company shall prepare and lodge with the Commission a profit and loss account or, if the Commission so requires, an audited profit and loss account, within such period, in such form, containing such particulars and including such documents as the company would have been required to prepare if the company were a public company incorporated under this Code.

(7) Except as provided in sub-sections (8) and (9), this section does not apply to or in relation to a registered foreign company—

- (a) that is an unlimited private company under the law of the United Kingdom relating to companies and is exempt under that law from lodging accounts with the Registrar of Companies or other appropriate authority under that law;
- (b) that is included in a class of companies incorporated under the law of another State, of a Territory, or of a country other than Australia and the external Territories, being a class of companies that the Commission has declared, by order in writing published in the *Gazette*, to be a class of companies of a kind the same or substantially the same as exempt proprietary companies under this Code;
- (c) that is included in a class of companies incorporated under the law of another State, of a Territory, or of a country other than Australia and the external Territories, being a class of companies that the Commission has declared, by order in writing published in the *Gazette*, to be a class of companies of a kind the same or substantially the same as proprietary companies under this Code, where no beneficial interest in any share in the company is held, directly or indirectly, otherwise than by a natural person;
- (d) that is a corporation incorporated in the United Kingdom or in another State or a Territory, that has, by the law of the place of its incorporation, exemptions and privileges similar to those that are provided for in section 66 and that is not required by

that law to lodge its accounts with a public authority so that they are available for public inspection;

or

(e) that is an association incorporated in another State or a Territory under a law of that other State or of the Territory that makes special provision for the incorporation of associations that—

(i) are formed for the purpose of providing recreation or amusement or promoting commerce, industry, art, science, religion, charity, pension or superannuation schemes or any other object useful to the community;

(ii) are by their constituent documents prohibited from the payment of dividends to their members;

and

(iii) are not required by that law to lodge accounts with a public authority so that they are available for public inspection.

(8) A registered foreign company referred to in paragraph (7) (a), (b) or (c) shall, at least once in every calendar year, lodge with the Commission a return in the prescribed form made up to the date of its annual general meeting.

(9) The return shall be lodged within a period of one month after the date to which it is made up or within such further period as the Commission, in special circumstances, allows.

517. (1) There shall appear in legible characters on every relevant document of a foreign company (other than a banking corporation) that is issued, signed or published in the State—

Publication of name, &c., of foreign company.

(a) the name of the foreign company and the place where it is formed or incorporated;

and

(b) in the case of a foreign company the liability of the members of which is limited (unless the last word of its name is the word "Limited" or the abbreviation "Ltd.")—notice of the fact that the liability of its members is limited,

and, if default is made in complying with this sub-section, the foreign company is guilty of an offence.

Penalty: \$1,000.

(2) If an officer of a foreign company, or any person on behalf of the foreign company—

(a) issues or publishes in the State, or authorizes the issue or publication in the State, of any business letter, statement of account, order for goods, order for services, official notice or publication of the foreign company that does not comply with the requirements of sub-section (1);

or

(b) signs or issues in the State, or authorizes to be signed or issued in the State, on behalf of the foreign company any bill of

exchange, promissory note, cheque or other negotiable instrument, indorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument, or any receipt or letter of credit, that does not comply with the requirements of sub-section (1),

he is guilty of an offence.

Penalty: \$1,000.

(3) If an officer of a foreign company or any person on behalf of a foreign company signs or issues in the State, or authorizes to be signed or issued in the State, on behalf of the foreign company, any bill of exchange, promissory note, cheque or other negotiable instrument, indorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument or any letter of credit that does not comply with the requirements of sub-section (1), he is liable to the holder of the instrument or letter of credit for the amount due on it, unless that amount is paid by the foreign company.

(4) A foreign company (other than a banking corporation) shall paint or affix and keep painted or affixed on the outside of every office or place in the State in which its business is carried on, in a conspicuous position and in letters easily legible—

- (a) its name and the place where it is formed or incorporated;
 - (b) in the case of a foreign company the liability of the members of which is limited (unless the last word of its name is the word "Limited" or the abbreviation "Ltd.")—notice of the fact that the liability of its members is limited;
- and
- (c) in the case of the office that is its registered office in the State—the words "Registered Office",

and, if default is made in complying with this sub-section, the foreign company is guilty of an offence.

Penalty: \$1,000.

(5) In this section, "relevant document", in relation to a foreign company, means a business letter, statement of account, invoice, order for goods, order for services, official notice, publication, bill of exchange, promissory note, cheque or other negotiable instrument, indorsement on or order in, a bill of exchange, promissory note, cheque or other negotiable instrument, receipt and letter of credit of or purporting to be issued or signed by or on behalf of the foreign company.

Cessation of
business, &c.

518. (1) If a registered foreign company—

- (a) ceases to have a place of business, or to carry on business, in the State (whether or not it continues to have a place of business, or to carry on business, in a participating State or participating Territory);
- or
- (b) ceases to have a place of business, or to carry on business, in a participating State or participating Territory (whether or not it continues to have a place of business, or to carry on business, in the State or in another participating State or participating Territory),

it shall, within 7 days after so ceasing, lodge with the Commission notice in writing of that fact.

(2) If the Commission receives notice from an agent of a registered foreign company that the company has been dissolved, the Commission shall remove the name of the company from the register.

(3) Where the Commission has reasonable cause to believe that a registered foreign company does not have a place of business, and does not carry on business, in the State and, in the case of a foreign company formed outside Australia and the external Territories, does not have a place of business, and does not carry on business, in any participating State or participating Territory, the Commission may send to the company in the prescribed manner a letter to that effect and stating that, if an answer showing cause to the contrary is not received within one month from the date of the letter, a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

(4) Unless the Commission receives an answer within one month from the date of the letter to the effect that the foreign company has a place of business, or is carrying on business, it may publish in the *Gazette* and send to the company in the prescribed manner a notice that, at the expiration of 3 months from the date of that notice, the name of the company mentioned in the notice will, unless cause is shown to the contrary, be struck off the register.

(5) At the expiration of the time mentioned in a notice sent by the Commission under sub-section (4), the Commission may, unless cause to the contrary is previously shown, strike the name of the foreign company off the register, and shall publish notice of the name having been so struck off the register in the *Gazette*, but nothing in this sub-section affects the power of the Court to wind up a foreign company the name of which has been struck off the register.

(6) Where the name of a foreign company is struck off the register pursuant to sub-section (5), the company ceases to be registered as a foreign company under this Division.

(7) If the Commission is satisfied that the name of a registered foreign company was struck off the register as the result of an error on the part of the Commission, the Commission may restore the name of the company to the register, and thereupon the name of the company shall be deemed never to have been struck off and the company shall be deemed never to have ceased to be registered as a foreign company.

(8) If a person is aggrieved by the name of a registered foreign company having been struck off the register, the Court, on an application made by the person at any time within 15 years after the name of the company has been so struck off, may, if satisfied that, at the time of the striking off, the company had a place of business or was carrying on business in the State or, in the case of a foreign company formed outside Australia and the external Territories, in a participating State or participating Territory or otherwise that it is just that the name of the company be restored to the register, order the name of the company to be restored to the register, and, upon an office copy of the order being lodged with the Commission, the name of the company shall be deemed never to have been struck off, and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(9) Where the name of a foreign company is restored to the register pursuant to sub-section (7) or (8), the Commission shall cause notice of that fact to be published in the *Gazette*.

(10) If a registered foreign company ceases to be registered under this Division, any obligation to lodge a document with the Commission imposed on the company by this Code by virtue of the doing of any act or thing, or the occurrence of any event, at or before the time of the company so ceasing, being an obligation not discharged by the company at or before that time, continues to apply to the company notwithstanding that the period specified by this Code for the lodging of the document has not expired at or before that time.

(11) If a registered foreign company commences to be wound up or is dissolved in its place of incorporation or formation—

(a) each person who, immediately before the commencement of the winding up proceedings, was an agent of the company, shall, within one month after the commencement of the winding up or the dissolution or within such further time as the Commission in special circumstances allows, lodge or cause to be lodged with the Commission notice of that fact and, when a liquidator is appointed, notice of the appointment;

and

(b) the Court shall, on application by the person who is the liquidator for the place of incorporation or formation of the company or by the Commission, appoint a liquidator of the company.

(12) If a registered foreign company incorporated under the law in force in another State or in a Territory is placed under official management in its place of incorporation under the provisions of the law of that State or Territory that correspond with Part XI or if the period of official management is terminated, the company shall, within one month after the commencement or termination or within such further time as the Commission in special circumstances allows, lodge with the Commission notice in the prescribed form of that fact.

(13) A liquidator of a registered foreign company who is appointed by the Court—

(a) shall, before any distribution of the foreign company's property is made, by advertisement in a newspaper circulating generally in the State and, in the case of a foreign company formed outside Australia and the external Territories, in each participating State or participating Territory where the foreign company had been carrying on business at any time during the 6 years immediately preceding the liquidation, invite all creditors to make their claims against the foreign company within a reasonable time before the distribution;

(b) shall not, without obtaining an order of the Court, pay out any creditor of the foreign company to the exclusion of any other creditor of the foreign company;

and

(c) shall, unless the Court otherwise orders, recover and realize the property of the foreign company in the State and, in the case of a foreign company formed outside Australia and the external

Territories, in any participating State or participating Territory and shall pay the net amount so recovered and realized to the liquidator of that foreign company for the place where it was formed or incorporated.

(14) Where a registered foreign company has been wound up so far as its property in the State and, in the case of a foreign company formed outside Australia and the external Territories, in any participating State or participating Territory is concerned and there is no liquidator for the place of its incorporation or formation, the liquidator may apply to the Court for directions as to the disposal of the net amount recovered pursuant to sub-section (13).

519. (1) Where a registered foreign company formed outside Australia and the external Territories is registered as a foreign company under the provisions of the law of a participating State or participating Territory that correspond with this Division, the Commission shall strike the name of that foreign company off the register, and the foreign company thereupon ceases to be registered as a foreign company under this Division.

Name of foreign company to be struck off register.

(2) Where a registered foreign company formed outside Australia and the external Territories is registered as a company under the provisions of the law of a participating State or participating Territory that correspond with Division 4 of Part III, the Commission shall strike the name of that foreign company off the register, and the foreign company thereupon ceases to be registered as a foreign company under this Division.

520. (1) A foreign company shall not be registered under this Division unless the name of the foreign company is reserved under Division 2 of Part III in respect of the foreign company.

Restriction on use of certain names.

(2) A change in the name of a foreign company shall not be registered under sub-section (3) unless the name to which the foreign company proposes to change its name is reserved under Division 2 of Part III in respect of the foreign company.

(3) If a registered foreign company lodges with the Commission notice in writing giving particulars of a change in the name of the foreign company, the Commission shall, subject to sub-sections (1) and (2), alter the register kept by the Commission for the purposes of this Division by substituting the new name of the company for the name by which the company was previously registered.

(4) A registered foreign company shall not use in the State any name other than that under which it is registered under this Division or under any other law of the State.

(5) If a registered foreign company contravenes or fails to comply with sub-section (4), the foreign company, and any officer of the foreign company and any agent of the foreign company who are in default, are each guilty of an offence.

521. (1) Subject to this section, a registered foreign company that has a share capital and has any member who is resident in the State shall keep at its registered office in the State or at some other place in the State a branch register for the purpose of registering shares of members resident in the State who apply to have the shares registered in that register.

Branch register of shares in foreign company.

(2) Subject to this section, a registered foreign company incorporated outside Australia and the external Territories that has a share capital and

has any member who is resident in a participating State or a participating Territory shall keep at its principal office in that State or Territory or at some other place in that State or Territory a branch register for the purpose of registering shares of members resident in that State or Territory who apply to have the shares registered in that branch register.

(3) A registered foreign company is not obliged to keep a branch register pursuant to sub-section (1) until after the expiration of one month from the receipt by it of an application in writing by a member resident in the State for registration in its branch register in the State of the shares held by the member.

(4) A registered foreign company is not obliged to keep a branch register in a participating State or participating Territory pursuant to sub-section (2), unless—

(a) the registered foreign company is carrying on business in that State or Territory;

and

(b) a period of 2 months has expired since the registered foreign company received an application in writing by a member resident in that State or Territory for registration, in a branch register in that State or Territory, of the shares held by the member.

(5) * * * * *

(6) This section does not apply to a foreign company that by its constituent documents prohibits any invitation to the public to subscribe for, and any offer to the public to accept subscriptions for, shares in the foreign company.

(7) Every branch register kept pursuant to this section shall be kept in the manner provided by Division 4 of Part V as though the branch register were a register of a company incorporated under this Code.

(8) Transfers shall be effected on a branch register kept pursuant to this section in the same manner and at the same charges as on the register of members of the foreign company concerned kept in its place of incorporation or formation and transfers lodged at its registered office in the State or, in the case of a foreign company formed outside Australia and the external Territories, at its principal office in a participating State or participating Territory are binding on the foreign company.

(9) The Court has the same powers in relation to rectification of a branch register kept pursuant to this section as it has in respect of the register of a company incorporated under this Code.

(10) Where a registered foreign company opens a branch register in the State or, in the case of a foreign company formed outside Australia and the external Territories, in any participating State or participating Territory, it shall, within 14 days after the opening of the register, lodge with the Commission notice of that fact specifying the address where the register is kept.

(11) Where any change is made in the place where a branch register is kept by a registered foreign company or where a branch register kept by a registered foreign company is discontinued, the company shall, within 14 days after the change or discontinuance, lodge notice of the change or discontinuance with the Commission.

(11A) If a registered foreign company fails to comply with sub-section (1), (2) or (11), the foreign company, any officer of the foreign company who is in default and any agent of the foreign company who is in default are each guilty of an offence.

(12) Where a corporation is entitled pursuant to a law of the place of incorporation or formation of a foreign company that corresponds with section 42 of the *Companies (Acquisition of Shares) (South Australia) Code* or corresponds with section 318 of this Code to give notice to a dissenting offeree or to a dissenting shareholder in that foreign company or the holder of shares in that foreign company that are not voting shares that it desires to acquire any of his shares registered on a branch register kept under this section, this section ceases to apply to that foreign company until—

(a) the shares have been acquired;

or

(b) that corporation has ceased to be entitled to acquire the shares.

522. (1) Subject to this Code, on application for that purpose made by a member of a registered foreign company, being a member who is resident in the State, the foreign company shall register in a branch register of the company kept in the State the shares held by the member that are registered in any other register kept by the company.

Registration of
shares in branch
register.

(2) Subject to this Code, on application for that purpose made by a member of a registered foreign company formed outside Australia and the external Territories, being a member who is resident in a participating State or a participating Territory, the foreign company shall register in a branch register of the company kept in that State or Territory the shares held by the member that are registered in any other register kept by the company.

523. Subject to this Code, on application for that purpose made by a member of a registered foreign company holding shares registered in a branch register, the foreign company shall remove the shares from the branch register and register them in such other register as is specified in the application.

Removal of
shares from
branch register.

524. The provisions of section 256 relating to the keeping of an index of the names of members of a company apply, with such adaptations as are necessary, in relation to persons holding shares in a branch register kept in the State and section 257 applies, with such adaptations as are necessary, to the inspection and closing of a branch register and of an index kept in relation to a branch register kept in the State.

Index of members
and inspection
and closing of
branch registers.

525. A branch register is *prima facie* evidence of any matters that are by this Division required or authorized to be inserted in that register.

Branch register to
be *prima facie*
evidence.

526. A certificate under the seal of a foreign company specifying any shares held by any member of that company and registered in the branch register is *prima facie* evidence of the title of the member to the shares and of the fact that the shares are registered in the branch register.

Certificate as to
shareholding.

527. If default is made by a foreign company in complying with any provision of this Division other than a provision in which a penalty or punishment is expressly mentioned, the company, and any officer or agent of the company who is in default, are each guilty of an offence.

Penalties.

PART XIV

PART XIV

MISCELLANEOUS

DIVISION 1

DIVISION 1—GENERAL

Service of
documents on
company.

528. (1) A document may be served on a company by leaving it at, or by sending it by post to, the registered office of the company.

(2) For the purpose of sub-section (1), the situation of the registered office of a company—

(a) in a case to which neither paragraph (b) nor paragraph (c) applies— shall be deemed to be the place notice of the address of which has been lodged with the Commission under sub-section 84 (2), 85 (4) or 217 (1);

(b) if only one notice of a change of address has been lodged with the Commission under sub-section 217 (3), shall, on and from—

(i) the date that is 7 days after the date on which the notice was lodged;

or

(ii) the date that is specified in the notice as the date from which the change of address is to take effect,

whichever is later, be deemed to be the place the address of which is specified in the notice;

or

(c) if 2 or more notices of a change of address have been lodged with the Commission under sub-section 217 (3), shall, on and from—

(i) the date that is 7 days after the date on which the later or latest of those notices was lodged;

or

(ii) the date that is specified in the later or latest of those notices as the date from which the change of address is to take effect,

whichever is later, be deemed to be the place the address of which is specified in the relevant notice,

and shall be so deemed to be that place irrespective of whether the address of a different place is shown as the address of the registered office of the company in a return or other document (not being a notice under sub-section 217 (3)) lodged with the Commission after the notice referred to in paragraph (a) or (b), or the later or latest of the notices referred to in paragraph (c), was lodged.

(3) For the purposes of sub-section (1), the situation of the registered office of a company incorporated under a corresponding previous law of the State shall, unless and until a notice is lodged with the Commission in relation to that company under sub-section 217 (3), be deemed to be the place that was, immediately before the commencement of the Companies (Application of Laws) Act, 1982, deemed to be the situation of the registered office of the company for the purposes of the Companies Act, 1962-1981.

(4) Without limiting the operation of sub-section (1), a document may be served on a company by delivering a copy of the document personally

to each of 2 directors of the company who reside in Australia or an external Territory.

(5) Where a liquidator of a company has been appointed, a document may be served on the company by leaving it at, or by sending it by post to, the last address of the office of the liquidator notice of which has been lodged with the Commission.

(6) Where an official manager of a company has been appointed, a document may be served on the company by leaving it at, or by sending it by post to, the last address of the office of the official manager notice of which has been lodged with the Commission.

(7) Nothing in this section affects—

(a) the power of the Court to authorize a document to be served on a company in a manner not provided for by this section;

or

(b) the operation of any provision of a law in force in the State or of the rules authorizing a document to be served on a company in a manner not provided for by this section.

529. (1) A document may be served on a recognized company or on a recognized foreign company by leaving it at, or by sending it by post to, the principal office of the company in the State.

Service of documents on recognized company or recognized foreign company.

(2) For the purposes of sub-section (1), the situation of the principal office of a recognized company or of a recognized foreign company—

(a) in a case to which neither paragraph (b) nor paragraph (c) applies— shall be deemed to be the place notice of the address of which has been lodged with the Commission under the provision of the law of the participating State or participating Territory in which the company is incorporated or registered that corresponds with sub-section 501 (1);

(b) if only one notice of a change of address has been lodged with the Commission under the provision of that law that corresponds with sub-section 502 (1), shall, on and from—

(i) the date that is 7 days after the date on which the notice was lodged;

or

(ii) the date that is specified in the notice as the date from which the change of address is to take effect,

whichever is later, be deemed to be the place the address of which is specified in the notice;

or

(c) if 2 or more notices of a change of address have been lodged with the Commission under the provision of that law that corresponds with sub-section 502 (1), shall, on and from—

(i) the date that is 7 days after the date on which the later or latest of those notices was lodged;

or

- (ii) the date that is specified in the later or latest of those notices as the date from which the change of address is to take effect,

whichever is later, be deemed to be the place the address of which is specified in the relevant notice,

and shall be so deemed to be that place irrespective of whether the address of a different place is shown as the address of the principal office of the recognized company or recognized foreign company in a return or other document (not being a notice lodged under the provision referred to in paragraph (b)) lodged with the Commission after the notice referred to in paragraph (a) or (b), or the later or latest of the notices referred to in paragraph (c), was lodged.

