

Western Australia

**Securities Industry (Application of Laws)  
Act 1981**

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# Securities Industry (Application of Laws) Act 1981

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Western Australia

# **Securities Industry (Application of Laws) Act 1981**

**An Act relating to the Securities Industry in Western Australia.**

*[Assented to 26 May 1981.]*

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows: —

## **Part I — Preliminary**

**1. Short title**

This Act may be cited as the *Securities Industry (Application of Laws) Act 1981*.

**2. Commencement**

This Act shall come into operation on a date to be fixed by proclamation.<sup>1</sup>

[3. *Repealed by No. 10 of 1998 s.76.*]

**4. Interpretation**

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

**“Agreement”** means 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;

**“Commission”** means the National Companies and Securities Commission established by the *National Companies and Securities Commission Act 1979* of the Commonwealth;

**“Commissioner for Corporate Affairs”** means the Commissioner for Corporate Affairs for Western Australia and includes any Deputy or Assistant Commissioner for Corporate Affairs;

**“Ministerial Council”** means the Ministerial Council for Companies and Securities established by the Agreement;

**“the applied provisions”** means the provisions applying by reason of sections 6 and 7;

**“the Commonwealth Act”** means the *Securities Industry Act 1980* 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.
- (3) The provisions of the Interstate Corporate Affairs Agreement do not apply to or with respect to the applied provisions or the administration of the applied provisions.

*[Section 4 amended by No. 48 of 1988 s.20.]*

**5. Interpretation of *Securities Industry (Western Australia) Code***

The *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*, applies to the *Securities Industry (Western Australia) Code*.

*[Section 5 amended by No. 10 of 1982 s.18.]*

## **Part II — Application of laws**

### **6. Application of Securities Industry Law**

Subject to this Act, the provisions of the Commonwealth Act as in force on 31 December 1990 (other than sections 1, 2 and 3) apply —

- (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 Western Australia.

*[Section 6 amended by No. 8 of 2001 s.27(1).]*

### **7. Application of Securities Industry Regulations**

Subject to this Act, the provisions of regulations in force on 31 December 1990 under the Commonwealth Act (other than provisions providing for the citation or commencement of the regulations) apply —

- (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.

*[Section 7 amended by No. 8 of 2001 s.27(2).]*

### **8. Fees payable**

- (1) There shall be paid to the Commissioner for Corporate Affairs, for and on behalf of the State, for or in respect of —
  - (a) the lodgment of documents with the 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 Commission under the applied provisions;
- (c) the production by the Commission, pursuant to a *subpoena*, of any registers kept by, or documents in the custody of, the 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 Commission under the applied provisions;
- (e) the making of inquiries of, or applications to, the Ministerial Council or the Commission in relation to matters arising under the applied provisions; and
- (f) the submission to the Commission of documents for examination by the Commission,

such fees (if any) as are prescribed by regulations in force for the time being under the *Securities Industry (Fees) Act 1980* of the Commonwealth and specified in the Schedule to those relations as if amended as set out in Schedule 3 and as if, unless the contrary intention appears, expressions used had the same respective meanings as in the applied provisions.

- (2) Where a fee is payable to the Commissioner for Corporate Affairs for and on behalf of the State under subsection (1) for or in respect of the lodgment of a document with the 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 Commissioner for Corporate Affairs 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 Commission, the Ministerial

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Council or the 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 Commissioner for Corporate Affairs 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.

*[Section 8 amended by Gazette 25 September 1981 p.4081.]*

**9. Amendment of Regulations pursuant to Agreement**

- (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 *Securities Industry (Fees) Act 1980* 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 *Securities Industry (Fees) Act 1980* of the Commonwealth includes a reference to those regulations as amended in accordance with this section.

**10. Publication of *Securities Industry (Western Australia) Code***

- (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 and 3), amended as set out in Schedule 1 and in operation, or to come into operation, in Western Australia.
- (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 Western Australia;
  - (c) shall include a statement of the date on which the Minister authorized the publication; and
  - (d) may be cited as the *Securities Industry (Western Australia) Code*.
- (3) A document that is or purports to be a copy of the *Securities Industry (Western, 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 western Australia as notified in the document in, accordance with paragraph (b) of subsection (2).