(3) Without limiting the operation of sub-section (1), a document may be served on a recognized company or recognized foreign company by delivering a copy of the document personally to each of 2 directors of the recognized company or recognized foreign company who reside in Australia or in an external Territory.

(4) Where a liquidator of a recognized company or of a recognized foreign company has been appointed, a document may be served on the recognized company or recognized foreign company by leaving it at, or by sending it by post to, the last address of the office of the liquidator notice of which has been lodged with the Commission under the law of a participating State or participating Territory.

(5) Where an official manager of a recognized company or of a recognized foreign company has been appointed, a document may be served on the recognized company or recognized foreign company by leaving it at, or by sending it by post to, the last address of the office of the official manager notice of which has been lodged with the Commission under the law of a participating State or participating Territory.

(6) Nothing in this section affects the power of the Court to authorize a document to be served on a recognized foreign company in a manner not provided for by this section.

530. (1) A document may be served on a registered foreign company—

- (a) by leaving it at, or by sending it by post to, the registered office of the foreign company in the State;

or

- (b) by leaving it at, or by sending it by post to, the address of a person who is an agent of the foreign company for the purposes of Division 5 of Part XIII, being—

- (i) in a case to which sub-paragraph (ii) does not apply—an address notice of which has been lodged with the Commission under sub-section 512 (2) or 514 (5);

or

- (ii) if a notice or notices of a change or alteration in that address has or have been lodged with the Commission under sub-section 515 (2)—the address shown in that last-mentioned notice or the later or latest of those last-mentioned notices.

(2) For the purposes of sub-section (1), the situation of the registered office of a registered foreign company—

(a) in a case to which neither paragraph (b) nor paragraph (c) applies—
shall be deemed to be the place notice of the address of which
has been lodged with the Commission under paragraph 512
(2) (g);

(b) if only one notice of a change of address has been lodged with
the Commission under sub-section 515 (1), shall, on and from—

(i) the date that is 7 days after the date on which the notice
was lodged;

or

(ii) the date that is specified in the notice as the date from
which the change of address is to take effect,

whichever is later, be deemed to be the place the address of
which is specified in the notice;

or

(c) if 2 or more notices of a change of address have been lodged with
the Commission under sub-section 515 (1), shall, on and from—

(i) the date that is 7 days after the date on which the later
or latest of those notices was lodged;

or

(ii) the date that is specified in the later or latest of those
notices as the date from which the change of address
is to take effect,

whichever is later, be deemed to be the place the address of
which is specified in the relevant notice,

and shall be so deemed to be that place irrespective of whether the address
of a different place is shown as the address of the registered office of the
registered foreign company in a return or other document (not being a notice
under sub-section 515 (1)) lodged with the Commission after the notice
referred to in paragraph (a) or (b), or the later or latest of the notices referred
to in paragraph (c), was lodged.

(3) Without limiting the operation of sub-section (1), if 2 or more
directors of a registered foreign company reside in Australia or an external
Territory, a document may be served on the foreign company by delivering
a copy of the document personally to each of 2 of those directors.

(4) Where a liquidator of a registered foreign company has been
appointed, a document may be served on the company by leaving it at, or
by sending it by post to, the last address of the office of the liquidator notice
of which has been lodged with the Commission.

(5) Nothing in this section affects the power of the Court to authorize
a document to be served on a registered foreign company in a manner not
provided for by this section.

530A. Where a provision of this Code requires a notice to be lodged
with the Commission of—

Address of
registered office,
principal office,
etc.

(a) the address of an office, or of a proposed office of a corporation
or person;

or

(b) a change in the situation of an office of a corporation or person,
the notice—

(c) shall specify the full address, or the full new address, as the case requires, of the relevant office including, where applicable, the number of the room and of the floor or level of the building on which the office is situated;

and

(d) where the notice relates to the address or situation of an office of a corporation and the address specified in accordance with paragraph (a) is the address of premises that are not to be occupied by the corporation—shall be accompanied by the consent, given in the prescribed form, by the person who is the occupier of those premises to the specification of that address in that notice.

Vesting of
property.

531. (1) Where an order is made by a court under this Code vesting property in a person—

(a) subject to sub-section (2), the property forthwith vests in the person named in the order without any conveyance, transfer or assignment;

and

(b) the person who applied for the order shall, within 7 days after the passing and entering of the order, lodge an office copy of the order with such person (if any) as is specified for the purpose in the order.

(2) Where—

(a) the property to which an order referred to in sub-section (1) relates is property the transfer or transmission of which may be registered under a law of the Commonwealth, of a State or of a Territory;

and

(b) that law enables the registration of such an order,

the property, notwithstanding that it vests in equity in the person named in the order, does not vest in that person at law until the requirements of the law referred to in paragraph (a) have been complied with.

(3) Where—

(a) property vests in a person by force of this Code;

(b) the property is property the transfer or transmission of which may be registered under a law of the Commonwealth, of a State or of a Territory;

and

(c) that law enables the person to be registered as the owner of that property,

that property, notwithstanding that it vests in equity in that person by force of this Code, does not vest in that person at law until the requirements of the law referred to in paragraph (b) have been complied with.

532. In determining for the purposes of this Code whether a majority in value of creditors, or a particular proportion in value of creditors, has passed a resolution or done any other act or thing, if a creditor's debt consists of a number of whole dollars and a part of a dollar, the part of the dollar shall be disregarded.

Parts of dollar to be disregarded in determining majority in value of creditors, &c.

533. (1) Where a corporation is plaintiff in any action or other legal proceeding, the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the corporation will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs and stay all proceedings until the security is given.

Costs.

(2) The costs of any proceeding before a court under this Code shall be borne by such party to the proceeding as the court, in its discretion, directs.

534. (1) Where a person has been shown in an appropriate register of a company as the holder of a security of the company for a period of not less than 6 years and the company has, for a period of not less than 6 years—

Disposal of securities if whereabouts of holder unknown.

(a) had reasonable grounds for believing that that person was not residing at the address shown in the register as his address;

and

(b) on each occasion during that last-mentioned period when, whether or not in accordance with a provision of this Code, it sought to communicate with that person, been unable after the exercise of reasonable diligence so to do,

the company may cause an advertisement to be published in a daily newspaper circulating in the State, Territory or country shown in that register in relation to the address of the person concerned stating that the company intends, after the expiration of one month from the date of the advertisement, to apply to the Minister administering the Unclaimed Moneys Act, 1891-1975 for permission to transfer to that Minister the securities held by the person and any rights in respect of the securities.

(2) If, after the expiration of one month from the date of the advertisement, the whereabouts of the person remain unknown, the company may apply to the Minister administering the Unclaimed Moneys Act, 1891-1975 for permission to transfer to that Minister the securities held by the person and any rights in respect of the securities.

(3) The application shall be accompanied by a statement in writing by a director, principal executive officer or secretary of the company in the prescribed form and a copy of the advertisement referred to in sub-section (1).

(4) Where the Minister administering the Unclaimed Moneys Act, 1891-1975 grants permission for the securities and rights (if any) to be transferred, the company may transfer the securities and rights (if any) to that Minister and for that purpose may execute for and on behalf of the holder a transfer of the securities and rights (if any) to that Minister.

(5) The Minister administering the Unclaimed Moneys Act, 1891-1975 shall sell or dispose of any securities or rights transferred to him under sub-section (4) or under any corresponding provision of a previous law of the State or any securities or other property received by him that became

substituted for any securities or rights so transferred as he thinks fit and shall deal with the proceeds of the sale or disposal, and any income derived, in accordance with that Act.

(6) Neither South Australia nor the Minister administering the Unclaimed Moneys Act, 1891-1975 is liable for any loss or damage suffered by a person arising out of the exercise of, or the failure to exercise, any of the powers that are conferred on that Minister under this section or that that Minister has in relation to the property transferred to him under this section or property that became substituted for the whole or any part of that property.

(7) The Minister administering the Unclaimed Moneys Act, 1891-1975 is not subject to any obligation—

- (a) to pay any calls;
 - (b) to make any contribution to the debts and liabilities of the company;
 - (c) to discharge any other liability;
- or
- (d) to do any other act or thing,

in respect of a security transferred to him under this section or under any corresponding provision of a previous law of the State, whether the obligation arose before, or arises after, the date of the transfer, but this sub-section does not affect the right of the company to forfeit a share.

(8) A reference in this section to a period of not less than 6 years is a reference to a period that commenced before or after the commencement of the Companies (Application of Laws) Act, 1982.

Power to grant relief.

535. (1) If, in any civil proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty in a capacity by virtue of which he is such a person, it appears to the court before which the proceedings are taken that the person is or may be liable in respect of the negligence, default or breach but that he has acted honestly and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default or breach, the court may relieve him either wholly or partly from his liability on such terms as the court thinks fit.

(2) Where a person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of trust or breach of duty in a capacity by virtue of which he is such a person, he may apply to the Court for relief, and the Court has the same power to relieve him as it would have had under sub-section (1) if it had been a court before which proceedings against the person for negligence, default, breach of trust or breach of duty had been brought.

(3) Where a case to which sub-section (1) applies is being tried by a judge with a jury, the judge after hearing the evidence may, if he is satisfied that the defendant ought pursuant to that sub-section to be relieved either wholly or partly from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge thinks proper.

(4) This section applies to a person who is—

- (a) an officer of a corporation;

- (b) an auditor of a corporation, whether or not he is an officer of the corporation;
 - (c) an expert in relation to a matter in relation to which the civil proceeding has been taken or the claim will or might arise;
- or
- (d) a receiver, receiver and manager, liquidator or other person appointed or directed by the Court to carry out any duty under this Code in relation to a corporation.

(5) For the purposes of this section, 'officer' in relation to a corporation, means—

- (a) a director, secretary, executive officer or employee of the corporation;
 - (b) a receiver, or receiver and manager, of the property or part of the property of the corporation;
 - (c) an official manager or deputy official manager of the corporation;
 - (d) a liquidator of the corporation;
- and
- (e) a trustee or other person administering a compromise or arrangement made between the corporation and another person or other persons.

536. Where, under this Code, the Court orders a meeting to be convened, the Court may, subject to this Code, give such directions with respect to the convening, holding or conduct of the meeting, and such ancillary or consequential directions in relation to the meeting, as it thinks fit.

Power of Court to give directions with respect to meetings ordered by the Court.

537. A person aggrieved by the refusal of the Commission to register a corporation or other person or to register or receive a document, or by any other act, omission or decision of the Commission, may, within such period (if any) as is prescribed, appeal to the Court, which may confirm, reverse or modify the refusal, act or decision, or remedy the omission, as the case may be, and make such orders and give such directions in the matter as it thinks fit, but this section does not apply to—

Appeals from decisions of Commission.

- (a) any act, omission or decision of the Commission in respect of which any provision in the nature of an appeal or review is expressly provided by this Code;
- or
- (b) any act or decision of the Commission that is declared by this Code to be conclusive or final or is embodied in any document declared by this Code to be conclusive evidence of any act, matter or thing.

538. A person aggrieved by any act, omission or decision of—

- (a) a person administering a compromise, arrangement or scheme referred to in Part VIII;
- (b) a receiver, or a receiver and manager, of the property or part of the property of a corporation;
- (c) an official manager or a deputy official manager;

Appeals from decisions of receivers, liquidators, &c.

or

(d) a liquidator or provisional liquidator of a company,

may appeal to the Court in respect of the act, omission or decision and the Court may confirm, reverse or modify the act or decision, or remedy the omission, as the case may be, and make such orders and give such directions as it thinks fit.

Irregularities.

539. (1) In this section, unless the contrary intention appears—

(a) a reference to a proceeding under this Code is a reference to any proceeding whether a legal proceeding or not;

and

(b) a reference to a procedural irregularity includes a reference to—

(i) the absence of a quorum at a meeting of a corporation, at a meeting of directors or creditors of a corporation or at a joint meeting of creditors and members of a corporation;

and

(ii) a defect, irregularity or deficiency of notice or time.

(2) A proceeding under this Code is not invalidated by reason of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.

(3) A meeting held for the purposes of this Code, or a meeting notice of which is required to be given in accordance with the provisions of this Code, or any proceeding at such a meeting, is not invalidated by reason only of the accidental omission to give notice of the meeting or the non-receipt by any person of notice of the meeting, unless the Court, on the application of the person concerned, a person entitled to attend the meeting or the Commission, declares proceedings at the meeting to be void.

(4) Subject to the following provisions of this section and without limiting the generality of any other provision of this Code, the Court may, on application by any interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the Court imposes:

(a) an order declaring that any act, matter or thing purporting to have been done, or any proceeding purporting to have been instituted or taken, under this Code or in relation to a corporation is not invalid by reason of any contravention of, or failure to comply with, a provision of this Code or a provision of any of the constituent documents of a corporation;

(b) an order directing the rectification of any register kept by the Commission under this Code;

(c) an order relieving a person in whole or in part from any civil liability in respect of a contravention or failure of a kind referred to in paragraph (a);

(d) an order extending the period for doing any act, matter or thing or instituting or taking any proceeding under this Code or in relation to a corporation (including an order extending a period

where the period concerned expired before the application for the order was made) or abridging the period for doing such an act, matter or thing or instituting or taking such a proceeding, and may make such consequential or ancillary orders as the Court thinks fit.

(5) An order may be made under paragraph (4) (a) or (c) notwithstanding that the contravention or failure referred to in the paragraph concerned resulted in the commission of an offence.

(6) The Court shall not make an order under this section unless it is satisfied—

(a) in the case of an order referred to in paragraph (4) (a)—

(i) that the act, matter or thing, or the proceeding, referred to in that paragraph is essentially of a procedural nature;

(ii) that the person or persons concerned in or party to the contravention or failure acted honestly;

or

(iii) that it is in the public interest that the order be made;

(b) in the case of an order referred to in paragraph (4) (c)—that the person subject to the civil liability concerned acted honestly;

and

(c) in every case—that no substantial injustice has been or is likely to be caused to any person.

540. (1) The Commission may intervene in any legal proceeding relating to a matter arising under this Code.

Power of
Commission to
intervene in
proceedings.

(2) Where the Commission intervenes in any proceeding referred to in sub-section (1), the Commission shall be deemed to be a party to the proceeding with all the rights, duties and liabilities of such a party.

(3) Without limiting the generality of sub-section (2), the Commission may appear and be represented in any proceeding in which it wishes to intervene pursuant to sub-section (1)—

(a) by an employee of the Commission;

(b) by a natural person to whom, or by an officer or employee of a person to whom or to which, the Commission has delegated its functions and powers under this Code or such of those functions and powers as relate to a matter to which the proceeding relates;

or

(c) by solicitor or counsel.

541. (1) In this section, a reference, in relation to a corporation, to a prescribed person, shall be construed as a reference to an official manager, liquidator or provisional liquidator of the corporation or to any other person authorized by the Commission to make applications under this section or to make an application under this section in relation to that corporation.

Examination of
persons concerned
with corporations.

(2) Where it appears to the Commission or to a prescribed person that—

(a) a person who has taken part or been concerned in the promotion, formation, management, administration or winding up of, or has otherwise taken part or been concerned in affairs of, a corporation has been, or may have been, guilty of fraud, negligence, default, breach of trust, breach of duty or other misconduct in relation to that corporation;

or

(b) a person may be capable of giving information in relation to the promotion, formation, management, administration or winding up of, or otherwise in relation to affairs of, a corporation,

the Commission or prescribed person may apply to the Court for an order under this section in relation to the person.

(3) Where an application is made under sub-section (2) in relation to a person, the Court may, if it thinks fit, order that the person attend before the Court on a day and at a time to be fixed by the Court to be examined on oath or affirmation on any matters relating to the promotion, formation, management, administration or winding up of, or otherwise relating to affairs of, the corporation concerned.

(4) An examination under this section shall be held in public except to such extent (if any) as the Court considers that, by reason of special circumstances, it is desirable to hold the examination in private.

(5) The Court, on making an order for an examination, or at any later time, on the application of any person concerned, may give such directions as to the matters to be inquired into, and, subject to sub-section (4), as to the procedure to be followed (including, in the case of an examination in private, directions as to the persons who may be present), as it thinks fit.

(6) A person who is ordered under sub-section (3) to attend before the Court shall not, without reasonable excuse—

(a) fail to attend as required by the order;

or

(b) fail to attend from day to day until the conclusion of the examination.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(7) A person attending before the Court for examination pursuant to an order made under sub-section (3) shall not refuse or fail to take an oath or make an affirmation.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(8) A person attending before the Court for examination pursuant to an order made under sub-section (3) shall not refuse or fail to answer a question that he is directed by the Court to answer.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(9) A person attending before the Court for examination pursuant to an order made under sub-section (3), if directed by the Court to produce any books in his possession or under his control relevant to the matters on which he is to be, or is being, examined, shall not refuse or fail to comply with the direction.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(10) Where the Court so directs a person to produce any books and the person has a lien on the books, the production of the books does not prejudice the lien.

(11) A person attending before the Court for examination pursuant to an order made under sub-section (3) shall not make a statement that is false or misleading in a material particular.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(12) A person is not excused from answering a question put to him at an examination held pursuant to an order made under sub-section (3) on the ground that the answer might tend to incriminate him but, where the person claims, before answering the question, that the answer might tend to incriminate him, the answer is not admissible in evidence against him in criminal proceedings other than proceedings under this section or other proceedings in respect of the falsity of the answer.

(13) The Court may order the questions put to a person and the answers given by him at an examination under this section to be recorded in writing and may require him to sign that written record.

(14) Subject to sub-section (12), any written record of an examination so signed by a person, or any transcript of an examination of a person that is authenticated as provided by the rules, may be used in evidence in any legal proceedings against the person.

(15) An examination under this section may, if the Court so directs and subject to the rules, be held before such other court as is specified by the Court and the powers of the Court under this section may be exercised by that other court.

(16) A person ordered to attend before the Court or another court for examination under this section may, at his own expense, employ a solicitor, or a solicitor and counsel, and the solicitor or counsel, as the case may be, may put to him such questions as the Court, or the other court, as the case may be, considers just for the purpose of enabling him to explain or qualify any answers or evidence given by him.

(17) The Court or another court before which an examination under this section takes place may, if it thinks fit, adjourn the examination from time to time.

(18) Where the Court that made the order under sub-section (3) for an examination is satisfied that the order for the examination was obtained without reasonable cause, the Court may order the whole or any part of the costs incurred by the person ordered to be examined to be paid by the applicant or by any other person who, with the consent of the Court, took part in the examination.

542. (1) In this section, a reference to a prescribed person, in relation to a corporation, shall be construed as a reference to an official manager, liquidator or provisional liquidator of the corporation or to any other person authorized by the Commission to make applications under this section or to make an application under this section in relation to that corporation.

Orders against
persons concerned
with corporations.

(2) Subject to sub-section (3), where, on application by the Commission or a prescribed person, the Court is satisfied that—

- (a) a person is guilty of fraud, negligence, default, breach of trust or breach of duty in relation to a corporation;

and

- (b) the corporation has suffered, or is likely to suffer, loss or damage as a result of the fraud, negligence, default, breach of trust or breach of duty,

the Court may make such order or orders as it thinks appropriate against or in relation to the person (including either or both of the orders specified in sub-section (4)) and may so make an order against or in relation to a person notwithstanding that the person may have committed an offence in respect of the matter to which the order relates.

(3) The Court shall not make an order against a person under sub-section (2) unless the Court has given the person the opportunity—

- (a) to give evidence himself;
 (b) to call witnesses to give evidence;
 (c) to adduce other evidence in relation to the matters to which the application relates;

and

- (d) to employ, at his own expense, a solicitor, or a solicitor and counsel, to put to him, or to any other witness, such questions as the Court considers just for the purpose of enabling him to explain or qualify any answers or evidence given by him.

(4) The orders that may be made under sub-section (2) against a person include—

- (a) an order directing the person to pay money or transfer property to the corporation;

and

- (b) an order directing the person to pay to the corporation the amount of the loss or damage.

(5) Nothing in this section prevents any person from instituting any other proceedings in relation to matters in respect of which an application may be made under this section.

Civil proceedings
not to be stayed.

543. No civil proceedings under this Code shall be stayed by reason only that the proceeding discloses, or arises out of, the commission of an offence.

Form and
evidentiary value
of books.

544. (1) A book that is required by this Code to be kept or prepared may be kept or prepared—

- (a) by making entries in a bound or looseleaf book;
 (b) by recording or storing the matters concerned by means of a mechanical, electronic or other device;

or

- (c) in any other manner approved by the Commission.

(2) Sub-section (1) does not authorize a book to be kept or prepared by a mechanical, electronic or other device unless—

- (a) the matters recorded or stored will be capable, at any time, of being reproduced in a written form;

or

(b) a reproduction of those matters is kept in a written form approved by the Commission.

(3) A corporation shall take all reasonable precautions, including such precautions (if any) as are prescribed, for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, any book or part of a book required by this Code to be kept or prepared by the corporation.

(4) Where a corporation records or stores any matters by means of a mechanical, electronic or other device, any duty imposed by this Code to make a book containing those matters available for inspection or to provide copies of the whole or part of a book containing those matters shall be construed as a duty to make the matters available for inspection in written form or to provide a document containing a clear reproduction in writing of the whole or part of them, as the case may be.

(5) Where—

(a) by virtue of a provision of this Code a book that is required by this Code to be kept or prepared is *prima facie* evidence of any matters;

and

(b) the book is kept or prepared by recording or storing the matters concerned by means of a mechanical, electronic or other device,

any writing that reproduces matters so recorded or stored is *prima facie* evidence of those matters.

(6) A writing that purports to reproduce matters recorded or stored by means of a mechanical, electronic or other device shall, unless the contrary is established, be deemed to be a reproduction of those matters.

545. (1) A book that is by this Code required to be available for inspection shall, subject to and in accordance with this Code, be available for inspection at the place where, in accordance with this Code, it is kept and at all times when the registered office in the State of the corporation concerned is required to be open and accessible to the public.

Inspection of books.

(2) If any register kept by a company or a foreign company for the purposes of this Code is kept at a place other than the registered office of the company or foreign company, that place shall be open to permit the register to be inspected during the same hours as those during which the registered office of the company or foreign company is required to be open.

(3) A person permitted by this Code to inspect a book may make copies of, or take extracts from, the book and any person who refuses or fails to allow a person so permitted to make a copy of, or take an extract from, the book is guilty of an offence.

546. (1) This section has effect where a corporation records otherwise than in written form the matters required to be contained in a book and means are provided by which those matters are made available for inspection in written form at a place (in this section referred to as the "place of inspection") other than the place (in this section referred to as the "place of storage") where the material constituting the record is kept.

Location of books kept on computers, &c.

(2) If the place of inspection in respect of a book is at a place where, apart from this section, the book would be required to be kept, the corporation shall be deemed to have complied with the requirements of this Code as to the location of the book.

(3) Sub-section (2) applies only if the corporation—

(a) has lodged with the Commission a notice stating that it desires to avail itself of this section in respect of a specified book and specifying the situation of the place of inspection and the place of storage in respect of that book;

and

(b) where such a situation is changed, has within 14 days after the change lodged notice of the change with the Commission.

Location of registers.

547. (1) A register that is required by section 131, 143, 147, 209, 231, 238 or 256 to be kept by a company shall be kept at the registered office or the principal place of business in the State of the company but—

(a) if the work of making up the register is done at another office of the company within the State, it may be kept at that other office;

(b) if the company arranges with some other person to make up the register on its behalf and the office of that other person at which the work is done is within the State, it may be kept at that office;

or

(c) if the Commission approves, it may be kept at another place in Australia.

(2) A branch register that is required by section 148 or 262 to be kept in a particular State or Territory by a company shall be kept at the principal office, or the principal place of business, in that State or Territory of the company but—

(a) if the work of making up the branch register is done at another office of the company within that State or Territory, it may be kept at that other office;

(b) if the company arranges with some other person to make up the branch register on its behalf and the office of that other person at which the work is done is within that State or Territory, it may be kept at that office;

or

(c) if the Commission approves, it may be kept at another place in Australia.

(3) If default is made in complying with sub-section (1) or (2) in its application to any register or branch register of a company, the company, any officer of the company who is in default, and any person who has arranged with the company to make up the register or branch register on its behalf and is in default, are each guilty of an offence.

(4) A company shall, within 7 days after any register or branch register of the company to which sub-section (1) or (2) applies is first kept at a place

other than the registered office or the principal office, as the case may be, lodge with the Commission notice of the place where the register or branch register is kept and shall, within 7 days after any change in the place at which the register or branch register is kept, lodge with the Commission notice of the change.

(5) If default is made in complying with sub-section (4) in its application to any register or branch register of a company, the company and any officer of the company who is in default are each guilty of an offence.

(6) For the purposes of this section, a reference in sub-section (1) to a register required to be kept by a company under section 256 includes, if an index is required to be kept under sub-section (5) of that section, a reference to the register and index.

(7) In this section, unless the contrary intention appears, "company" includes a registered foreign company.

548. (1) Where under this Code a corporation is required to lodge with the Commission any instrument or a certified copy of any instrument and the instrument is not written in the English language, the corporation shall lodge at the same time with the Commission a certified translation of the instrument into the English language.

Translations of instruments.

(2) Where under this Code a corporation is required to make an instrument available for inspection and the instrument is not written in the English language, the corporation shall keep at its registered office in the State or, if it does not have a registered office in the State, at its principal office in the State, a certified translation of the instrument into the English language.

(3) In this section, "instrument" includes any certificate, contract or other document.

549. A certificate of incorporation of a company given under section 35 or 72 or under the corresponding provision of a previous law of the State, or a certificate of the incorporation of a company given under section 31 or under the corresponding provision of a previous law of the State, is conclusive evidence that all the requirements of this Code or of that previous law, as the case may be, in respect of registration and all matters precedent and incidental to registration have been complied with and that the company referred to in the certificate is duly incorporated under this Code or is a company within the meaning of this Code, as the case may be.

Certificate of incorporation conclusive evidence.

550. (1) Any book kept by a corporation pursuant to a requirement of this Code, or of any previous corresponding law of the State, or a requirement of the corresponding law in force in another State or in a Territory or of a previous corresponding law in force in another State or in a Territory, is admissible in evidence in any proceeding and is *prima facie* evidence of any matter stated or recorded in the book.

Admissibility of books in evidence.

(2) A document purporting to be a book kept by a corporation shall, unless the contrary is proved, be deemed to be such a book and to be kept pursuant to a requirement mentioned in sub-section (1).

551. If any person in contravention of this Code refuses to permit the inspection of any book or to supply a copy of any book, the Court may by order compel an immediate inspection of the book or order the copy to be supplied.

Court may compel compliance.

Restriction on offering shares, debentures, &c., for subscription or purchase.

552. (1) A person shall not, whether by appointment or otherwise go from place to place offering shares for subscription or purchase to the public or any member of the public.

(2) Sub-section (1) does not apply in the case of the shares of a corporation where the Commission has, on the application of the corporation, exempted the corporation from the provision of that sub-section by instrument in writing published in the *Gazette*.

(3) A person shall not make an offer in writing to any member of the public (not being a person whose ordinary business it is to purchase or sell shares, whether as principal or agent) of any shares for purchase unless the offer is accompanied by—

(a) a statement in writing (signed by the person making the offer and dated) containing such particulars as are required by this section to be included in the statement and otherwise complying with the requirements of this section;

or

(b) in the case of shares in a corporation formed or incorporated outside the State, by such a statement or by a prospectus that complies with this Code.

(4) Sub-section (3) does not apply—

(a) where the shares to which the offer relates are shares of a class that are listed for quotation on the stock market of a stock exchange in a State or Territory and the offer so states, specifying the stock exchange;

(b) where the shares to which the offer relates are shares that a corporation has allotted or agreed to allot with a view to their being offered for sale to the public and the offer is made by a document that complies with all applicable enactments and rules of law as to prospectuses;

(c) where the provisions of Division 1 or Division 5 of Part IV apply in relation to the offer and have been complied with;

(d) where the offer relates to a prescribed interest and is made by means of a statement in writing as required by Division 6 of Part IV;

or

(e) where the offer relates to debentures of a corporation of the kind referred to in sub-section 97 (6).

(5) The statement referred to in sub-section (3) shall not contain any matter other than the particulars required by this section to be included in the statement, and shall not be in characters smaller or less legible than any characters used in the offer or in any document sent with the offer.

(6) The statement referred to in sub-section (3) shall contain particulars as to—

(a) whether the person making the offer is acting as principal or agent and, if as agent—

(i) the name of his principal;

- (ii) an address in the State where that principal can be served with process;
 - and
 - (iii) particulars as to the remuneration payable by the principal to the agent;
- (b) the date on which and the place where the corporation was incorporated and the address of its registered or principal office in its place of incorporation and in the State;
 - (c) the authorized share capital of the corporation, its issued share capital, its paid-up share capital and the classes into which its share capital is divided and the rights of each class of shareholders in respect of capital, dividends and voting;
 - (d) the dividends (if any) paid by the corporation in respect of each class of shares during each of the 5 financial years immediately preceding the offer and, if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;
 - (e) the total amount of any debentures issued by the corporation and outstanding at the date of the statement, together with the rate of interest payable on those debentures;
 - (f) the names and addresses of the directors;
 - (g) whether or not the shares offered are fully paid up and, if not, to what extent they are paid up;
 - (h) whether or not the shares are listed for quotation on the stock market of, or permission to deal in the shares on a stock market has been granted by, any stock exchange and, if so, the name of each such stock exchange;
 - (j) where the offer relates to units—the names and addresses of the persons in whom the shares represented by the units are vested, the date of, and the parties to, any document defining the terms on which those shares are held, and an address in the State where that document or a copy of that document can be inspected;
- and
- (k) the last audited balance-sheet of the corporation.

(7) In sub-section (6), “corporation” means the corporation by which the shares to which the statement relates were or are to be issued.

(8) A person shall not, whether by appointment or otherwise, go from place to place making offers to the public or any member of the public, being offers of shares in a corporation that has not been formed for subscription or purchase.

(9) A person shall not make an offer to any member of the public, being an offer of any shares in a corporation that has not been formed for subscription or purchase.

(10) A person who acts in contravention of this section is guilty of an offence.

Penalty: \$2,500 or imprisonment for 6 months, or both.

(11) Where a person convicted of an offence under this section is a corporation, each officer concerned in the management of the corporation is guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

(12) Where a person is convicted of having made an offer in contravention of this section, the Court or, if he was convicted by another court, that other court, may order that any contract made as a result of the offer is void and may give such consequential directions as it thinks proper for the repayment of any money or the re-transfer of any shares.

(13) A person aggrieved by an order made or direction given under sub-section (12) by a court other than the Court may appeal to the Court against the order or direction, and the Court may confirm, reverse or modify the order or direction and make such further order or give such further directions as it thinks just.

(14) In this section, "shares" means shares in a corporation and includes—

(a) debentures and units and (without affecting the generality of the expression "debentures") all such documents (including those referred to as "bonds") as confer or purport to confer on the holder of the documents any claim against a corporation, whether the claim is present or future, certain or contingent, or ascertained or sounding only in damages;

and

(b) prescribed interests.

(15) In this section, a reference to an offer or offering of shares for subscription or purchase shall be construed as including an offer of shares by way of barter or exchange and a reference to an offer in writing of shares shall be construed as including an offer by means of broadcasting, television or cinematograph, but, where an offer is made by means of broadcasting, television or cinematograph, the statement or prospectus by which the offer is required to be accompanied by virtue of sub-section (3) shall be deemed to accompany the offer if—

(a) the statement or prospectus is prepared by the person on whose behalf the offer is made;

(b) the public are informed at the same time and by the same means as that by which the offer is made that a copy of the statement or prospectus will be supplied on request being made at a specified address;

and

(c) where a request for a copy of a statement or prospectus is made at that address within one month after the offer was made—the person making the request is supplied with a copy within 7 days after the request was made.

(16) For the purposes of this section, a person shall not, in relation to a corporation, be regarded as not being a member of the public by reason only that he is a holder of shares in the corporation or a purchaser of goods from the corporation.

(17) The provisions of this section do not apply to—

(a) offers of shares in a building society registered under the Building Societies Act, 1975-1981;

(b) offers of shares in a credit union registered under the Credit Unions Act, 1976-1980;

or

(c) offers of shares in a society registered under the Friendly Societies Act, 1919-1975.

553. (1) Sections 554 to 557 (inclusive) apply to a company—

Interpretation.

(a) that has been wound up or is in the course of being wound up;

(b) that has been in the course of being wound up, where the winding up has been stayed or terminated by an order under section 383;

(c) that has at any time been, or is, under official management;

(d) affairs of which have been or are under investigation pursuant to Part VII or the provisions of a previous law of the State with which that Part corresponds;

(e) in respect of the property or part of the property of which a receiver, or a receiver and manager, has at any time been appointed, whether by the Court or pursuant to the powers contained in any instrument, whether or not the appointment has been terminated;

(f) that has ceased to carry on business or is unable to pay its debts;

or

(g) that has entered into a compromise or arrangement with its creditors.

(2) For the purposes of this section, a company—

(a) shall be deemed to have ceased to carry on business if, and only if, the Commission has—

(i) sent to the company by post a letter pursuant to the provisions of sub-section 459 (1) and has not, within the next succeeding period of one month from the date of the letter, received an answer to the effect that the company is carrying on business;

or

(ii) published in the *Gazette* a notice pursuant to the provisions of sub-section 459 (3);

and

(b) shall be deemed to be unable to pay its debts if, and only if, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part.

(3) In this section and in sections 554 to 557 (inclusive)—

“appropriate officer” means—

(a) in relation to a company that has been, has been being or is being wound up—the liquidator;

(b) in relation to a company that has been or is under official management—the official manager;

- (c) in relation to a company affairs of which have been or are under investigation—the Commission;
 - (d) in relation to a company in respect of the property or any part of the property of which a receiver, or a receiver and manager, has been appointed—the receiver or the receiver and manager;
 - (e) in relation to a company that has ceased to carry on business or is unable to pay its debts—the Commission;
- and
- (f) in relation to a company that has entered into a compromise or arrangement with its creditors—the person appointed by the Court to administer the compromise or arrangement;

“company” includes any body to which Division 6 of Part XII applies;

“relevant day” means—

- (a) in relation to a company that has been, has been being or is being wound up—the day upon which under the provisions of this Code or of a corresponding previous law of the State the winding up commenced or is deemed to have commenced;
- (b) in relation to a company that has been or is under official management—the day upon which it was determined that the company should be placed under official management;
- (c) in relation to a company affairs of which have been or are under investigation—the day upon which a direction was given to the Commission to arrange for the investigation of those affairs;
- (d) in relation to a company in respect of the property or any part of the property of which a receiver, or a receiver and manager, has been appointed—the day upon which the receiver, or the receiver and manager, was appointed;
- (e) in relation to a company that is unable to pay its debts—the day upon which the execution or other process was returned unsatisfied in whole or in part;
- (f) in relation to a company that has ceased to carry on business—the day on which a letter was first sent to the company, or a notice was first published in the *Gazette* in relation to the company, as the case may be, under section 459 or the corresponding provision of a previous law of the State;

or

- (g) in relation to a company that has entered into a compromise or arrangement with its creditors—the day upon which the compromise or arrangement was approved by the Court.

Offences by
officers of certain
companies.

554. (1) A person who, being a past or present officer of a company to which this section applies—

- (a) does not, so far as he is capable of doing so, disclose to the

- appropriate officer all the property of the company, and how and to whom and for what consideration and when any part of the property of the company was disposed of within 5 years next before the relevant day, except such part as has been disposed of in the ordinary course of the business of the company;
- (b) does not deliver up to, or in accordance with the directions of, the appropriate officer—
- (i) all the property of the company in his custody or under his control;
 - or
 - (ii) all books in his custody or under his control belonging to the company;
- (c) has, within 5 years next before the relevant day or at a time on or after that day—
- (i) concealed or removed any part of the property of the company to the value of \$100 or upwards;
 - (ii) concealed any debt due to or by the company;
 - (iii) fraudulently parted with, altered or made any omission in, or been privy to fraudulent parting with, altering or making any omission in, any book affecting or relating to affairs of the company;
 - (iv) by any false representation or other fraud, obtained on credit, for or on behalf of the company, any property that the company has not subsequently paid for;
 - or
 - (v) pawned, pledged or disposed of, otherwise than in the ordinary course of the business of the company, property of the company that has been obtained on credit and has not been paid for;
- (d) makes any material omission in any statement or report relating to affairs of the company;
- (e) knowing or believing that a false debt has been proved by a person, fails for a period of one month to inform the appropriate officer of his knowledge or belief;
- (f) prevents the production to the appropriate officer of any book affecting or relating to affairs of the company;
- (g) has, within 5 years next before the relevant day or at a time on or after that day, attempted to account for any part of the property of the company by making entries in the books of the company showing fictitious transactions, losses or expenses;
- or
- (h) has, within 5 years next before the relevant day or at a time on or after that day, been guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to affairs of the company or to the winding up,

is guilty of an offence.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(2) It is a defence to a charge arising under sub-paragraph (1) (c) (i) in relation to the removal of property of a company, or under sub-paragraph (1) (c) (v) in relation to property of a company, if the defendant proves that he had no intent to defraud.

(3) It is a defence to a charge arising under paragraph (1) (d) if the defendant proves that he had no intent to defraud.

(4) It is a defence to a charge arising under paragraph (1) (f) if the defendant proves that he had no intent to conceal the state of affairs of the company.

(5) Where a person pawns, pledges or disposes of any property in circumstances that amount to an offence under sub-paragraph (1) (c) (v), any person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances is guilty of an offence.

Penalty: \$5,000 or imprisonment for 1 year, or both.

(6) A person who takes in pawn or pledge or otherwise receives property in circumstances mentioned in sub-section (5) and with the knowledge mentioned in that sub-section shall be deemed to hold the property as trustee for the company concerned and is liable to account to the company for the property.