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**11. Publication of *Securities Industry (Western Australia) Regulations***

- (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 Western Australia.
- (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 Western Australia;
  - (c) shall include a statement of the date on which the Minister authorized the publication; and
  - (d) may be cited as the *Securities Industry (Western Australia) Regulations*.
- (3) A document that is or purports to be a copy of the *Securities Industry (Western 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 Western Australia as notified in the document in accordance with paragraph (b) of subsection (2).

**12. Publication of *Securities Industry (Fees) Regulations***

- (1) The Minister may from time to time authorize the publication by the Government Printer of the Schedule to regulations prescribing fees under the *Securities Industry (Fees) Act 1980* of the Commonwealth amended as set out in Schedule 3 and in operation, or to come into operation, in Western Australia.

- (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 Western Australia;
  - (c) shall include a statement of the date on which the Minister authorized the publication; and
  - (d) may be cited as the *Securities Industry (Fees) (Western Australia) Regulations*.
- (3) A document that is or purports to be a copy of the *Securities Industry (Fees) (Western 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 Western Australia as notified in the document in accordance with paragraph (b) of subsection (2).

**13. Publication of provisions amending Code or regulations**

- (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 Western Australia;
  - (b) provisions that by reason of —
    - (i) regulations under the Commonwealth Act; and
    - (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

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- (c) fees that by reason of —
  - (i) regulations under the *Securities Industry (Fees) Act 1980* 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 Western 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. Interpretation of references to the applied provisions**

- (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 Western Australia —
  - (a) a reference to the *Securities Industry (Western 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 *Securities Industry (Western 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 *Securities Industry (Fees) (Western Australia) Regulations* is a reference to the Schedule to regulations prescribing fees under the *Securities Industry (Fees) Act 1980* 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 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. Amendment of certain provisions in accordance with approval of Ministerial Council**

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 *Securities Industry (Fees) Act 1980* 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),

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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.

**15A. Exemptions from “prescribed interest”**

- (1) Where the Ministerial Council approves an exemption of a right or interest, or a right or interest included in a class or kind of rights or interests, to be an exempt right or interest or a class or kind of exempt rights or interests for the purposes of the interpretation of “prescribed interest” in subsection (1) of section 4 of the *Securities Industry (Western 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 an exempt right or interest or a class or kind of exempt rights or interests for the purposes of that interpretation.
- (2) Regulations under subsection (1) shall be read and construed as one with the *Securities Industry (Western Australia) Regulations*.

*[Section 15A inserted by No. 10 of 1982 s.16; amended by No. 48 of 1988 s.21.]*

**15B. Regulations for penalty notices**

- (1) The Governor may make regulations that —
  - (a) prescribe offences against the *Securities Industry (Western Australia) Code* (not being offences the penalties applicable to which include a term of imprisonment that exceeds 6 months or a pecuniary penalty that exceeds \$2 500), or offences against the *Securities Industry (Western Australia) Regulations*, for the purposes of section 141A of the *Securities Industry (Western Australia) Code*; and
  - (b) in relation to each offence that is prescribed pursuant to this subsection —

- (i) prescribe the particulars of that offence that are to be given in a notice served on a person under section 141A of the *Securities Industry (Western Australia) Code* in relation to the offence; and
  - (ii) prescribe the amount of the penalty (being an amount that does not exceed half the amount of the penalty applicable to the offence) that is payable in respect of the offence pursuant to a notice served on the person under section 141A of the *Securities Industry (Western Australia) Code* in relation to the offence.
- (2) In subsection (1), a reference to a penalty applicable to an offence is a reference to the penalty that is applicable to that offence by virtue of any of the provisions of section 141 of the *Securities Industry (Western Australia) Code*.
- (3) The particulars of an offence required to be prescribed by subsection (1) (b) (i) may be prescribed by being set out in the form prescribed by the *Securities Industry (Western Australia) Regulations* for the purposes of section 141A of the *Securities Industry (Western Australia) Code* in relation to the offence.
- (4) A provision of the *Securities Industry (Western Australia) Regulations* that is inconsistent with a provision of regulations made under this section has no effect.
- (5) Except as provided in subsection (4), regulations under this section shall be read and construed as one with the *Securities Industry (Western Australia) Regulations*.