Liability where
proper accounts
not kept.

555. (1) If—

- (a) a provision of section 267 was not complied with, in respect of a company to which this section applies, during the whole or any part of the period of 2 years immediately preceding the relevant day or the period between the incorporation of the company and the relevant day whichever is the shorter;

and

- (b) the company was at any time during that period, or became at a later time, a company to which this section applies,

a director of the company who failed to take all reasonable steps to secure compliance by the company with the provision throughout that period and any officer of the company who is in default are each guilty of an offence.

Penalty: \$5,000 or imprisonment for 1 year, or both.

(2) In any proceedings against a person for failure to take all reasonable steps to secure compliance by a company with a provision of section 267, it is a defence if the person proves that he had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that that provision was complied with and was in a position to discharge that duty.

Offences relating
to incurring of
debts or
fraudulent
conduct.

556. (1) If—

- (a) a company incurs a debt, whether within or outside the State;

- (b) immediately before the time when the debt is incurred—

- (i) there are reasonable grounds to expect that the company will not be able to pay all its debts as and when they become due;

or

(ii) there are reasonable grounds to expect that, if the company incurs the debt, it will not be able to pay all its debts as and when they become due; and

(c) the company is, at the time when the debt is incurred, or becomes at a later time, a company to which this section applies,

any person who was a director of the company, or took part in the management of the company, at the time when the debt was incurred is guilty of an offence and the company and that person or, if there are 2 or more such persons, those persons are jointly and severally liable for the payment of the debt.

Penalty: \$5,000 or imprisonment for 1 year, or both.

(2) In any proceedings against a person under sub-section (1), it is a defence if the defendant proves—

(a) that the debt was incurred without his express or implied authority or consent;

or

(b) that at the time when the debt was incurred, he did not have reasonable cause to expect—

(i) that the company would not be able to pay all its debts as and when they became due;

or

(ii) that, if the company incurred that debt, it would not be able to pay all its debts as and when they became due.

(3) Proceedings may be brought under sub-section (1) for the recovery of a debt whether or not the person against whom the proceedings are brought, or any other person, has been convicted of an offence under sub-section (1) in respect of the incurring of that debt.

(4) Where sub-section (1) renders a person or persons liable to pay a debt incurred by a company, the payment by that person or either or any of those persons of the whole or any part of that debt does not render the company liable to the person concerned in respect of the amount so paid.

(5) If—

(a) a company does any act (including the making of a contract or the entering into of a transaction) with intent to defraud creditors of the company or of any other person or for any other fraudulent purpose;

and

(b) the company is at the time when it does the act, or becomes at a later time, a company to which this section applies,

any person who was knowingly concerned in the doing of the act with that intent or for that purpose is guilty of an offence.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(6) A certificate issued by the proper officer of a court stating that a person specified in the certificate—

(a) was convicted of an offence under sub-section (1) in relation to a debt specified in the certificate incurred by a company so specified;

or

- (b) was convicted of an offence under sub-section (5) in relation to a company specified in the certificate,

is, in any proceedings, *prima facie* evidence of the matters stated in the certificate.

(7) A document purporting to be a certificate issued under sub-section (6) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly issued.

Powers of Court.

557. (1) Where a person has been convicted of an offence under sub-section 556 (1) in respect of the incurring of a debt, the Court, on the application of the Commission or the person to whom the debt is payable, may, if it thinks it proper to do so, declare that the first-mentioned person shall be personally responsible without any limitation of liability for the payment to the person to whom the debt is payable of an amount equal to the whole of the debt or such part of it as the Court thinks proper.

(2) Where a person has been convicted of an offence under sub-section 556 (5), the Court, on the application of the Commission or of a prescribed person, may, if it thinks it proper to do so, declare that the first-mentioned person shall be personally responsible without any limitation of liability for the payment to the company of the amount required to satisfy so much of the debts of the company as the Court thinks proper.

(3) In relation to a company in respect of which a conviction referred to in sub-section (2) relates—

- (a) the appropriate officer;
- (b) a creditor or contributory of the company authorized by the Commission to make an application under that sub-section;
- and
- (c) if the company was a company to which section 556 applied by reason of paragraph 553 (1) (c)—a member of the company,

are prescribed persons for the purposes of that sub-section.

(4) Where the Court makes a declaration under sub-section (1) in relation to a person, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration.

(5) In particular, the Court may order that the liability of the person under the declaration shall be a charge—

- (a) on a debt or obligation due from the company to him;
- or
- (b) on a right or interest under a charge on any property of the company held by or vested in him or a person on his behalf, or a person claiming as assignee from or through the person liable or a person acting on his behalf.

(6) The Court may, from time to time, make such further order as it thinks proper for the purpose of enforcing a charge imposed under sub-section (5).

(7) For the purpose of sub-section (5), “assignee” includes a person to whom or in whose favour, by the directions of the person liable, the debt,

obligation or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without actual knowledge of any of the matters upon which the conviction or declaration was made.

(8) On the hearing of an application under sub-section (1) or (2), the appropriate officer or other applicant may himself give evidence or call witnesses.

(9) A reference in this section to a provision of this Code, other than a provision of this section, shall be construed as including a reference to a provision of a previous law of the State with which the first-mentioned provision corresponds.

558. Except as provided by sub-section 556 (4), nothing in sub-section 556 (1) or 557 (1) or (2) affects any rights of a person to indemnity, subrogation or contribution.

Certain rights not affected.

559. A person who gives, or agrees or offers to give, to a member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the liquidator, provisional liquidator or official manager of the company, as receiver, or receiver and manager, of the property or any part of the property of the company or as a trustee or other person administering a compromise or arrangement in relation to the company is guilty of an offence.

Inducement to be appointed liquidator or official manager.

Penalty: \$1,000 or imprisonment for 3 months, or both.

560. (1) An officer, former officer, member or former member of a company who conceals, destroys, mutilates or falsifies any securities of or belonging to the company or any books affecting or relating to affairs of the company is guilty of an offence.

Falsification of books.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(2) Where matter that is used or intended to be used in connection with the keeping of any books affecting or relating to affairs of a company is recorded or stored in an illegible form by means of a mechanical device, an electronic device or any other device, a person who—

- (a) records or stores by means of that device matter that he knows to be false or misleading in a material particular;
 - (b) destroys, removes or falsifies matter that is recorded or stored by means of that device, or has been prepared for the purpose of being recorded or stored, or for use in compiling or recovering other matter to be recorded or stored, by means of that device;
- or
- (c) fails to record or store matter by means of that device with intent to falsify any entry made or intended to be compiled, wholly or in part, from that matter,

is guilty of an offence.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(3) It is a defence to a charge arising under sub-section (1) or (2) if the defendant proves that he acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.

(4) In this section, "officer", in relation to a company, includes a receiver of the property or any part of the property of the company who is not also a manager.

Frauds by
officers.

561. A person who, while an officer of a company—

- (a) by false pretences or by means of any other fraud, induces a person to give credit to the company or to a related corporation;
- (b) with intent to defraud the company or a related corporation or members or creditors of the company or of a related corporation, makes or purports to make, or causes to be made or to be purported to be made, any gift or transfer of or charge on, or causes or connives at the levying of any execution against, the property of the company or related corporation;

or

- (c) with intent to defraud the company or a related corporation or members or creditors of the company or of a related corporation, conceals or removes any part of the property of the company or related corporation after, or within 2 months before, the date of any unsatisfied judgment or order for payment of money obtained against the company or related corporation,

is guilty of an offence.

Penalty: \$10,000 or imprisonment for 2 years, or both.

Court may
disqualify person
from acting as
director, &c., in
certain
circumstances.

562. (1) This section applies to a company—

- (a) that has been wound up, or is in the course of being wound up, because of inability to pay its debts as and when they become due;
- (b) that has been in the course of being wound up because of inability to pay its debts as and when they became due, where the winding up has been stayed or terminated by an order under section 383;
- (c) that has been or is under official management;
- (d) that has ceased to carry on business because it was unable to pay its debts as and when they became due;
- (e) in respect of which a levy of execution was not satisfied;
- (f) in respect of the property or part of the property of which a receiver, or a receiver and manager, has been appointed, whether by a court or pursuant to the powers contained in an instrument, whether or not the appointment has been terminated;

or

- (g) that has entered into a compromise or arrangement with its creditors.

(2) Unless cause to the contrary is shown, the Court may, on an application by the Commission and on being satisfied as to the matters referred to in sub-section (3), make an order prohibiting a person specified

in the order from acting as a director of, or from being concerned or taking part in the management of, a company during such period not exceeding 5 years after the date of the order as is specified in the order.

(3) The Court shall not make an order under sub-section (2) unless it is satisfied—

- (a) that the person to whom the application for an order relates was given notice of the application;
- (b) that, within the period of 7 years before notice of the application was given to the person referred to in paragraph (a), whether that period commenced before or after the commencement of the Companies (Application of Laws) Act, 1982, that person was a director of, or was concerned or took part in the management of, 2 or more companies to which this section applies;

and

(c) that—

(i) in the case of each of those 2 companies;

or

(ii) where the person was a director of, or was concerned or took part in the management of, more than 2 companies to which this section applies—in the case of each of 2 more of those companies,

the manner in which affairs of the company had been managed was wholly or partly responsible for the company being wound up, being under official management, ceasing to carry on business, being unable to satisfy a levy of execution, being subject to the appointment of a receiver, or a receiver and manager, or entering into a compromise or arrangement with its creditors.

(4) A person shall not contravene or fail to comply with an order under this section that is applicable to him.

Penalty: \$5,000 or imprisonment for 1 year, or both.

(5) In this section “company” means—

(a) a corporation;

or

(b) a body referred to in paragraph 469 (1) (b).

563. (1) A corporation that advertises, issues or publishes any statement of the amount of its capital that is misleading or in which the amount of nominal or authorized capital is stated without the words “nominal” or “authorized”, or in which the amount of capital or authorized or subscribed capital is stated but the amount of paid up capital or the amount of any charge on uncalled capital is not stated, and any officer of the corporation who knowingly authorizes, directs or consents to the advertising, issue or publication, are each guilty of an offence.

False or
misleading
statements.

(2) A person who, in a document required by or for the purposes of this Code or lodged with or submitted to the Commission, makes or authorizes the making of a statement that to his knowledge is false or misleading in a material particular, or omits or authorizes the omission of any matter or

thing without which the document is to his knowledge misleading in a material respect, is guilty of an offence.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(3) A person who, in a document required by or for the purposes of this Code or lodged with or submitted to the Commission—

(a) makes or authorizes the making of a statement that is false or misleading in a material particular;

or

(b) omits or authorizes the omission of any matter or thing without which the document is misleading in a material respect,

without having taken reasonable steps to ensure that the statement was not false or misleading or to ensure that the statement did not omit any matter or thing without which the document would be misleading, as the case may be, is guilty of an offence.

Penalty: \$5,000 or imprisonment for 1 year, or both.

(4) For the purposes of sub-sections (2) and (3), where—

(a) at a meeting, a person votes in favour of a resolution approving, or otherwise approves, a document required by or for the purposes of this Code or required to be lodged with or submitted to the Commission;

and

(b) the document contains a statement that, to the person's knowledge, is false or misleading in a material particular, or omits any matter or thing without which the document is, to the person's knowledge, misleading in a material respect,

the person shall be deemed to have authorized the making of the statement or the omission of the matter or thing.

False reports.

564. (1) An officer of a corporation who makes or furnishes, or authorizes or permits the making or furnishing of, a statement or report relating to affairs of the corporation, knowing the statement or report to be false or misleading in a material particular, to—

(a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation;

(b) in the case of a corporation that is a subsidiary, an auditor of the holding company;

or

(c) a stock exchange in Australia or elsewhere or an officer of such a stock exchange,

is guilty of an offence.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(2) An officer of a corporation who makes or furnishes, or authorizes or permits the making or furnishing of, a statement or report relating to affairs of the corporation that is false or misleading in a material particular to—

- (a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation;
 - (b) in the case of a corporation that is a subsidiary, an auditor of the holding company;
- or
- (c) a stock exchange in Australia or elsewhere or an officer of such a stock exchange,

without having taken reasonable steps to ensure that the statement or report was not false or misleading is guilty of an offence.

Penalty: \$5,000 or imprisonment for 1 year, or both.

(3) The references in sub-sections (1) and (2) to making or furnishing, or authorizing or permitting the making or furnishing of, a false or misleading statement or report relating to affairs of a corporation includes a reference to making or furnishing, or authorizing or permitting the making or furnishing of, a false or misleading statement or report as to the state of knowledge with respect to those affairs of the person making or furnishing, or authorizing or permitting the making or furnishing of, the statement or report.

(4) Where a statement or report is made or furnished to a person referred to in paragraph (1) (a), (b) or (c) or (2) (a), (b) or (c) in response to a question asked by that person, the question, and the statement or report, shall be considered together in determining whether the statement or report was false or misleading.

565. (1) No dividend shall be payable to the shareholder of any company except out of profits or pursuant to section 119.

Dividends payable from profits only.

(2) Every director or executive officer of a company who wilfully pays or permits to be paid any dividend out of what he knows is not profits except pursuant to section 119—

- (a) is, without prejudice to any other liability, guilty of an offence;

and

- (b) is also liable to the creditors of the company for the amount of the debts due by the company to them respectively to the extent by which the dividends so paid have exceeded the profits,

and the amount for which a director or executive officer is so liable may be recovered by the creditors or the liquidator suing on behalf of the creditors.

Penalty: \$10 000 or imprisonment for 2 years, or both.

(3) If the whole amount is recovered from one director or executive officer, he may recover contribution against any other person liable who has directed or consented to the payment.

(4) A liability imposed by this section on a person does not, on the death of the person, extend or pass to his executors or administrators nor is the estate of any such person liable under this section.

(5) In this section, “dividend” includes bonus and payment by way of bonus.

566. If a person carries on business under any name or title of which “Limited” or “No Liability” or any abbreviation of these words is the final

Restriction on use of words “Limited” and “No Liability”.

word or abbreviation, the person is, unless duly incorporated with limited liability or no liability, as the case may be, guilty of an offence.

Penalty: \$1,000 or imprisonment for 3 months, or both.

Restriction on use
of word
"Proprietary".

567. If a company uses the word "Proprietary" or any abbreviation of that word as part of its name and the company does not fulfil the requirements required by this Code to be fulfilled by proprietary companies, the company and each officer of the company who is in default are each guilty of an offence.

Reciprocity in
relation to
offences.

568. If a person does or omits to do an act or thing in the State and that person, if he had done or had omitted to do that act or thing in another State or in a Territory, would have been guilty of an offence against a provision of a law of that State or Territory that corresponds with a provision of this Code, that person is guilty of an offence against that provision of this Code.

Offences
committed partly
in and partly out
of the State.

569. If a person does or omits to do an act or thing outside the State and that person, if he had done or omitted to do that act or thing in the State, would, by reason of his also having done or omitted to do an act or thing in the State, have been guilty of an offence against this Code, that person is guilty of that offence.

General penalty
provisions.

570. (1) A person who—

(a) does an act or thing that he is forbidden to do by or under a provision of this Code;

(b) does not do an act or thing that he is required or directed to do by or under a provision of this Code;

or

(c) otherwise contravenes or fails to comply with a provision of this Code,

is, unless that provision or another provision of this Code provides that he is guilty of an offence, guilty of an offence by virtue of this sub-section.

(2) A person who is guilty of an offence against this Code, whether by virtue of sub-section (1) or otherwise, is punishable, upon conviction, by a penalty not exceeding the penalty applicable to the offence.

(3) Where—

(a) a section that does not consist of 2 or more sub-sections provides that a person is in circumstances referred to in the section guilty of an offence;

or

(b) sub-section (1) operates in relation to a provision of this Code that is contained in a section that does not consist of 2 or more sub-sections so as to make a person guilty of an offence,

and a penalty, pecuniary or otherwise, is set out at the foot of the section, the penalty applicable to the offence is the penalty so set out.

(4) Where—

(a) a sub-section of a section that consists of 2 or more sub-sections provides that a person is in circumstances referred to in the sub-section guilty of an offence;

or

- (b) sub-section (1) operates in relation to a provision of this Code that is contained in a sub-section of a section that consists of 2 or more sub-sections so as to make a person guilty of an offence,

then—

- (c) if a penalty, pecuniary or otherwise, is set out at the foot of the sub-section—the penalty applicable to the offence is the penalty set out at the foot of the sub-section;

or

- (d) if a penalty, pecuniary or otherwise, is set out at the foot of the section and no penalty is set out at the foot of the sub-section—the penalty applicable to the offence is the penalty set out at the foot of the section.

(5) Where each of 2 or more sub-sections of a section contains one of the following provisions:

- (a) a provision that a person is in circumstances referred to in the sub-section guilty of an offence;

or

- (b) a provision in relation to which sub-section (1) operates so as to make a person guilty of an offence,

and a penalty, pecuniary or otherwise, is set out at the foot of each of those sub-sections, the penalty applicable in relation to an offence created by either or any of those sub-sections, or in relation to an offence created by sub-section (1) in relation to a provision contained in either or any of those sub-sections, is the penalty set out at the foot of the sub-section concerned.

(6) Except as provided by sub-sections (3), (4) and (5) the penalty applicable in relation to an offence against this Code is a fine of \$500.

571. (1) Where—

Continuing
offences.

- (a) by or under a section, or a sub-section of a section, of this Code an act or thing is required or directed to be done within a particular period or before a particular time;
- (b) failure to do that act or thing within the period or before the time referred to in paragraph (a) constitutes an offence;

and

- (c) that act or thing is not done within the period or before the time referred to in paragraph (a),

the following provisions of this sub-section have effect:

- (d) the obligation to do that act or thing continues, notwithstanding that that period has expired or that time has passed, until that act or thing is done;
- (e) where a person is convicted of an offence that, by virtue of paragraph (d), is constituted by failure to do that act or thing after the expiration of that period or after that time, as the case may be, that person is guilty of a separate and further

offence in respect of each day after the day of the conviction during which the failure to do that act or thing continues;

and

(f) the penalty applicable to each such separate and further offence is \$50.

(2) Where—

(a) by or under a section, or a sub-section of a section, of this Code an act or thing is required or directed to be done but no period within which or time by which that act or thing is to be done is specified;

(b) failure to do that act or thing constitutes an offence;

and

(c) a person is convicted of an offence in respect of a failure to do that act or thing,

that person is guilty of a separate and further offence in respect of each day after the day of the conviction during which the failure to do that act or thing continues and the penalty applicable to each such separate and further offence is \$50.

(3) Charges against the same person for any number of offences under paragraph (1) (e) or sub-section (2) may be joined in the same information or complaint if those offences relate to a failure to do the same act or thing.

(4) If a person is convicted of more than one offence under paragraph (1) (e) or more than one offence under sub-section (2), the court may impose one penalty in respect of all the offences of which the person is so convicted under that paragraph or sub-section, as the case may be, but that penalty shall not exceed the sum of the maximum penalties that could be imposed if a penalty were imposed in respect of each offence separately.

Officers and other persons in default.

572. (1) Where a provision of this Code provides that an officer of a corporation or other person who is in default is guilty of an offence, the reference to the officer or other person who is in default shall, in relation to a contravention of, or failure to comply with, the provision, be construed as a reference to any officer of the corporation (including a person who subsequently ceased to be an officer of the corporation) or any person, as the case may be, who is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention or failure.

(2) For the purposes of sub-section (1), a secretary of a corporation shall, unless the contrary is proved, be deemed to be knowingly concerned in and party to any contravention by the corporation of, or any failure by the corporation to comply with—

(a) a provision of section 216;

or

(b) a provision of section 238 or 263 requiring the lodgment of a document with the Commission.

Power of Court to prohibit payment or transfer of moneys, securities or other property.

573. (1) Where—

(a) an investigation is being carried out under this Code in relation to any act or omission by a person, being an act or omission that constitutes or may constitute an offence against this Code;

(b) a prosecution has been instituted against a person for an offence against this Code;

or

(c) a civil proceeding has been instituted against a person under this Code,

and the Court considers it necessary or desirable to do so for the purpose of protecting the interests of any persons to whom the person referred to in paragraph (a), (b) or (c), as the case may be (in this section referred to as the “relevant person”), is liable or may be or become liable to pay any moneys, whether in respect of a debt, by way of damages or compensation or otherwise, or to account for any securities or other property, the Court may, on application by the Commission, make one or more of the following orders:

- (d) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the relevant person or to any person associated with the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;
 - (e) an order prohibiting, either absolutely or subject to conditions, a person holding money, or securities or other property, on behalf of the relevant person or on behalf any person associated with the relevant person from paying all or any of the money, or transferring, or otherwise parting with possession of, the securities or other property, to, or to another person at the direction or request of, the person on whose behalf the money, or the securities or other property, is or are held;
 - (f) an order prohibiting, either absolutely or subject to conditions, the taking or sending by any person out of the State, or out of Australia, of moneys of the relevant person or of any person associated with the relevant person;
 - (g) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer by any person of securities or other property of the relevant person or of any person associated with the relevant person from a place in the State to a place outside the State (including the transfer of securities from a register in the State to a register outside the State) or from a place in Australia to a place outside Australia (including the transfer of securities from a register in Australia to a register outside Australia);
 - (h) an order appointing—
 - (i) where the relevant person is a natural person—a receiver or trustee, having such powers as the Court orders, of the property or of part of the property of that person;
- or
- (ii) where the relevant person is a body corporate—a receiver or receiver and manager, having such powers as the Court orders, of the property or of part of the property of that person;

- (j) where the relevant person is a natural person—an order requiring that person to deliver up to the Court his passport and such other documents as the Court thinks fit;
- (k) where the relevant person is a natural person—an order prohibiting that person from leaving Australia without the consent of the Court.

(1A) Where an application is made to the Court for an order under sub-section (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

(1B) Where the Commission makes an application to the Court for the making of an order under sub-section (1), the Court shall not require the Commission or any other person, as a condition of granting an interim order under sub-section (1A), to give any undertakings as to damages.

(2) Where the Court has made an order under this section, the Court may, on application by the Commission or by any person affected by the order, make a further order rescinding or varying the first-mentioned order.

(3) An order made under sub-section (1) or (2) may be expressed to operate for a period specified in the order or until the order is rescinded by a further order under sub-section (1) or (2).

(4) A person shall not contravene or fail to comply with an order by the Court under this section that is applicable to him.

Penalty: \$2,500 or imprisonment for 6 months, or both.

Injunctions.

574. (1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute an offence against this Code, the Court may, on the application of—

- (a) the Commission;
- or
- (b) any person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

(2) Where—

- (a) a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing;

and

- (b) that refusal or failure is, or would be, an offence against this Code,

the Court may, on the application of—

- (c) the Commission;
- or
- (d) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

grant an injunction requiring the first-mentioned person to do that act or thing.

(3) Where an application is made to the Court for an injunction under sub-section (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in sub-section (1) pending the determination of the application.

(4) The Court may rescind or vary an injunction granted under sub-section (1), (2) or (3).

(5) Where an application is made to the Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Court to grant the injunction may be exercised—

(a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind;

or

(b) if it appears to the Court that, in the event that an injunction is not granted, it is likely the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(6) Where an application is made to the Court for a grant of an injunction requiring a person to do a particular act or thing, the power of the Court to grant the injunction may be exercised—

(a) if the Court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;

or

(b) if it appears to the Court that, in the event that an injunction is not granted, it is likely the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(7) Where the Commission makes an application to the Court for the grant of an injunction under this section, the Court shall not require the Commission or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

(8) Where the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

575. Nothing in a provision of this Code that provides—

(a) that a person shall not contravene or fail to comply with an order of the Court;

Power of Court to
punish for
contempt of
Court.

PART XIV
DIVISION 2

or

- (b) that a person who contravenes or fails to comply with an order of the Court is guilty of an offence,

affects the powers of the Court in relation to the punishment of contempts of the Court.

DIVISION 3

576. * * * * *

577. * * * * *

DIVISION 4

DIVISION 4—MISCELLANEOUS

Non-application
of rule against
perpetuities to
certain schemes.

578. (1) The rule of law relating to perpetuities does not apply, and shall be deemed never to have applied, to the trusts of any fund or scheme for the benefit of any employee of a corporation, whether the fund or scheme was established before, or is established after, the commencement of the Companies (Application of Laws) Act, 1982.

(2) In this section—

(a) a reference to a corporation includes a reference to a body corporate or society incorporated or formed, whether before or after the commencement of the Companies (Application of Laws) Act 1982, in pursuance of any Act, Imperial Act, Act of another State or Ordinance of a Territory or of letters patent or royal charter, or otherwise duly constituted according to law;

(b) a reference to a fund or scheme includes a reference to a provident, superannuation, sick, accident, assurance, unemployment, pension or co-operative benefit fund, scheme, arrangement or provision or other like fund, scheme, arrangement or provision;

and

(c) a reference to an employee of a corporation includes a reference to—

(i) a director of the corporation;

and

(ii) a wife, child, grandchild, parent or any dependant of an employee or of a director of the corporation.

(3) The provisions of this section do not affect the operation of section 62a of the Law of Property Act, 1936-1980.

Code not to affect
operation of
Industrial
Conciliation and
Arbitration Act,
1972-1981.

579. The operation of the Industrial Conciliation and Arbitration Act, 1972-1981, is not affected by this Code.

580. * * * * *

581. * * * * *

* * * SCHEDULE 1 * * *

* * * SCHEDULE 2 * * *

Section 67

POWERS

1. To carry on any other business that may seem to the company capable of being conveniently carried on in connection with its business or calculated directly or indirectly to enhance the value of or render profitable any of the company's property or rights.
2. To acquire the whole or any part of the business and property, and undertake the whole or any part of the liabilities, of any person or corporation carrying on any business that the company is authorized to carry on, or possessed of property suitable for the purposes of the company.
3. To apply for, purchase or otherwise acquire any patents, patent rights, copyrights, trade marks, formulas, licences, concessions and the like conferring any exclusive or non-exclusive or limited right to use, or any secret or other information as to, any invention that seems capable of being used for any of the purposes of the company, or the acquisition of which seems calculated directly or indirectly to benefit the company, and to use, exercise, develop or grant licences in respect of, or otherwise turn to account, the property, rights, or information so acquired.
4. To amalgamate, or enter into partnership or into any arrangement for sharing of profits, union of interest, co-operation, joint venture, reciprocal concession or otherwise, with any person or corporation carrying on or engaged in, or about to carry on or engage in, any business or transaction that the company is authorized to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit the company.
5. To take, or otherwise acquire, and hold, securities of any other corporation.
6. To enter into any arrangements with any Government or authority, supreme, municipal, local or otherwise, that may seem conducive to the company's objects, or any of them, to obtain from any such Government or authority any rights, privileges and concessions that the company thinks it desirable to obtain and to carry out, exercise, and comply with, any such arrangements, rights, privileges and concessions.
7. To establish and support, or aid in the establishment and support of, associations, institutions, funds, trusts and conveniences calculated to benefit employees or directors or past employees or directors of the company or of its predecessors in business, or the dependants or connections of any such persons, to grant pensions and allowances, to make payments towards insurance and to subscribe or guarantee money for charitable or benevolent objects, for any exhibition or for any public, general or useful object.
8. To promote any other corporation or corporations for the purpose of acquiring or taking over all or any of the property, rights and liabilities of the company, or for any other purpose that may seem directly or indirectly calculated to benefit the company.
9. To purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property or any rights or privileges that the company thinks necessary or convenient for the purposes of its business and, in particular, any land, buildings, easements, machinery, plant or stock in trade.
10. To construct, improve, maintain, develop, work, manage, carry out, or control any buildings, works, factories, mills, roads, ways, tramways, railways, branches or sidings, bridges, reservoirs, water-courses, wharves, warehouses, electric works, shops, stores or other works and conveniences that seem calculated directly or indirectly to advance the company's interests and to contribute to, subsidize or otherwise assist or take part in the construction, improvement, maintenance, development, working, management, carrying out or control of the works or conveniences.
11. To invest and deal with the money of the company not immediately required in such manner as is from time to time thought fit.
12. To lend and advance money or give credit to any person or corporation, to guarantee and give guarantees or indemnities for the payment of money or the performance of contracts or obligations by any person or corporation, to secure or undertake in any way the repayment of moneys lent or advanced to, or the liabilities incurred by, any person or corporation and otherwise to assist any person or corporation.
13. To borrow or raise or secure the payment of money in such manner as the company thinks fit and to secure any such borrowing, raising or payment of money or the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the company in any way and, in particular, by the issue of debentures, perpetual or otherwise, charged upon all or any of the company's property (both present and future), including its uncalled capital and to purchase, redeem or pay off any such securities.
14. To remunerate any person or corporation for services rendered, or to be rendered, in placing or assisting to place or guaranteeing the placing of any of the shares in the company's capital or any debentures or other securities of the company, or in or about the organization, formation or promotion of the company or the conduct of its business.

15. To draw, make, accept, indorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments.

16. To sell or dispose of the undertaking of the company or any part of that undertaking for such consideration as the company thinks fit and, in particular, for shares, debentures or securities of any other corporation having objects altogether or in part similar to those of the company.

17. To adopt such means of making known and advertising the business and products of the company as seem expedient.

18. To apply for, secure or acquire by grant, legislative enactment, assignment, transfer, purchase or otherwise, to exercise, carry out and enjoy, and to pay for, aid in and contribute towards carrying into effect, any charter, licence, power, authority, franchise, concession, right or privilege that any Government or authority or any corporation or other public body is empowered to grant and to appropriate any of the company's securities and property to defray the necessary costs, charges and expenses.

19. To apply for, promote and obtain any statute, order, regulation or other authorization or enactment that seems calculated directly or indirectly to benefit the company and to oppose any bills, proceedings or applications that seem calculated directly or indirectly to prejudice the company's interests.

20. To procure the company to be registered or recognized in any country or place outside the State.

21. To sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the company.

22. To issue and allot fully or partly paid shares in the capital of the company in payment or part payment for any real or personal property purchased or otherwise acquired by the company or any services rendered to the company.

23. To distribute any of the property of the company among the members in kind or otherwise but so that no distribution amounting to a reduction of capital is made without the sanction required by law.

24. To take or hold mortgages, liens and charges to secure payment of the purchase price, or any unpaid balance of the purchase price, of any part of the company's property of whatsoever kind sold by the company, or any money due to the company from purchasers and others.

25. To carry out all or any of the objects of the company and do all or any of the abovementioned things in any part of the world and whether as principal, agent, contractor or trustee or otherwise, and by or through trustees or agents or otherwise, and either alone or in conjunction with others.

26. To do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the company.

SCHEDULE 3

Sections 5 and 75

TABLE A

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES

Interpretation

1. (1) In these regulations—
 - “Code” means the *Companies (South Australia) Code*;
 - “seal” means the common seal of the company and includes any official seal of the company;
 - “secretary” means any person appointed to perform the duties of a secretary of the company.
- (2) Section 40 of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (South Australia) Code* applies in relation to these regulations as if they were an instrument made by an authority under a power conferred by the *Companies (South Australia) Code* as in force on the date on which these regulations became binding on the company.
- (3) An expression used in a particular Part or Division of the Code that is given by that Part or Division a special meaning for the purposes of that Part or Division has, in any of these regulations that deals with a matter dealt with by that Part or Division, unless the contrary intention appears, the same meaning as in that Part or Division.

Share Capital and Variation of Rights

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Code, shares in the company may be issued by the directors and any such share may be issued with such preferred, deferred or other special rights or such restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the directors, subject to any resolution, determine.
3. Subject to the Code, any preference shares may, with the sanction of a resolution, be issued on the terms that they are, or at the option of the company are liable, to be redeemed.
4. (1) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied with the consent in writing of the holders of three-quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of the class.
 - (2) The provisions of these regulations relating to general meetings apply so far as they are capable of application and *mutatis mutandis* to every such separate meeting except that—
 - (a) a quorum is constituted by 2 persons who, between them, hold or represent by proxy one-third of the issued shares of the class;
 - and
 - (b) any holder of shares of the class present in person or by proxy, may demand a poll.
 - (3) The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking equally with the first-mentioned shares.
5. (1) The company may exercise the power to pay commissions conferred by the Code if—
 - (a) the rate or the amount of the commission paid or agreed to be paid is disclosed in the manner required by the Code;
 - and
 - (b) the commission does not exceed 10% of the price at which the shares in respect of which the commission is paid are issued.
 - (2) The commission may be satisfied by the payment of cash or by the allotment of fully or partly paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.
 - (3) The company may, on any issue of shares, also pay such brokerage as is lawful.
6. (1) Except as required by law, the company shall not recognize a person as holding a share upon any trust.
 - (2) The company is not bound by or compelled in any way to recognize (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any share or unit of a share or (except as otherwise provided by these regulations or by law) any other right in respect of a share except an absolute right of ownership in the registered holder.
7. (1) A person whose name is entered as a member in the register of members is entitled without payment to receive a certificate in respect of the share under the seal of the company in accordance

with the Code but, in respect of a share or shares held jointly by several persons, the company is not bound to issue more than one certificate.

(2) Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all such holders.

Lien

8. (1) The company has a first and paramount lien on every share (not being a fully paid share) for all money (whether presently payable or not) called or payable at a fixed time in respect of that share.

(2) The company also has a first and paramount lien on all shares (other than fully paid shares) registered in the name of a sole holder for all money presently payable by him or his estate to the company.

(3) The directors may at any time exempt a share wholly or in part from the provisions of this regulation.

(4) The company's lien (if any) on a share extends to all dividends payable in respect of the share.

9. (1) Subject to sub-regulation (2), the company may sell, in such manner as the directors think fit, any shares on which the company has a lien.

(2) A share on which the company has a lien shall not be sold unless—

(a) a sum in respect of which the lien exists is presently payable;

and

(b) the company has, not less than 14 days before the date of the sale, given to the registered holder for the time being of the share or the person entitled to the share by reason of the death or bankruptcy of the registered holder a notice in writing setting out, and demanding payment of, such part of the amount in respect of which the lien exists as is presently payable.

10. (1) For the purpose of giving effect to a sale mentioned in regulation 9, the directors may authorize a person to transfer the shares sold to the purchaser of the shares.

(2) The company shall register the purchaser as the holder of the shares comprised in any such transfer and he is not bound to see to the application of the purchase money.

(3) The title of the purchaser to the shares is not affected by any irregularity or invalidity in connection with the sale.

11. The proceeds of a sale mentioned in regulation 9 shall be applied by the company in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue (if any) shall (subject to any like lien for sums not presently payable that existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

Calls on Shares

12. (1) The directors may make calls upon the members in respect of any money unpaid on the shares of the members (whether on account of the nominal value of the shares or by way of premium) and not by the terms of issue of those shares made payable at fixed times, except that no call shall exceed one-quarter of the sum of nominal values of the shares or be payable earlier than one month from the date fixed for the payment of the last preceding call.

(2) Each member shall, upon receiving at least 14 days' notice specifying the time or times and place of payment, pay to the company at the time or times and place so specified the amount called on his shares.

(3) The directors may revoke or postpone a call.

13. A call shall be deemed to have been made at the time when the resolution of the directors authorizing the call was passed and may be required to be paid by instalments.

14. The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

15. If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment of the sum to the time of actual payment at such rate not exceeding 8% per annum as the directors determine, but the directors may waive payment of that interest wholly or in part.

16. Any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these regulations be deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable, and, in case of non-payment, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

17. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

18. (1) The directors may accept from a member the whole or a part of the amount unpaid on a share although no part of that amount has been called up.

(2) The directors may authorize payment by the company of interest upon the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the prescribed rate, as is agreed upon between the directors and the member paying the sum.

(3) For the purposes of sub-regulation (2), the prescribed rate of interest is—

(a) if the company has, by resolution, fixed a rate—the rate so fixed;

and

(b) in any other case—8% per annum.

Transfer of Shares

19. (1) Subject to these regulations, a member may transfer all or any of his shares by instrument in writing in any usual or common form or in any other form that the directors approve.

(2) An instrument of transfer referred to in sub-regulation (1) shall be executed by or on behalf of both the transferor and the transferee.

(3) A transferor of shares remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect of the shares.

20. The instrument of transfer must be left for registration at the registered office of the company, together with such fee (if any) not exceeding \$1.00 as the directors require, accompanied by the certificate of the shares to which it relates and such other information as the directors properly require to show the right of the transferor to make the transfer, and thereupon the company shall, subject to the powers vested in the directors by these regulations, register the transferee as a shareholder.

21. The directors may decline to register a transfer of shares, not being fully paid shares, to a person of whom they do not approve and may also decline to register any transfer of shares on which the company has a lien.

22. The registration of transfers may be suspended at such times and for such periods as the directors from time to time determine not exceeding in the whole 30 days in any year.

Transmission of Shares

23. In the case of the death of a member, the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognized by the company as having any title to his interest in the shares, but this regulation does not release the estate of a deceased joint holder from any liability in respect of a share that had been jointly held by him with other persons.

24. (1) Subject to the *Bankruptcy Act 1966*, a person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such information being produced as is properly required by the directors, elect either to be registered himself as holder of the share or to have some other person nominated by him registered as the transferee of the share.

(2) If the person becoming entitled elects to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects.

(3) If he elects to have another person registered, he shall execute a transfer of the share to that other person.

(4) All the limitations, restrictions and provisions of these rules relating to the right to transfer, and the registration of transfer of shares are applicable to any such notice or transfer as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

25. (1) Where the registered holder of a share dies or becomes bankrupt, his personal representative or the trustee of his estate, as the case may be, is, upon the production of such information as is properly required by the directors, entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the company, or to voting or otherwise), as the registered holder would have been entitled to if he had not died or become bankrupt.

(2) Where 2 or more persons are jointly entitled to any share in consequence of the death of the registered holder, they shall, for the purpose of these regulations, be deemed to be joint holders of the share.

Forfeiture of Shares

26. (1) If a member fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued.

(2) The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made and

shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

27. (1) If the requirements of a notice served under regulation 26 are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

(2) Such a forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

28. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the directors think fit.

29. A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares, but remains liable to pay to the company all money that, at the date of forfeiture, was payable by him to the company in respect of the shares (including interest at the rate of 8% per annum from the date of forfeiture on the money for the time being unpaid if the directors think fit to enforce payment of the interest), but his liability ceases if and when the company receives payment in full of all the money (including interest) so payable in respect of the shares.

30. A statement in writing declaring that the person making the statement is a director or a secretary of the company, and that a share in the company has been duly forfeited on a date stated in the statement, is *prima facie* evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.