*[Section 15B inserted by No. 45 of 1988 s.22.]*

### **Part III — Transitional provisions**

**16. Exclusion of *Securities Industry Act 1975* etc.**

- (1) The provisions applying by reason of section 6 operate to the exclusion of the provisions of the *Securities Industry Act 1975* and the *Companies Act 1961* in relation to acts, matters and things in relation to which the first-mentioned provisions apply.
- (2) The provisions of subsection (1) do not, unless the contrary intention appears —
  - (a) revive anything not in force or existing at the time at which the exclusion of the provisions of the *Securities Industry Act 1975* and the *Companies Act 1961* takes effect;
  - (b) affect the previous operation of either of those Acts or anything duly done or suffered under either of those Acts;
  - (c) affect any right, privilege, obligation or liability acquired or incurred under either of those Acts;
  - (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against either 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 subsection (1) had not been enacted.

- (3) For the purposes of subsection (2) —
  - (a) the provisions of section 8 of the *Securities Industry Act 1975* and of any regulations prescribing fees for the purposes of that Act; and

- (b) any other provisions of that Act that are necessary for the effectual operation of the provisions mentioned in paragraph (a),

continue in force, but it is not a contravention of subsection (5) of section 8 of that Act as so continuing in force to divulge or communicate information to the Commission or to a person authorized by the Commission to receive the information.

## **17. General provisions**

Unless the contrary intention appears in this Act or in the *Securities Industry (Western Australia) Code*—

- (a) all persons, things and circumstances appointed or created by or under the *Securities Industry Act 1975*, or existing or continuing under that Act immediately before the commencement of this Act shall, under and subject to this Act, the *Securities Industry (Western Australia) Code* and the *Companies Act 1961*, continue to have the same status, operation and effect as they respectively would have had if this Act had not been enacted; and
- (b) in particular and without affecting the generality of paragraph (a), this Act does not disturb the continuity of status, operation or effect of any order, rule, regulation, scale of fees, deed, agreement, direction, instrument, document, register, registration, right, priority, liability, duty, obligation, proceeding, matter or thing made, done, effected, given, issued, entered into, accrued, incurred, existing, pending or acquired by or under the *Securities Industry Act 1975*, before the commencement of this Act.

## **18. References to *Securities Industry Act 1975***

A reference in an Act or document to a provision of the *Securities Industry Act 1975*, shall, unless the contrary intention appears, be construed as a reference to the provision as

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contained with or without modification in the *Securities Industry (Western Australia) Code*.

**19. Proceedings by or against Commissioner to be proceedings by or against Commission**

- (1) Where, before the commencement of this Act, a proceeding under the *Securities Industry Act 1975*, had been commenced by or against the Commissioner for Corporate Affairs, the proceeding may be continued by or against the Commission.
- (2) Where, but for the enactment of this Act, a proceeding under the *Securities Industry Act 1975*, could have been commenced by or against the Commissioner for Corporate Affairs, the proceeding may be commenced by or against the Commission.
- (3) Where, but for the enactment of this Act, a proceeding could have been commenced in relation to an offence against section 51 of the *Securities Industry Act 1975*, the proceeding may, notwithstanding subsection (1) of section 127 of that Act, be commenced by the Commission or, with the consent of the Ministerial Council, by any other person.

**20. Power of Minister to consent to institution of proceedings**

Where —

- (a) the institution of the particular proceeding under the *Securities Industry Act 1975*, 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 that commencement by reason of the operation of section 16,

the enactment of this Act does not affect the power of the Minister to consent to the institution of the proceeding.

**21. Registers, funds and account**

- (1) Any register, fund, deposit or account kept immediately before the commencement of this Act under any provision of the *Securities Industry Act 1975*, shall be deemed to be part of a register, fund, deposit or account kept under the corresponding provision of the *Securities Industry (Western Australia) Code*.
- (2) Where, under subsection (1), a register is to be deemed to form part of a register kept under section 89 of the *Securities Industry (Western Australia) Code*, the register shall, unless notice of change of place at which it is kept is given under section 90 of that Code, be kept at the place at which, under the *Securities Industry Act 1975*, it was required to be kept immediately before the commencement of this Act.
- (3) A person to whom section 89 of the *Securities Industry (Western Australia) Code* applies at the commencement of this Act who did not, immediately before that commencement, keep a register under Part VII of the *Securities Industry Act 1975*, shall —
  - (a) give the notice referred to in subsection (2) of section 90 of that Code within one month after that commencement; and
  - (b) give the notice notwithstanding that during that time he had ceased to be a person to whom section 89 of that Code applies.