31. (1) The company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.

(2) Upon the execution of the transfer, the transferee shall be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.

(3) The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.

32. The provisions of these regulations as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if that sum had been payable by virtue of a call duly made and notified.

Conversion of Shares into Stock

33. The company may, by resolution, convert all or any of its paid up shares into stock and reconvert any stock into paid up shares of any nominal value.

34. (1) Subject to sub-regulation (2), where shares have been converted into stock, the provisions of these rules relating to the transfer of shares apply, so far as they are capable of application, to the transfer of the stock or of any part of the stock.

(2) The directors may fix the minimum amount of stock transferable and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the aggregate of the nominal values of the shares from which the stock arose.

35. (1) The holders of stock have, according to the amount of the stock held by them, the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as they would have if they held the shares from which the stock arose.

(2) No such privilege or advantage (except participation in the dividends and profits of the company and in the property of the company on winding up) shall be conferred by any amount of stock that would not, if existing in shares, have conferred that privilege or advantage.

36. The provisions of these regulations that are applicable to paid up shares apply to stock, and references in those provisions to share and shareholder shall be read as including references to stock and stockholder, respectively.

Alteration of Capital

37. The company may by resolution—

- (a) increase its authorized share capital by the creation of new shares of such amount as is specified in the resolution;
- (b) consolidate and divide all or any of its authorized share capital into shares of larger amount than its existing shares;
- (c) subdivide all or any of its shares into shares of smaller amount than is fixed by the memorandum but so that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each such share of a smaller amount is the same as it was in the case of the share from which the share of a smaller amount is derived;

and

- (d) cancel shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person or have been forfeited and reduce its authorized share capital by the amount of the shares so cancelled.

38. (1) Subject to any direction to the contrary that may be given by the company in general meeting, all unissued shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances allow, to the sum of the nominal values of the shares already held by them.

(2) The offer shall be made by notice specifying the number of shares offered and limiting a time within which the offer, if not accepted, will be deemed to be declined.

(3) After the expiration of that time or on being notified by the person to whom the offer is made that he declines to accept the shares offered, the directors may issue those shares in such manner as they think most beneficial to the company.

(4) Where, by reason of the proportion that shares proposed to be issued bear to shares already held, some of the first-mentioned shares cannot be offered in accordance with sub-regulation (1), the directors may issue the shares that cannot be so offered in such manner as they think most beneficial to the company.

39. Subject to the Code, the company may, by special resolution, reduce its share capital, any capital redemption reserve fund or any share premium account.

General Meetings

40. Any director may whenever he thinks fit convene a general meeting.

41. (1) A notice of a general meeting shall specify the place, the day and the hour of meeting and, except as provided by sub-regulation (2), shall state the general nature of the business to be transacted at the meeting.

(2) It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the declaring of a dividend, the consideration of accounts and the reports of the directors and auditors, the election of directors in the place of those retiring or the appointment and fixing of the remuneration of the auditors.

Proceedings at General Meetings

42. (1) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(2) For the purpose of determining whether a quorum is present, a person attending as a proxy, or as representing a corporation that is a member, shall be deemed to be a member.

43. If a quorum is not present within half an hour from the time appointed for the meeting—

(a) where the meeting was convened upon the requisition of members—the meeting shall be dissolved;

or

(b) in any other case—

(i) the meeting stands adjourned to such day, and at such time and place, as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place;

and

(ii) if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting—

(A) 2 members constitute a quorum;

or

(B) where 2 members are not present—the meeting shall be dissolved.

44. (1) If the directors have elected one of their number as chairman of their meetings, he shall preside as chairman at every general meeting.

(2) Where a general meeting is held and—

(a) a chairman has not been elected as provided by sub-regulation (1);

or

(b) the chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act,

the members present shall elect one of their number to be chairman of the meeting.

45. (1) The chairman may with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(2) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(3) Except as provided by sub-regulation (2), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

46. (1) At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded—

(a) by the chairman;

(b) by at least 3 members present in person or by proxy;

(c) by a member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting;

or

(d) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

(2) Unless a poll is so demanded, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(3) The demand for a poll may be withdrawn.

47. (1) If a poll is duly demanded, it shall be taken in such manner and (subject to sub-regulation (2)) either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

(2) A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.

48. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, in addition to his deliberative vote (if any), has a casting vote.

49. Subject to any rights or restrictions for the time being attached to any class or classes of shares—

(a) at meetings of members or classes of members each member entitled to vote may vote in person or by proxy or attorney;

and

(b) on a show of hands every person present who is a member or a representative of a member has one vote, and on a poll every person present in person or by proxy or attorney has one vote for each share he holds.

50. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy or by attorney, shall be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority shall be determined by the order in which the names stand in the register of members.

51. If a member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, his committee or trustee or such other person as properly has the management of his estate may exercise any rights of the member in relation to a general meeting as if the committee, trustee or other person were the member.

52. A member is not entitled to vote at a general meeting unless all calls and other sums presently payable by him in respect of shares in the company have been paid.

53. (1) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.

(2) Any such objection shall be referred to the chairman of the meeting, whose decision is final.

(3) A vote not disallowed pursuant to such an objection is valid for all purposes.

54. (1) An instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorized in writing or, if the appointer is a corporation, either under seal or under the hand of an officer or attorney duly authorized.

(2) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.

(3) An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

(4) An instrument appointing a proxy shall be in the following form or in a form that is as similar to the following form as the circumstances allow:

[Name of company]

I/we, _____, of _____, being a member/members of the abovenamed company, hereby appoint _____ of _____ or, in his absence, _____ as my/our proxy to vote for me/us on my/our behalf at the _____*annual general meeting of the company to be held on the _____ day of _____ 19____ and at any adjournment of that meeting.

†This form is to be used _____*in favour of _____ the resolution.
 _____*against

Signed this _____ day of _____ 19____.

*Strike out whichever is not desired.
 †to be inserted if desired.

55. An instrument appointing a proxy shall not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of that power or authority, is or are deposited, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, at the registered office, of the company or at such other place within the State as is specified for that purpose in the notice convening the meeting.

56. A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, or the transfer of the share in respect of which the instrument or power is given, if no intimation in writing of the death, unsoundness of mind, revocation or transfer has been received by the company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

Appointment, Removal and Remuneration of Directors

57. (1) The number of the directors and the names of the first directors shall be determined in writing by the subscribers to the memorandum of association or a majority of them.

(2) The company may, by resolution, increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

58. (1) At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not 3 or a multiple of 3, then the number nearest one-third, shall retire from office.

(2) A retiring director is eligible for re-election.

59. The directors to retire at an annual general meeting other than the first annual general meeting are those who have been longest in office since their last election, but, as between persons who became directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.

60. (1) The company may, at the meeting at which a director so retires, by resolution fill the vacated office by electing a person to that office.

(2) If the vacated office is not so filled, the retiring director shall, if offering himself for re-election and not being disqualified under the Code from holding office as a director, be deemed to have been re-elected unless at that meeting—

(a) it is expressly resolved not to fill the vacated office;

or

(b) a resolution for the re-election of that director is put and lost.

61. (1) The directors may at any time appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors does not at any time exceed the number determined in accordance with these regulations.

(2) Any director so appointed holds office only until the next following annual general meeting and is then eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at that meeting.

62. (1) The company may by resolution remove any director before the expiration of his period of office, and may by resolution appoint another person in his stead.

(2) The person so appointed is subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

63. (1) The directors shall be paid such remuneration as is from time to time determined by the company in general meeting.

(2) That remuneration shall be deemed to accrue from day to day.

(3) The directors may also be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meeting of the company or otherwise in connection with the business of the company.

64. The share qualification for directors may be fixed by the company in general meeting and, unless and until so fixed, is one share.

65. In addition to the circumstances in which the office of a director becomes vacant by virtue of the Code the office of a director becomes vacant if the director—

- (a) becomes an insolvent under administration;
 - (b) becomes prohibited from being a director by reason of an order made under the Code;
 - (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (d) resigns his office by notice in writing to the company;
 - (e) is absent without the consent of the directors from meetings of the directors held during a period of 6 months;
 - (f) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or principal executive officer;
- or
- (g) is directly or indirectly interested in any contract or proposed contract with the company and fails to declare the nature of his interest as required by the Code.

Powers and Duties of Directors

66. (1) Subject to the Code and to any other provision of these regulations, the business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and forming the company, and may exercise all such powers of the company as are not, by the Code or by these regulations, required to be exercised by the company in general meeting.

(2) Without limiting the generality of sub-regulation (1), the directors may exercise all the powers of the company to borrow money, to charge any property or business of the company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.

67. (1) The directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the directors), for such period and subject to such conditions as they think fit.

(2) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the directors think fit and may also authorize the attorney to delegate all or any of the powers, authorities and discretions vested in him.

68. All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any 2 directors or in such other manner as the directors determine.

Proceedings of Directors

69. (1) The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.

(2) A director may at any time, and a secretary shall on the requisition of a director, convene a meeting of the directors.

70. (1) Subject to these regulations, questions arising at a meeting of directors shall be decided by a majority of votes of directors present and voting and any such decision shall for all purposes be deemed a decision of the directors.

(2) In case of an equality of votes, the chairman of the meeting, in addition to his deliberative vote (if any), has a casting vote.

71. A director shall not vote in respect of any contract or proposed contract with the company in which he is in any way, whether directly or indirectly, interested or in respect of any matter arising out of such a contract or proposed contract and, if he votes in contravention of this sub-regulation, his vote shall not be counted.

72. (1) A director may, with the approval of the other directors, appoint a person (whether a member of the company or not) to be an alternate director in his place during such period as he thinks fit.

(2) An alternate director is entitled to notice of meetings of the directors and, if the appointor is not present at such a meeting, is entitled to attend and vote in his stead.

(3) An alternate director may exercise any powers that the appointor may exercise and the exercise of any such power by the alternate director shall be deemed to be the exercise of the power by the appointer.

(4) An alternate director is not required to have any share qualifications.

(5) The appointment of an alternate director may be terminated at any time by the appointor notwithstanding that the period of the appointment of the alternate director has not expired, and terminates in any event if the appointor vacates office as a director.

(6) An appointment, or the termination of an appointment, of an alternate director shall be effected by a notice in writing signed by the director who makes or made the appointment and served on the company.

73. At a meeting of directors, the number of directors whose presence is necessary to constitute a quorum is such number as is determined by the directors and, unless so determined, is 2.

74. In the event of a vacancy or vacancies in the office of a director or offices of directors, the remaining directors may act but, if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, they may act only for the purpose of increasing the number of directors to a number sufficient to constitute such a quorum or of convening a general meeting of the company.

75. (1) The directors shall elect one of their number as chairman of their meetings and may determine the period for which he is to hold office.

(2) Where such a meeting is held and—

(a) a chairman has not been elected as provided by sub-regulation (1);

or

(b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act,

the directors present shall elect one of their number to be a chairman of the meeting.

76. (1) The directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit.

(2) A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the directors and a power so exercised shall be deemed to have been exercised by the directors.

(3) The members of such a committee may elect one of their number as chairman of their meetings.

(4) Where such a meeting is held and—

(a) a chairman has not been elected as provided by sub-regulation (3);

or

(b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act,

the members present may elect one of their number to be chairman of the meeting.

(5) A committee may meet and adjourn as it thinks proper.

(6) Questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and voting.

(7) In the case of an equality of votes, the chairman, in addition to his deliberative vote (if any), has a casting vote.

77. (1) If all the directors have signed a document containing a statement that they are in favour of a resolution of the directors in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the directors held on the day on which the document was signed and at the time at which the document was last signed by a director or, if the directors signed the document on different days, on the day on which, and at the time at which, the document was last signed by a director.

(2) For the purposes of sub-regulation (1), 2 or more separate documents containing statements in identical terms each of which is signed by one or more directors shall together be deemed to constitute one document containing a statement in those terms signed by those directors on the respective days on which they signed the separate documents.

(3) A reference in sub-regulation (1) to all the directors does not include a reference to a director who, at a meeting of directors, would not be entitled to vote on the resolution.

78. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a director or a member of the committee, or to act as, a director, or that a person so appointed was disqualified, as valid as if the person had been duly appointed and was qualified to be a director or to be a member of the committee.

Managing Director

79. (1) The directors may from time to time appoint one or more of their number to the office of managing director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in a particular case, may revoke any such appointment.

(2) A director so appointed shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment automatically terminates if he ceases from any cause to be a director.

80. A managing director shall, subject to the terms of any agreement entered into in a particular case, receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors determine.

81. (1) The directors may, upon such terms and conditions and with such restrictions as they think fit, confer upon a managing director any of the powers exercisable by them.

(2) Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the directors.

(3) The directors may at any time withdraw or vary any of the powers so conferred on a managing director.

Associate Directors

82. (1) The directors may from time to time appoint any person to be an associate director and may from time to time terminate any such appointment.

(2) The directors may from time to time determine the powers, duties and remuneration of any person so appointed.

(3) A person so appointed is not required to hold any shares to qualify him for appointment but, except by the invitation and with the consent of the directors, does not have any right to attend or vote at any meeting of directors.

Secretary

83. A secretary of the company holds office on such terms and conditions, as to remuneration and otherwise, as the directors determine.

Seal

84. (1) The directors shall provide for the safe custody of the seal.

(2) The seal shall be used only by the authority of the directors, or of a committee of the directors authorized by the directors to authorize the use of the seal, and every document to which the seal is affixed shall be signed by a director and be countersigned by another director, a secretary or another person appointed by the directors to countersign that document or a class of documents in which that document is included.

Inspection of Records

85. The directors shall determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the company or any of them will be open to the inspection of members other than directors, and a member other than a director does not have the right to inspect any document of the company except as provided by law or authorized by the directors or by the company in general meeting.

Dividends and Reserves

86. (1) The company in general meeting may declare a dividend if, and only if the directors have recommended a dividend.

(2) A dividend shall not exceed the amount recommended by the directors.

87. The directors may authorize the payment by the company to the members of such interim dividends as appear to the directors to be justified by the profits of the company.

88. Interest is not payable by the company in respect of any dividend.

89. (1) The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as reserves, to be applied, at the discretion of the directors, for any purpose for which the profits of the company may be properly applied.

(2) Pending any such application, the reserves may, at the discretion of the directors, be used in the business of the company or be invested in such investments as the directors think fit.

(3) The directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

90. (1) Subject to the rights of persons (if any) entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid.

(2) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but, if any share is issued on terms providing that it will rank for dividend as from a particular date, that share ranks for dividend accordingly.

(3) An amount paid or credited as paid on a share in advance of a call shall not be taken for the purposes of this regulation to be paid or credited as paid on the share.

91. The directors may deduct from any dividend payable to a member all sums of money (if any) presently payable by him to the company on account of calls or otherwise in relation to shares in the company.

92. (1) Any general meeting declaring a dividend may, by resolution, direct payment of the dividend wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, any other corporation, and the directors shall give effect to such a resolution.

(2) Where a difficulty arises in regard to such a distribution, the directors may settle the matter as they consider expedient and fix the value for distribution of the specific assets or any part of those assets and may determine that cash payments will be made to any members on the basis of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as the directors consider expedient.

93. (1) Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque sent through the post directed to—

(a) the address of the holder as shown in the register of members, or in the case of joint holders, to the address shown in the register of members as the address of the joint holder first named in that register;

or

(b) to such other address as the holder or joint holders in writing directs or direct.

(2) Any one of 2 or more joint holders may give effectual receipts for any dividends, interest or other money payable in respect of the shares held by them as joint holders.

Capitalization of Profits

94. (1) Subject to sub-regulation (2), the company in general meeting may resolve that it is desirable to capitalize any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to members, and that that sum be applied, in any of the ways mentioned in sub-regulation (3), for the benefit of members in the proportions to which those members would have been entitled in a distribution of that sum by way of dividend.

(2) The company shall not pass a resolution as mentioned in sub-regulation (1) unless the resolution has been recommended by the directors.

(3) The ways in which a sum may be applied for the benefit of members under sub-regulation (1) are—

(a) in paying up any amounts unpaid on shares held by members;

(b) in paying up in full unissued shares or debentures to be issued to members as fully paid;

or

(c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

(4) The directors shall do all things necessary to give effect to the resolution and, in particular, to the extent necessary to adjust the rights of the members among themselves, may—

(a) issue fractional certificates or make cash payments in cases where shares or debentures become issuable in fractions;

and

(b) authorize any person to make, on behalf of all the members entitled to any further shares or debentures upon the capitalization, an agreement with the company providing for the issue to them, credited as fully paid up, of any such further shares or debentures or for the payment up by the company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalized,

and any agreement made under an authority referred to in paragraph (b) is effective and binding on all the members concerned.

Notices

95. (1) A notice may be given by the company to any member either by serving it on him personally or by sending it by post to him at his address as shown in the register of members or the address supplied by him to the company for the giving of notices to him.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected, in the case

of a notice of a meeting, on the day after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.

(3) A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

(4) A notice may be given by the company to a person entitled to a share in consequence of the death or bankruptcy of a member by serving it on him personally or by sending it to him by post addressed to him by name, or by the title of representative of the deceased or assignee of the bankrupt, or by any like description, at the address (if any) within the State supplied for the purpose by the person or, if such an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred.

96. (1) Notice of every general meeting shall be given in the manner authorized by regulation 95 to—

- (a) every member;
- (b) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting;
- and
- (c) the auditor for the time being of the company.

(2) No other person is entitled to receive notices of general meetings.

Winding Up

97. (1) If the company is wound up, the liquidator may, with the sanction of a special resolution, divide among the members in kind the whole or any part of the property of the company and may for that purpose set such value as he considers fair upon any property to be so divided and may determine how the division is to be carried out as between the members or different classes of members.

(2) The liquidator may, with the sanction of a special resolution, vest the whole or any part of any such property in trustees upon such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no member is compelled to accept any shares or other securities in respect of which there is any liability.

Indemnity

98. Every officer, auditor or agent of the company shall be indemnified out of the property of the company against any liability incurred by him in his capacity as officer, auditor or agent in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in relation to any such proceedings in which relief is under the Code granted to him by the Court.

TABLE B

REGULATIONS FOR MANAGEMENT OF A NO LIABILITY COMPANY

Interpretation

1. (1) In these regulations—

“Code” means the *Companies (South Australia) Code*;

“seal” means the common seal of the company and includes any official seal of the company;

“secretary” means any person appointed to perform the duties of a secretary of the company.

(2) Section 40 of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (South Australia) Code* applies in relation to these regulations as if they were an instrument made by an authority under a power conferred by the *Companies (South Australia) Code* as in force on the date on which these regulations became binding on the company.

(3) An expression used in a particular Part or Division of the Code that is given by that Part or Division a special meaning for the purposes of that Part or Division has, in any of these regulations that deals with a matter dealt with by that Part or Division, unless the contrary intention appears, the same meaning as in that Part or Division.

Share Capital and Variation of Rights

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Code, shares in the company may be issued by the directors and any such share may be issued with such preferred, deferred or other special rights or such restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the directors, subject to any resolution, determine.

3. Subject to the Code, any preference shares may, with the sanction of a resolution, be issued on the terms that they are, or at the option of the company are liable, to be redeemed.

4. (1) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether

or not the company is being wound up, be varied with the consent in writing of the holders of three-quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of the class.