**22. Order of Court**

An order made by the Court under section 12 of the *Securities Industry Act 1975*, or under a corresponding previous enactment and in force immediately before the commencement of this Act shall be deemed to be an order made by the Court under section 14 of the *Securities Industry (Western Australia) Code*.

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**23. Investigations**

- (1) Division 2 of Part II of the *Securities Industry (Western Australia) Code* applies to and in relation to an investigation to which Division 2 of Part II of the *Securities Industry Act 1975*, applied immediately before the commencement of this Act and so applies as if the inspector appointed to carry out the investigation was appointed, and the investigation is being carried out, pursuant to a direction given by the Minister in the exercise of a power under subsection (1) of section 16 of the *Securities Industry (Western Australia) Code* otherwise than in response to a request made by the Commission under subsection (4) of section 16 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 Division 2 of Part II of the *Securities Industry Act 1975*, applied immediately before that commencement, that act, matter or thing shall have the same status, operation and effect in relation to the completion of 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 Division 2 of Part II of the *Securities Industry Act 1975*, 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.

**24. Licences**

- (1) A licence under Part IV of the *Securities Industry Act 1975*, and in force immediately before the commencement of this Act,



continues in force as if it were a licence issued by the Commission under Part IV of the *Securities Industry (Western Australia) Code* and, where the licence was so granted subject to a condition that the holder of the licence lodges with the Commissioner a bond as referred to in paragraph (c) of subsection (2) of section 40 of that Act, a bond so lodged and held by the Commissioner immediately before the commencement of this Act shall be deemed to have been approved by the Commission under paragraph (d) of subsection (2) of section 51 of that Code and to be lodged with the local authority under that section, and that bond is a bond for the purposes of that Code and also continues to be subject to any claim in respect of it as if this Act had not been enacted.

- (2) Where security was lodged under section 17 of the *Securities Industry Act 1970* in respect of the issue of a licence and that security was retained by the Commissioner after that Act was repealed, that security shall be and be deemed always to have been a bond lodged with and approved by the Commissioner as a condition of a licence under the *Securities Industry Act 1975* while it is so retained.
- (3) Where, before the commencement of this Act, a licence under the *Securities Industry Act 1975* was suspended and the period of the suspension had not expired or been removed before that commencement, the licence shall, for the purpose of this Act, be deemed to be a licence issued under the *Securities Industry (Western Australia) Code* and suspended by the Commission under that Code for a period that, subject to this Act, expires at the time at which, immediately before the commencement of this Act, the first-mentioned suspension would have expired.

## **25. Statements by licensees**

- (1) A person who was the holder of a licence within the meaning of the *Securities Industry Act 1975*, shall, in relation to a prescribed year, lodge with the Commission a statement in such form and containing such information as was prescribed for the

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purposes of section 44 of that Act by regulations in force under that Act immediately before the commencement of this Act.

- (2) The statement referred to in subsection (1) shall be lodged within the period of two months (or, in the case of a body corporate, three months) after the commencement of this Act.
- (3) In this section, “**prescribed year**” means, in relation to a person, the whole or part of a year ending before the commencement of this Act, being a year or part of a year which commenced on the date, or on the anniversary of the date, on which a licence was granted to the person under the *Securities Industry Act 1975*, and in respect of which the person did not lodge a statement under section 44 of that Act.

**26. Accounts**

- (1) A dealer within the meaning of the *Securities Industry Act 1975* who carried on a business of dealing in securities before the commencement of this Act shall, in relation to a prescribed financial year —
  - (a) prepare a true and fair profit and loss account and balance sheet on the basis of such accounting principles (if any) and containing such information and matters as were prescribed in that regard for the purposes of subsection (2) of section 64 of the *Securities Industry Act 1975* by regulations in force under that Act immediately before the commencement of this Act; and
  - (b) lodge the account and balance sheet with the Commission within the period of two months (or, in the case of a body corporate, three months) after the commencement of this Act together with an auditor’s report containing the information and matters prescribed in that regard for the purposes of subsection (2) of section 64 of that Act by regulations in force under that act immediately before the commencement of this Act.

- (2) The Commission may, on application by a dealer and his auditor before the expiration of the period of two months or, as the case requires, the period of three months referred to in subsection (1) or, if that period has been extended pursuant to an approval or approvals previously given under this subsection, before the expiration of the period as so extended, approve an extension or further extension of the period, and such an approval may be given subject to such conditions (if any) as the Commission imposes.
- (3) Where an approval under subsection (2) in relation to a dealer is given subject to conditions, the dealer shall comply with those conditions.
- (4) In this section, “**prescribed financial year**” in relation to a dealer means —
  - (a) where the dealer is not a body corporate — a year ending on 30 June before the commencement of this Act; and
  - (b) where the dealer is a body corporate — a financial year of the body corporate within the meaning of the *Companies Act 1961*, that ended before the commencement of this Act,

being a year or financial year during which the dealer carried on business as a dealer and in respect of which he would, but for the enactment of this Act, have been required to lodge a profit and loss account and balance sheet under the *Securities Industry Act 1975*, but did not so do before the commencement of this Act.

## **27. Annual fee**

- (1) A person who, by reason of section 24, is the holder of a licence under the *Securities Industry (Western Australia) Code* shall, in respect of a year commencing before, and expiring after, the commencement of this Act in respect of which, but for the enactment of this Act, he would have been required to pay a

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prescribed fee under section 43 of the *Securities Industry Act 1975*, pay that fee to the Commissioner for Corporate Affairs for and on behalf of the State at the time when, or during the period within which, he would, but for the enactment of this Act, have been required to pay that fee.

- (2) Where a person pays a fee under subsection (1) in respect of a year, he is not required to pay a fee in respect of the lodgment of a statement under section 56 of the *Securities Industry (Western Australia) Code* in respect of that year.
- (3) The Commissioner for Corporate Affairs may, in his discretion, extend, or further extend, the time for paying a fee under this section.

**28. Orders relating to dealer's bank accounts**

- (1) An order made by the Court under section 69 of the *Securities Industry Act 1975*, and in force immediately before the commencement of this Act shall be deemed to be an order made by the Court under section 83 of the *Securities Industry (Western Australia) Code*.
- (2) Nothing in subsection (1) requires a banker to disclose an account to the Commission, or permit the Commission to make a copy of, or take an extract from, an account where the banker has, under section 70 of the *Securities Industry Act 1975*, disclosed that account to the Commissioner for Corporate Affairs or permitted the Commissioner to make a copy of, or take an extract from, that account.

**29. Investment of deposit with stock exchanges**

- (1) A deposit received by a stock exchange under section 81 of the *Securities Industry Act 1975*, and held by the stock exchange immediately before the commencement of this Act shall be deemed to have been received by the stock exchange under section 95 of the *Securities Industry (Western Australia) Code*.

- (2) Where, under section 83 of the *Securities Industry Act 1975*, or corresponding previous enactment, an amount had been deposited with the Treasurer, that amount is repayable on demand.

**30. Accounts of deposits**

- (1) A stock exchange shall, within one month after the commencement of this Act, cause a balance sheet to be made out as at each prescribed quarter day in relation to the accounts or deposits received by it under Part VIII of the *Securities Industry Act 1975*.
- (2) A registered company auditor within the meaning of the *Companies Act 1961*, appointed by the stock exchange to audit its accounts relating to deposits shall audit the accounts to which each balance sheet under subsection (1) relates and shall cause a report on the accounts and balance sheet to be laid before the committee of the stock exchange not later than one month after the balance sheet is made out.
- (3) A stock exchange shall give to the Commission a copy of each report laid before the committee of the stock exchange under this section and of the balance sheet to which the report relates within fourteen days after the report is so laid before the committee.
- (4) In this section, “**prescribed quarter day**” means a quarter day within the meaning of the *Securities Industry Act 1975*, occurring before the commencement of this Act and in relation to which the stock exchange was required to give but did not give a report and balance sheet to the Commissioner for Corporate Affairs under section 84 of that Act.

**31. Accounts of fidelity fund**

- (1) A stock exchange shall, within one month of after the commencement of this Act, cause a balance sheet in respect of

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the accounts of its fidelity fund to be made out as at each prescribed day.

- (2) A registered company auditor within the meaning of the *Companies Act 1961*, appointed by the stock exchange to audit the accounts of its fidelity fund shall audit the accounts to which each balance sheet under subsection (1) relates and shall cause a report on the accounts and balance sheet to be laid before the committee of the stock exchange not later than one month after the balance sheet is made out.
- (3) A stock exchange shall give to the Commission a copy of each report laid before the committee of the stock exchange under this section and of the balance sheet to which the report relates within fourteen days after the report is so laid before the committee.
- (4) In this section, “**prescribed day**” means any 30 June occurring before the commencement of this Act and in relation to which the stock exchange was required to give but did not give a report and balance sheet to the Commissioner for Corporate Affairs under section 30 of the *Securities Industry Act 1975*.