(2) The provisions of these regulations relating to general meetings apply so far as they are capable of application and *mutatis mutandis* to every such separate meeting except that—

(a) a quorum is constituted by 2 persons who, between them, hold or represent by proxy one-third of the issued shares of the class;

and

(b) any holder of shares of the class, present in person or by proxy, may demand a poll.

(3) The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking equally with the first-mentioned shares.

5. (1) The company may exercise the power to pay commissions conferred by the Code if—

(a) the rate or the amount of the commission paid or agreed to be paid is disclosed in the manner required by the Code;

and

(b) the commission does not exceed 10% of the price at which the shares in respect of which the commission is paid are issued.

(2) The commission may be satisfied by the payment of cash or by the allotment of fully or partly paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.

(3) The company may, on any issue of shares, also pay such brokerage as is lawful.

6. (1) Except as required by law, the company shall not recognize a person as holding a share upon any trust.

(2) The company is not bound by or compelled in any way to recognize (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any share or unit of a share or (except as otherwise provided by these regulations or by law) any other right in respect of a share except an absolute right of ownership in the registered holder.

7. (1) A person whose name is entered as a member in the register of members is entitled without payment to receive a certificate in respect of the share under the seal of the company in accordance with the Code but, in respect of a share or shares held jointly by several persons, the company is not bound to issue more than one certificate.

(2) Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all such holders.

Calls on Shares

8. (1) The directors may, subject to section 478 of the Code, make calls upon the members in respect of any money unpaid on the shares of the members (whether on account of the nominal value of the shares or by way of premium) and not by the terms of issue of those shares made payable at fixed times.

(2) The directors may revoke or postpone a call.

9. A call shall be deemed to have been made at the time when the resolution of the directors authorizing the call was passed and may be required to be paid by instalments.

10. At any sale by auction under section 479 of the Code, a share forfeited for non-payment of any call may, if the directors so determine, be offered for sale and sold credited as paid up to the sum of—

(a) the amount paid up at the time of forfeiture;

(b) the amount of the call;

and

(c) the amount of any other call or calls becoming payable on or before the date of sale.

Transfer of Shares

11. (1) Subject to these regulations, a member may transfer all or any of his shares by instrument in writing in any usual or common form or in any other form that the directors approve.

(2) An instrument of transfer referred to in sub-regulation (1) shall be executed by or on behalf of both the transferor and the transferee.

(3) A transferor of shares remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect of the shares.

12. The instrument of transfer must be left for registration at the registered office of the company together with such fee (if any) not exceeding \$1.00 as the directors require, accompanied by the

certificate of the shares to which it relates and such other information as the directors properly require to show the right of the transferor to make the transfer, and thereupon the company shall, subject to the powers vested in the directors by these regulations, register the transferee as a shareholder.

13. The registration of transfer may be suspended at such times and for such periods as the directors from time to time determine not exceeding in the whole 30 days in any year.

Transmission of Shares

14. In the case of the death of a member, the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognized by the company as having any title to his interest in the shares.

15. (1) Subject to the *Bankruptcy Act* 1966, a person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such information being produced as is properly required by the directors, elect either to be registered himself as holder of the share or to have some other person nominated by him registered as the transferee of the share.

(2) If the person becoming entitled elects to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects.

(3) If he elects to have another person registered, he shall execute a transfer of the share to that other person.

(4) All the limitations, restrictions and provisions of these rules relating to the right to transfer, and the registration of transfer of, shares are applicable to any such notice or transfer as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

16. (1) Where the registered holder of a share dies or becomes bankrupt, his personal representative or the trustee of his estate, as the case may be, is, upon the production of such information as is properly required by the directors, entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the company, or to voting or otherwise), as the registered holder would have been entitled to if he had not died or become bankrupt.

(2) Where 2 or more persons are jointly entitled to any share in consequence of the death of the registered holder, they shall, for the purpose of these regulations, be deemed to be joint holders of the share.

Conversion of Shares into Stock

17. The company may, by resolution, convert all or any of its paid up shares into stock and reconvert any stock into paid up shares of any nominal value.

18. (1) Subject to sub-regulation (2), where shares have been converted into stock, the provisions of these rules relating to the transfer of shares apply, so far as they are capable of application, to the transfer of the stock or of any part of the stock.

(2) The directors may fix the minimum amount of stock transferable and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the aggregate of the nominal values of the shares from which the stock arose.

19. (1) The holders of stock have, accordingly to the amount of the stock held by them, the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as they would have if they held the shares from which the stock arose.

(2) No such privilege or advantage (except participation in the dividends and profits of the company and in the property of the company on winding up) shall be conferred by any amount of stock that would not, if existing in shares, have conferred that privilege or advantage.

20. The provisions of these regulations that are applicable to paid up shares apply to stock, and references in those provisions to share and shareholder shall be read as including references to stock and stockholder, respectively.

Alteration of Capital

21. The company may, by resolution—

- (a) increase its authorized share capital by the creation of new shares of such amount as is specified in the resolution;
- (b) consolidate and divide all or any of its authorized share capital into shares of a larger amount than its existing shares;
- (c) subdivide all or any of its shares into shares of a smaller amount than is fixed by the memorandum but so that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each such share of a smaller amount is the same as it was in the case of the share from which the share of a smaller amount is derived;

and

- (d) cancel shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person or have been forfeited and reduce its authorized share capital by the amount of the shares so cancelled.

22. (1) Subject to any direction to the contrary that may be given by the company in general meeting, all unissued shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances allow, to the sum of the nominal values of the shares already held by them.

(2) The offer shall be made by notice specifying the number of shares offered and limiting a time within which the offer, if not accepted, will be deemed to be declined.

(3) After the expiration of that time or on being notified by the person to whom the offer is made that he declines to accept the shares offered, the directors may issue those shares in such manner as they think most beneficial to the company.

(4) Where, by reason of the proportion that shares proposed to be issued bear to shares already held, some of the first-mentioned shares cannot be offered in accordance with sub-regulation (1), the directors may issue the shares that cannot be so offered in such manner as they think most beneficial to the company.

23. Subject to the Code, the company may, by special resolution, reduce its share capital, any capital redemption reserve fund or any share premium account.

General Meetings

24. Any director may whenever he thinks fit convene a general meeting.

25. (1) A notice of a general meeting shall specify the place, the day and the hour of meeting and, except as provided by sub-regulation (2), shall state the general nature of the business to be transacted at the meeting.

(2) It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the declaring of a dividend, the consideration of accounts and the reports of the directors and auditors, the election of directors in the place of those retiring or the appointment and fixing of the remuneration of the auditors.

Proceedings at General Meetings

26. (1) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(2) For the purpose of determining whether a quorum is present, a person attending as a proxy, or as representing a corporation that is a member, shall be deemed to be a member.

27. If a quorum is not present within half an hour from the time appointed for the meeting—

(a) where the meeting was convened upon the requisition of members—the meeting shall be dissolved;

or

(b) in any other case—

(i) the meeting stands adjourned to such day, and at such time and place, as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place;

and

(ii) if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting—

(A) 2 members constitute a quorum;

or

(B) where 2 members are not present—the meeting shall be dissolved.

28. (1) If the directors have elected one of their number as chairman of their meetings, he shall preside as chairman at every general meeting.

(2) Where a general meeting is held and—

(a) a chairman has not been elected as provided by sub-regulation (1);

or

(b) the chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act,

the members present shall elect one of their number to be chairman of the meeting.

29. (1) The chairman may with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(2) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(3) Except as provided by sub-regulation (2), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

30. (1) At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded—

- (a) by the chairman;
- (b) by at least 3 members present in person or by proxy;
- (c) by a member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting;
- or
- (d) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

(2) Unless a poll is so demanded, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(3) The demand for a poll may be withdrawn.

31. (1) If a poll is duly demanded, it shall be taken in such manner and (subject to sub-regulation (2)) either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

(2) A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.

32. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, in addition to his deliberative vote (if any), has a casting vote.

33. Subject to any rights or restrictions for the time being attached to any class or classes of shares—

- (a) at meetings of members or classes of members each member entitled to vote may vote in person or by proxy or attorney;
- and
- (b) on a show of hands every person present who is a member or a representative of a member has one vote, and on a poll every person present in person or by proxy or attorney has one vote for each share he holds.

34. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy or by attorney, shall be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority shall be determined by the order in which the names stand in the register of members.

35. If a member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, his committee or trustee or such other person as properly has the management of his estate may exercise any rights of the member in relation to a general meeting as if the committee, trustee or other person were the member.

36. A member is not entitled to vote at a general meeting unless all calls and other sums presently payable by him in respect of shares in the company have been paid.

37. (1) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.

(2) Any such objection shall be referred to the chairman of the meeting, whose decision is final.

(3) A vote not disallowed pursuant to such an objection is valid for all purposes.

38. (1) An instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorized in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorized.

(2) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.

(3) An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

(4) An instrument appointing a proxy shall be in the following form or in a form that is as similar to the following form as the circumstances allow:

[Name of company]

I/we, _____, of _____, being a member/members of the abovenamed company,
 hereby appoint _____ of _____ or, in his absence,
 of _____ as my/our proxy to vote for me/us on my/our behalf at the ^{*annual general} ~~*general~~

meeting of the company to be held on the _____ day of _____ 19 _____ and at any adjournment
 of that meeting.

†This form is to be used ^{*in favour of} ~~*against~~ the resolution.

Signed this _____ day of _____ 19 _____.

*Strike out whichever is not desired.

†to be inserted if desired.

39. An instrument appointing a proxy shall not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of that power or authority, is or are deposited, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, at the registered office of the company or at such other place within the State as is specified for that purpose in the notice convening the meeting.

40. A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the previous death or unsoundness of mind, of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, or the transfer of the share in respect of which the instrument or power is given, if no intimation in writing of the death, unsoundness of mind, revocation or transfer has been received by the company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

Appointment, Removal and Remuneration of Directors

41. (1) The number of the directors and the names of the first directors shall be determined in writing by the subscribers to the memorandum of association or a majority of them.

(2) The company may, by resolution, increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

42. (1) At the first annual meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not 3 or a multiple of 3, then the number nearest one-third, shall retire from office.

(2) A retiring director is eligible for re-election.

43. The directors to retire at an annual general meeting other than the first annual general meeting are those who have been longest in office since their last election, but, as between persons who became directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.

44. (1) The company may, at the meeting at which a director so retires, by resolution fill the vacated office by electing a person to that office.

(2) If the vacated office is not so filled, the retiring director shall, if offering himself for re-election and not being disqualified under the Code from holding office as a director, be deemed to have been re-elected unless at that meeting—

(a) it is expressly resolved not to fill the vacated office;

or

(b) a resolution for the re-election of that director is put and lost.

45. (1) The directors may at any time appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors does not at any time exceed the number determined in accordance with these regulations.

(2) Any director so appointed holds office only until the next following annual general meeting and is then eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at that meeting.

46. (1) The company may by resolution remove any director before the expiration of his period of office, and may by resolution appoint another person in his stead.

(2) The person so appointed is subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

47. (1) The directors shall be paid such remuneration as is from time to time determined by the company in general meeting.

(2) That remuneration shall be deemed to accrue from day to day.

(3) The directors may also be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the directors, or any committee of the directors or general meetings of the company or otherwise in connection with the business of the company.

48. The share qualifications for directors may be fixed by the company in general meeting and, unless and until so fixed, is one share.

49. In addition to the circumstances in which the office of a director becomes vacant by virtue of the Code, the office of a director becomes vacant if the director—

- (a) becomes an insolvent under administration;
 - (b) becomes prohibited from being a director by reason of an order made under the Code;
 - (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (d) resigns his office by notice in writing to the company;
 - (e) is absent without the consent of the directors from meetings of the directors held during a period of 6 months;
 - (f) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or principal executive officer;
- or
- (g) is directly or indirectly interested in any contract or proposed contract with the company and fails to declare the nature of his interest as required by the Code.

Powers and Duties of Directors

50. (1) Subject to the Code and to any other provision of these regulations, the business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and forming the company, and may exercise all such powers of the company as are not, by the Code or by these regulations, required to be exercised by the company in general meeting.

(2) Without limiting the generality of sub-section (1), the directors may exercise all the powers of the company to borrow money, to charge any property or business of the company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.

51. (1) The directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the directors), for such period and subject to such conditions as they think fit.

(2) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the directors think fit and may also authorize the attorney to delegate all or any of the powers, authorities and discretions vested in him.

52. All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the company, shall be signed, drawn, accepted, indorsed or otherwise executed, as the case may be, by any 2 directors or in such other manner as the directors determine.

Proceedings of Directors

53. (1) The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.

(2) A director may at any time, and a secretary shall on the requisition of a director, convene a meeting of the directors.

54. (1) Subject to these regulations, questions arising at a meeting of directors shall be decided by a majority of votes of directors present and voting and any such decision shall for all purposes be deemed a decision of the directors.

(2) In case of an equality of votes, the chairman of the meeting, in addition to his deliberative vote (if any), has a casting vote.

55. A director shall not vote in respect of any contract or proposed contract with the company in which he is in any way, whether directly or indirectly, interested or in respect of any matter arising out of such a contract or proposed contract and, if he votes in contravention of this sub-regulation, his vote shall not be counted.

56. (1) A director may, with the approval of the other directors, appoint a person (whether a member of the company or not) to be an alternate director in his place during such period as he thinks fit.

(2) An alternate director is entitled to notice of meetings of the directors and, if the appointor is not present at such a meeting, is entitled to attend and vote in his stead.

(3) An alternate director may exercise any powers that the appointor may exercise and the exercise of any such power by the alternate director shall be deemed to be the exercise of the power by the appointor.

(4) An alternate director is not required to have any share qualifications.

(5) The appointment of an alternate director may be terminated at any time by the appointor notwithstanding that the period of the appointment of the alternate director has not expired, and terminates in any event if the appointor vacates office as a director.

(6) An appointment, or the termination of an appointment, of an alternate director shall be effected by a notice in writing signed by the director who makes or made the appointment and served on the company.

57. At a meeting of directors, the number of directors whose presence is necessary to constitute a quorum is such number as is determined by the directors and, unless so determined, is 2.

58. In the event of a vacancy or vacancies in the office of a director or offices of directors, the remaining directors may act but, if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, they may act only for the purpose of increasing the number of directors to a number sufficient to constitute such a quorum or of convening a general meeting of the company.

59. (1) The directors may elect one of their number as chairman of their meetings and may determine the period for which he is to hold office.

(2) Where such a meeting is held and—

(a) a chairman has not been elected as provided by sub-regulation (1);

or

(b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act,

the directors present shall elect one of their number to be chairman of the meeting.

60. (1) The directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit.

(2) A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the directors and a power so exercised shall be deemed to have been exercised by the directors.

(3) The members of such a committee may elect one of their number as chairman of their meetings.

(4) Where such a meeting is held and—

(a) a chairman has not been elected as provided by sub-regulation (3);

or

(b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act,

the members present may elect one of their number to be chairman of the meeting.

(5) A committee may meet and adjourn as it thinks proper.

(6) Questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and voting.

(7) In the case of an equality of votes, the chairman, in addition to his deliberative vote (if any), has a casting vote.

61. (1) If all the directors have signed a document containing a statement that they are in favour of a resolution of the directors in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the directors held on the day on which the document was signed and at the time at which the document was last signed by a director or, if the directors signed the document on different days, on the day on which, and at the time at which, the document was last signed by a director.

(2) For the purposes of sub-regulation (1), 2 or more separate documents containing statements in identical terms each of which is signed by one or more directors shall together be deemed to constitute one document containing a statement in those terms signed by those directors on the respective days on which they signed the separate documents.

(3) A reference in sub-regulation (1) to all the directors does not include a reference to a director who, at a meeting of directors, would not be entitled to vote on the resolution.

62. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be, or to act as, a director, or that a person so appointed was disqualified, as valid as if the person had been duly appointed and was qualified to be a director.

Managing Directors

63. (1) The directors may from time to time appoint one or more of their number to the office

of managing director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in a particular case, may revoke any such appointment.

(2) A director so appointed shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors but his appointment automatically terminates if he ceases from any cause to be a director.

64. A managing director shall, subject to the terms of any agreement entered into in a particular case, receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors determine.

65. (1) The Directors may, upon such terms and conditions and with such restrictions as they think fit, confer upon a managing director any of the powers exercisable by them.

(2) Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the directors.

(3) The directors may at any time withdraw or vary any of the powers so conferred on a managing director.

Associate Directors

66. (1) The directors may from time to time appoint any person to be an associate director and may from time to time terminate any such appointment.

(2) The directors may from time to time determine the powers, duties and remuneration of any person so appointed.

(3) A person so appointed is not required to hold any shares to qualify him for appointment but, except by the invitation and with the consent of the directors, does not have any right to attend or vote at any meeting of directors.

Secretary

67. A secretary of the company holds office on such terms and conditions, as to remuneration and otherwise, as the directors determine.

Seal

68. (1) The directors shall provide for the safe custody of the seal.

(2) The seal shall be used only by the authority of the directors, or of a committee of the directors authorized by the directors to authorize the use of the seal, and every document to which the seal is affixed shall be signed by a director and be countersigned by another director, a secretary or another person appointed by the directors to countersign that document or a class of documents in which that document is included.

Inspection of Records

69. The directors shall determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the company or any of them will be open for the inspection of members other than directors, and a member other than a director does not have the right to inspect any document of the company except as provided by law or authorized by the directors or by the company in general meeting.

Dividends and Reserves

70. (1) The company in general meeting may declare a dividend if, and only if, the directors have recommended a dividend.

(2) A dividend shall not exceed the amount recommended by the directors.

71. The directors may authorize the payment by the company to the members of such interim dividends as appear to the directors to be justified by the profits of the company.

72. Interest is not payable by the company in respect of any dividend.

73. (1) The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as reserves, to be applied, at the discretion of the directors, for any purpose for which the profits of the company may be properly applied.

(2) Pending any such application, the reserves may, at the discretion of the directors, be used in the business of the company or be invested in such investments as the directors think fit.

(3) The directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

74. (1) Subject to the rights of persons (if any) entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid.

(2) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is

paid, but, if any share is issued on terms providing that it will rank for dividend as from a particular date, that share ranks for dividend accordingly.

(3) An amount paid or credited as paid on a share in advance of a call shall not be taken for the purposes of this regulation to be paid or credited as paid on the share.

75. (1) Any general meeting declaring a dividend may, by resolution, direct payment of the dividend wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, any other corporation, and the directors shall give effect to such a resolution.

(2) Where a difficulty arises in regard to such a distribution, the directors may settle the matter as they consider expedient and fix the value for distribution of the specific assets or any part of those assets and may determine that cash payments will be made to any members on the basis of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as the directors consider expedient.

76. (1) Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque sent through the post directed to—

(a) the address of the holder as shown in the register of members, or in the case of joint holders, to the address shown in the register of members as the address of the joint holder first named in that register;

or

(b) to such other address as the holder or joint holders in writing directs or direct.

(2) Any one of 2 or more joint holders may give effectual receipts for any dividends, interest or other money payable in respect of the shares held by them as joint holders.

Capitalization of Profits

77. (1) Subject to sub-regulation (2), the company in general meeting may resolve that it is desirable to capitalize any sum, being the whole or part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to members, and that that sum be applied, in any of the ways mentioned in sub-regulation (3), for the benefit of members in the proportions to which those members would have been entitled in a distribution of that sum by way of dividend.

(2) The company shall not pass a resolution as mentioned in sub-regulation (1) unless the resolution has been recommended by the directors.

(3) The ways in which a sum may be applied for the benefit of members under sub-regulation (1) are—

(a) in paying up any amounts unpaid on shares held by members;

(b) in paying up in full unissued shares or debentures to be issued to members as fully paid;

or

(c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

(4) The directors shall do all things necessary to give effect to the resolution and, in particular, to the extent necessary to adjust the rights of the members among themselves, may—

(a) issue fractional certificates or make cash payments in cases where shares or debentures become issuable in fractions;

and

(b) authorize any person to make, on behalf of all the members entitled to any further shares or debentures upon the capitalization, an agreement with the company providing for the issue to them, credited as fully paid up, of any such further shares or debentures or for the payment up by the company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalized,

and any agreement made under an authority referred to in paragraph (b) is effective and binding on all the members concerned.

Notices

78. (1) A notice may be given by the company to any member either by serving it on him personally or by sending it by post to him at his address as shown in the register of members or the address supplied by him to the company for the giving of notices to him.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, on the day after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.

(3) A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

(4) A notice may be given by the company to a person entitled to a share in consequence of the death or bankruptcy of a member by serving it on him personally or by sending it to him by post

addressed to him by name, or by the title of representative of the deceased or assignee of the bankrupt, or by any like description, at the address (if any) within the State supplied for the purpose by the person or, if such an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred.

79. (1) Notice of every general meeting shall be given in the manner authorized by regulation 78 to—

- (a) every member;
- (b) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting;
- and
- (c) the auditor for the time being of the company.

(2) No other person is entitled to receive notices of general meetings.

Winding Up

80. (1) If the company is wound up, the liquidator may, with the sanction of a special resolution, divide among the members in kind the whole or any part of the property of the company and may for that purpose set such value as he considers fair upon any property to be so divided and may determine how the division is to be carried out as between the members or different classes of members.

(2) The liquidator may, with the sanction of a special resolution, vest the whole or any part of any such property in trustees upon such trust for the benefit of the contributories as the liquidator thinks fit, but so that no member is compelled to accept any shares or other securities in respect of which there is any liability.

81. (1) Subject to the rights of persons (if any) entitled to shares with special rights in a winding up, to the provisions of sub-section 486 (2) of the Code and to sub-regulation (2) of this regulation, all moneys and property that are to be distributed among members on a winding up shall be so distributed in proportion to the shares held by them respectively irrespective of the amount paid up or credited as paid up on the shares.

(2) If a company ceases to carry on business within 12 months of its incorporation, shares issued for cash shall, in the distribution, to the extent of the capital contributed by subscribing shareholders, rank in priority to shares issued to vendors or promoters or both for consideration other than cash.

Indemnity

82. Every officer, auditor or agent of the company shall be indemnified out of the property of the company against any liability incurred by him in his capacity as officer, auditor or agent in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in relation to any such proceedings in which relief is under the Code granted to him by the Court.

SCHEDULE 4

FORMS OF TRANSFER OF MARKETABLE SECURITIES
FORM 1

Section 191

SECURITY TRANSFER FORM	MARKING STAMP
------------------------	---------------

PART 1

Full name of company or prescribed corporation:

Description of securities:	Class:	If not fully paid, paid to:	Register
Quantity: [Words] [Figures]			Transferor's broker hereby certifies: (a) as to validity of documents; and (b) that stamp duty, if payable, has been or will be paid. [Transferor's broker's stamp]
Transfer identification number:			
Full name(s) of transferor(s):			
			Affixed at on (place and date of affixing stamp)

I (or We) hereby transfer the above securities to the transferee(s) named in Part 2 hereof or to the several transferees named in Part 2 of the Broker's Transfer Form(s) or Split Transfer Form(s) relating to the above securities.

*I (or We) have no notice of revocation of the power of attorney under which this transfer is signed.

Signature(s) of transferor(s):

Date(s) signed:

PART 2

Full name(s) and address(es) of transferee(s):	Transferee's broker hereby certifies: (a) that the securities set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in this Part; and (b) that stamp duty, if payable, has been or will be paid, and hereby requests that such entries be made in the register as are necessary to give effect to this transfer. [Transferee's broker's stamp]
	Date of affixing stamp:

*Delete if not applicable

Companies (South Australia) Code

FORM 2

Section 191

BROKER'S TRANSFER FORM	MARKING STAMP
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PART 1

Full name of company or prescribed corporation:

Description of securities:	Class:	If not fully paid, paid to:	Register:
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Quantity: [Words] [Figures]

Transfer identification number: Full name(s) of transferor(s):	Transferor's broker hereby certifies: (a) that the Security Transfer Form relating to the securities set out above has been or will be lodged at the company's or corporation's office; and (b) that stamp duty, if payable, has been or will be paid. [Transferor's broker's stamp] Affixed at on (place and date of affixing stamp)
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PART 2

Full name(s) and address(es) of transferee(s):	Transferee's broker hereby certifies: (a) that the securities set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in this Part; and (b) that stamp duty, if payable, has been or will be paid, and hereby requests that such entries be made in the register as are necessary to give effect to this transfer. [Transferee's broker's stamp] Date of affixing stamp:
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FORM 3

Section 191

SPLIT TRANSFER FORM	MARKING STAMP
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PART 1

Full name of company or prescribed corporation:

Description of securities:	Class:	If not fully paid, paid to:	Register:
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Quantity:	[Words]	[Figures]
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Transfer identification number: Full name(s) of transferor(s):	The [name of prescribed stock exchange] hereby certifies that the Security Transfer Form or the Broker's Transfer Form relating to the securities set out above has been or will be lodged at the company's or corporation's office. [Stock Exchange stamp] Affixed at on (place and date of affixing stamp)
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PART 2

Full name(s) and address(es) of transferee(s):	Transferee's broker hereby certifies: (a) that the securities set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in this Part; and (b) that stamp duty, if payable, has been or will be paid, and hereby requests that such entries be made in the register as are necessary to give effect to this transfer. [Transferee's broker's stamp] Date of affixing stamp:
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TRANSFeree'S ACCEPTANCE

For completion—

- (a) by transferee(s) of marketable securities with an uncalled liability, not being partly paid shares in a no liability company;
- or
- (b) by transferee(s) of rights to marketable securities, where the whole of the moneys to be subscribed for the marketable securities to which the rights relate is not payable in full on application and the securities are not shares in a no liability company.

To

[Name of company or prescribed corporation whose securities are involved]

I (or We)

of

, being

the transferee(s) of

[Quantity and description of securities or rights]

in the abovenamed company or corporation, comprised in the

[Number]

instrument(s) of transfer (or renunciation and transfer) attached, in respect of which there is an uncalled liability of per unit after payment of application moneys, if any, and being the person(s) named as transferee(s) in the Security Transfer Form, Broker's Transfer Form or Split Transfer Form (or Security Renunciation and Transfer Form, Broker's Renunciation and Transfer Form or Renunciation and Split Transfer Form) relating to those securities (or rights), and having attained the age of 18 years, HEREBY AGREE—

- (a) to accept the securities (or securities to which those rights relate) subject to the several terms and conditions upon which the transferor(s) held them at the time of the transfer of the securities by the transferor(s) to me (or us) (or upon which the securities were offered by the company or corporation for subscription);
- and
- (b) to become a member (or members) of the company or corporation and to be bound by the memorandum and articles or by the constitution of the company or corporation upon being registered as the holder(s) of the securities.

*I (or We) have no notice of revocation of the power of attorney under which this instrument is signed.

Signature(s) of transferee(s)

Dated the

day of

, 19

*Delete if not applicable

FORM 5

Section 191

SECURITY RENUNCIATION AND TRANSFER FORM	MARKING STAMP
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PART 1

Full name of company or prescribed corporation:

Description of rights:		Register:
Quantity: [Words] [Figures]	Transferor's broker hereby certifies:	
Transfer identification number:	(a) as to the validity of documents;	
Full name(s) of transferor(s):	and	
	(b) that stamp duty, if payable, has been or will be paid.	
	[Transferor's broker's stamp]	
	Affixed at	
	on	
	(place and date of affixing stamp)	

I (or We) hereby renounce and transfer the above rights in favour of the transferee(s) named in Part 2 hereof or to the several transferee(s) named in Part 2 of the Broker's Renunciation and Transfer Form(s) or Renunciation and Split Transfer Form(s) relating to the above rights.

*I (or We) have no notice of revocation of the power of attorney under which this renunciation and transfer is signed.

Signature(s) of transferor(s):

Date(s) signed:

PART 2

Full name(s) and address(es) of transferee(s):	Transferee's broker hereby certifies:
	(a) that, the rights set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in this Part;
	and
	(b) that stamp duty, if payable, has been or will be paid,
	and hereby requests that the marketable securities be allotted by the company or corporation to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer.
	[Transferee's broker's stamp]
	Date of affixing stamp:

*Delete if not applicable

Companies (South Australia) Code

FORM 6

Section 191

BROKER'S RENUNCIATION AND TRANSFER FORM

MARKING STAMP

PART 1

Full name of company or prescribed corporation:

Description of rights:

Register:

Quantity: [Words]

[Figures]

Transfer identification number:

Full name(s) of transferor(s):

Transferor's broker hereby certifies:

(a) that the Security Renunciation and Transfer Form relating to the rights set out above has been or will be lodged at the company's or corporation's office;

and

(b) that stamp duty, if payable, has been or will be paid.

[Transferor's broker's stamp]

Affixed at
on
(place and date of affixing stamp)

PART 2

Full name(s) and address(es) of transferee(s):

Transferee's broker hereby certifies:

(a) that, the rights set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in this Part;

and

(b) that stamp duty, if payable, has been or will be paid,

and hereby requests that the marketable securities be allotted by the company or corporation to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer.

[Transferee's broker's stamp]

Date of affixing stamp:

FORM 7

Section 191

RENUNCIATION AND SPLIT TRANSFER FORM

MARKING STAMP

PART 1

Full name of company or prescribed corporation:

Description of rights:

Register:

Quantity: [Words]

[Figures]

Transfer identification number:

Full name(s) of transferor(s):

The [name of prescribed stock exchange] hereby certifies that the Security Renunciation and Transfer Form or the Broker's Renunciation and Transfer Form relating to the rights set out above has been or will be lodged at the company's or corporation's office.

[Stock Exchange stamp]

Affixed at
on
(place and date of affixing stamp)

PART 2

Full name(s) and address(es) of transferee(s):

Transferee's broker hereby certifies:

(a) that, the rights set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in this Part;

and

(b) that stamp duty, if payable, has been or will be paid,
and hereby requests that the marketable securities be allotted by the company or corporation to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer.

[Transferee's broker's stamp]

Date of affixing stamp:

Companies (South Australia) Code

FORM 8

Section 192

TRUSTEE TRANSFER FORM	MARKETING STAMP
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PART 1

Full name of company or prescribed corporation:

Description of securities:	Class:	If not fully paid, paid to:	Register:
Quantity:	[Words]		[Figures]

Transfer identification number, where appropriate:

Full name(s) of transferor(s):

PART 2

Full name(s) and address(es) of transferee(s):	Transferor hereby certifies that the securities set out in Part 1 above are to be registered in the name(s) of the transferee(s) named in this Part, being the person(s) for or on whose behalf the transferor held them, either alone or together with another person or other persons, in the ordinary course of business immediately before the execution of this transfer, and hereby requests that such entries be made in the register as are necessary to give effect to this transfer.
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I (or We) hereby transfer the above securities to the transferee(s) named in Part 2 hereof.

Execution by the transferor(s):

Date of execution:

FORM 9

Section 192

TRANSFEREE'S ACCEPTANCE

For completion—

by transferee(s) of marketable securities with an uncalled liability, not being partly paid shares in a no liability company, where the securities are transferred by an authorized trustee corporation, either alone or together with another person or other persons, to the person(s) for or on behalf of whom the corporation held them, either alone or together with that other person or those other persons, in the ordinary course of its business immediately before the execution of this transfer.

To:

[Name of company or prescribed corporation whose securities are involved]

I (or We)

of _____, being

the transferee(s) of

[Quantity and description of securities]

comprised in the _____ instrument(s) of transfer attached

[Number]

each paid to _____ in the abovenamed company or corporation and being the person(s) named as the transferee(s) in the Trustee Transfer Form relating to those securities and having attained the age of 18 years, HEREBY AGREE to accept the securities subject to the several terms and conditions on which the transferor held them at the time of the transfer of the securities by the transferor to me (or us) and further agree to become a member (or members) of the company or corporation and to be bound by the memorandum and articles or by the constitution of the company or corporation upon being registered as the holder(s) of the securities.

Signature(s) of transferee(s):

Dated the _____ day of _____ .19 .

FORM 10

Section 192

TRUSTEE RENUNCIATION AND TRANSFER FORM

PART 1

Full name of company or prescribed corporation:

Description of rights:

Register:

Quantity:

[Words]

[Figures]

Transfer identification number, where appropriate:

Full name(s) of transferor(s):

PART 2

Full name(s) and address(es) of transferee(s):

Transferor hereby certifies that, the rights set out in Part 1 above having been transferred to the person(s) for or on whose behalf the transferor held them, either alone or together with another person or other persons, in the ordinary course of business immediately before the transfer, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in this Part, and hereby requests that the marketable securities be allotted by the company or corporation to the transferee(s) and that such entries be made in the register as are necessary to give effect to this renunciation and transfer.

I (or We) hereby renounce and transfer the above rights in favour of the transferee(s) named in Part 2 hereof.

Execution by the transferor(s):

Date of execution:

TRANSFEEE'S ACCEPTANCE

For completion—

by persons to whom rights to marketable securities are transferred by an authorized trustee corporation, either alone or together with another person or other persons, where the whole of moneys to be subscribed for marketable securities to which the rights relate is not payable in full on application, the securities are not shares in a no liability company and the rights were held for or on behalf of the person(s) by the transferor(s).

To:

[Name of company or prescribed corporation whose securities are involved]

I (or We)

of

,being

the transferee(s) of

[Quantity and description of rights]

comprised in the

instrument(s) of renunciation and transfer attached,

[Number]

to securities in respect of which there is an uncalled liability of per unit after the payment of application moneys, if any, and being the person(s) named as transferee(s) in the Trustee Renunciation and Transfer Form and having attained the age of 18 years, HEREBY AGREE to accept the securities to which the rights relate subject to the several terms and conditions upon which the securities were offered by the company or corporation for subscription and I (or We) hereby agree to become a member (or members) of the company or corporation and to be bound by the memorandum and articles or by the constitution of the company or corporation upon being registered as the holder(s) of the securities.

Signature(s) of transferee(s):

Dated the

day of

.19 .

SCHEDULE 5

Section 204

ORDER OF PRIORITY OF REGISTRABLE CHARGES

1. (1) A registered charge on property of a company has priority over—
 - (a) a subsequent registered charge on the property, unless the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created;
 - (b) an unregistered charge on the property created before the creation of the registered charge, unless the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge at the time when the registered charge was created;

and

 - (c) an unregistered charge on the property created after the creation of the registered charge.
- (2) A registered charge on property of a company is postponed to—
 - (a) a subsequent registered charge on the property, where the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created;

and

 - (b) an unregistered charge on the property created before the creation of the registered charge, where the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge at the time when the registered charge was created.
2. An unregistered charge on the property of a company has priority over—
 - (a) a registered charge on the property that was created after the creation of the unregistered charge and does not have priority over the unregistered charge under clause 1;

and

 - (b) another unregistered charge on the property created after the first-mentioned unregistered charge.
3. (1) Except as provided by the succeeding sub-clauses of this clause, any priority accorded by this Schedule to a charge over another charge does not extend to any liability that, at the priority time in relation to the first-mentioned charge, is not a present liability.
 - (2) Where a registered charge on property of a company secures—
 - (a) a present liability and a prospective liability of an unspecified amount;

or

 - (b) a prospective liability of an unspecified amount,

any priority accorded by this schedule to the charge over another charge of which the chargee in relation to the first-mentioned charge does not have actual knowledge extends to the prospective liability, whether the prospective liability became a present liability before or after the registration of the first-mentioned charge.
 - (3) Where a registered charge on property of a company secures—
 - (a) a present liability and a prospective liability up to a specified maximum amount;

or

 - (b) a prospective liability up to a specified maximum amount,

and the notice lodged with the Commission under section 201 or 202 in relation to the charge sets out the nature of the prospective liability and the amount so specified, then any priority accorded by this schedule to the charge over another charge extends to any prospective liability secured by the first-mentioned charge to the extent of the maximum amount so specified, whether the prospective liability became a present liability before or after the registration of the first-mentioned charge and notwithstanding that the chargee in relation to the first-mentioned charge had actual knowledge of the other charge at the time when the prospective liability became a present liability.
 - (4) Where—
 - (a) a registered charge on property of a company secures—
 - (i) a present liability and a prospective liability up to a specified maximum amount;

or

 - (ii) a prospective liability up to a specified maximum amount,

but the notice lodged with the Commission under section 201 or 202 in relation to the charge does not set out the nature of the prospective liability or the maximum amount so specified;

or

(b) a registered charge on property of a company secures a prospective liability of an unspecified amount,

the following provisions of this sub-clause have effect:

(c) any priority accorded by this schedule to the charge over another charge of which the chargee in relation to the first-mentioned charge has actual knowledge extends to any prospective liability secured by the first-mentioned charge that had become a present liability at the time when the chargee in relation to the first-mentioned charge first obtained actual knowledge of the other charge;

and

(d) any priority accorded by this schedule to the charge over another charge of which the chargee in relation to the first-mentioned charge has actual knowledge extends to any prospective liability secured by the first-mentioned charge that became a present liability, as the result of the making of an advance, after the time when the chargee in relation to the first-mentioned charge first obtained actual knowledge of the other charge if, at that time, the terms of the first-mentioned charge required the chargee in relation to that charge to make the advance after that time, and so extends to that prospective liability whether the advance was made before or after the registration of the first-mentioned charge and notwithstanding that the chargee in relation to the first-mentioned charge had actual knowledge of the other charge at the time when the advance was made.

4. A reference in this schedule to a person having notice of a charge includes a reference to the person having constructive notice of the charge.

5. In this schedule—

(a) a reference to a prior registered charge in relation to another registered charge is a reference to a charge the priority time of which is earlier than the priority time of the other charge;

and

(b) a reference to a subsequent registered charge in relation to another registered charge is a reference to a charge the priority time of which is later than the priority time of the other registered charge.

6. In this schedule—

“priority time”, in relation to a registered charge, means—

(a) except as provided by paragraph (b) or (c)—the time and date appearing in the Register in relation to the charge, being a time and date entered in the Register pursuant to section 203;

(b) where a notice has been lodged under section 202 in relation to a charge on property, being a charge that, at the time when the notice was lodged, was already registered under Division 9 of Part IV—the earlier or earliest time and date appearing in the Register in relation to the charge, being a time and date entered in the Register pursuant to section 203;

and

(c) to the extent that the charge has effect as varied by a variation notice of which was required to be lodged with the Commission under sub-section 206 (2)—the time and date entered in the Register in relation to the charge pursuant to sub-section 203 (14);

“registered charge”, means a charge that is registered under Division 9 of Part IV;

“unregistered charge”, means a charge that is not registered under Division 9 of Part IV but does not include a charge that is not registrable.