**32. Fidelity funds**

- (1) Where, immediately before the commencement of this Act, there is an amount in the fidelity fund of a stock exchange kept under Part IX of the *Securities Industry Act 1975*, that amount shall form part of the fidelity fund of the stock exchange under Part IX of the *Securities Industry (Western Australia) Code*.
- (2) Where the whole or any part of an amount referred to in subsection (1) is, immediately before the commencement of this Act, invested under section 96 of the *Securities Industry Act 1975*, the amount, or part, shall be deemed to be invested under section 110 of the *Securities Industry (Western Australia) Code*.

**33. Order of Court establishing claim on fidelity fund**

An order made by the Court under section 102 of the *Securities Industry Act 1975*, and in force immediately before the commencement of this Act shall be deemed to be an order made by the Court under section 116 of the *Securities Industry (Western Australia) Code*.

**34. Preservation of records**

- (1) The provisions of subsections (1) and (2) of section 136 of the *Securities Industry (Western Australia) Code* apply to and in relation to a register and an accounting or other record in relation to a business carried on by a person, being a register or record that the person was before the commencement of this Act, required by section 120 of the *Securities Industry Act 1975* to preserve for a specified period.
- (2) Notwithstanding subsection (1), the provisions of subsections (1) and (2) of section 136 of the *Securities Industry (Western Australia) Code* do not apply to or in relation to a contract note or copy of a contract note received or issued by a dealer who, at the time of the receipt or issue, was a member of a stock exchange if the matters referred to in sub-section (2) of section 51 of the *Securities Industry Act 1975* in relation to the contract note were recorded —
  - (a) by the stock exchange; or
  - (b) subject to such conditions, if any, as the Commissioner for Corporate Affairs may have imposed, by the dealer,in a manner approved by the Commissioner and the record of those matters is retained for not less than five years.
- (3) Notwithstanding subsection (1), the provisions of subsections (1) and (2) of section 136 of the *Securities Industry (Western Australia) Code* do not apply in relation to an accounting record where the last day of the accounting period to which the record relates occurred at least five years before the commencement of this Act.

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**35. Offences**

The provisions of sections 125, 126, 127 and 131 of the *Securities Industry Act 1975* apply to and in respect of a contravention of or failure to comply with the provisions of section 21, 25, 26, 27, 30 or 31 of this Act as if a reference in those first-mentioned sections to the *Securities Industry Act 1975* were a reference to section 21, 25, 26, 27, 30 or 31 of this Act.

**36. Court may resolve difficulties**

- (1) Where any difficulty arises in the application to a particular matter of any of the provisions of the *Securities Industry (Western Australia) Code* or the *Securities Industry Act 1975*, by reason of the operation of this Part of this Act, 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 the *Securities Industry (Western Australia) Code*, the *Securities Industry Act 1975*, or this Act.
- (3) In subsection (1), “**Court**” means the Supreme Court or a judge of the Supreme Court.



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## 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 passage “ *Companies Act 1981* “ in the Commonwealth Act (wherever occurring) there were substituted the passage “ *Companies (Western Australia) Code* “;
  - (b) for the words “the Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “Western Australia”;
  - (c) for the words “law of a State or of another Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “law in force in another State or in a Territory”;
  - (ca) for the words “law of a participating State or participating Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “law in force in a participating State or in a participating Territory”;
  - (cb) for the words “law of that State or Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “law in force in that State or Territory”;
  - (d) 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”;
  - (e) for the words “commencement of this Act” in the Commonwealth Act (wherever occurring) there were substituted the passage “commencement of the *Securities Industry (Application of Laws) Act 1981* “; and
  - (f) after the passage “ *Australian Stock Exchange and National Guarantee Fund Act 1987* “ (wherever occurring) there were inserted the words “of the Commonwealth”

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2. (1) In subsection (1) of section 4 of the Commonwealth Act —

(aa) in the definition of “Australian company law” —

- (i) for the words “of a state or of another Territory” there were substituted the words in force in another state or in a Territory; and
- (ii) for the words “that Act” there were substituted the words “that Code”;

(a) after the definition of “banker’s books” there were inserted the following definition:

“

*“Bankruptcy Act 1959” means the Bankruptcy 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) after the definition of “committee” there were inserted the following definition:

“

**“Commonwealth Minister”** means the Minister of State for the Commonwealth for the time being administering the *Securities Industry Act 1980* of the Commonwealth as amended and in force for the time being;

”;

(ca) in the definition of “Corporation” there were inserted, after the designation “122BA (1)”, the passage “of the *Securities Industry Act 1980* of the Commonwealth as amended and in force for the time being”

[(d) *deleted*]

(da) in the definition of “Fund”, there were inserted, after the designation “122CA (1)”, the passage “of the *Securities Industry Act 1980* of the Commonwealth as amended and in force for the time being”

(e) after the definition of “licencee” 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;

”;

(f) after the definition of “memorandum” there were inserted the following definitions:

“

“**Minister**” means the Minister of State for Western Australia for the time being administering the *Securities Industry (Application of Laws) Act 1981*;

“**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;

”;

(g) after the definition of “registered company auditor” there were inserted the following definition:

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“

“regulations” means the provisions applying as regulations made under this Code by reason of section 7 of the *Securities Industry (Application of Laws) Act 1981*;

”;

- (ga) in the definition of “securities” for paragraph (ea) there were substituted the following paragraph —

“

(ea) a futures contract within the meaning of the *Futures Industry (Western Australia) Code* or of the provisions of a law in force in participating State or in a participating Territory that correspond with that Code;

”

- (h) after the definition of “securities business” there were inserted the following definition:

“

“*Securities Industry (Western Australia) Code* or “Code” means the provisions applying by reason of section 6 of the *Securities Industry (Application of Laws) Act 1981*;

”;

- (ha) in the definition of “securities law” for paragraph (b) there were substituted the following paragraphs —

“

(b) the Companies (*Acquisition of Shares*) (*Western Australia*) Code;

”

- (i) for the definition of “stock exchange” there were substituted the following definition:

“

“stock exchange” means —

- (a) the Exchange;
- (aa) the Australian Stock Exchange (Perth) Limited; or
- (b) any other body corporate that is approved by the Ministerial Council under section 38;

”;

- (j) for the definition of “trust account” there were substituted the following definition:

“

“trust account” means trust account opened and maintained under section 73 of this Code, under section 59 of the *Securities Industry Act 1975*, or under a corresponding previous enactment;

”.

- (1A) In subsection (1A) of section 4 of the Commonwealth Act for the passage “Act 1980” there were substituted the passage “*(Western Australia) Code*”.
- (1B) In section 4 (5B) of the Commonwealth Act —
  - (a) for the passage “*Act 1986*”, there were substituted the passage “*(Western Australia) Code*”; and
  - (b) for the words “that Act”, there were substituted the words “that Code”;
- (2) In subsection (7) of section 4 of the Commonwealth Act, for the words “that Act” there were substituted the words “that Code”.
- (3) After subsection (9) of section 4 of the Commonwealth Act there were inserted the following subsection:

“

- (10) In this Code —

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- (a) a reference to a previous law, or provision of a previous law, or previous enactment, of Western Australia or of the State corresponding to, or to a provision of, this Code includes a reference to, or to a provision of, the *Securities Industry Act 1975*; and
- (b) a reference to a previous law, or provision of a previous law, or previous enactment, of a State other than Western Australia or of another State corresponding to, or to a provision of this Code includes a reference to, or to a provision of, the law of that State corresponding to the *Securities Industry Act 1975*.

”.

2A. In section 5 (12) of the Commonwealth Act after the expression “*Act 1980*” there were inserted the words “of the Commonwealth as amended and in force for the time being.

2B. In section 6C (2) of the Commonwealth Act, for paragraph (d) there were substituted the following paragraph —

“

- (d) by virtue of the person’s powers, as Public Trustee, under the *Public Trustee Act 1941* or a prescribed law of another State or of a Territory.

”

2C. In section 6J (6) of the Commonwealth Act —

- (a) for paragraph (a), there were substituted the paragraph —

“

- (a) the *Futures Industry (Western Australia) Code*; or

”; and

- (b) in paragraph (b), for the words “that Act” there were substituted the words “that Code”;
3. In section 8 of the Commonwealth Act, for the words “relevant Act” (wherever occurring) there were substituted the words “relevant Code”.
4. In subsection (1) of section 9 of the Commonwealth Act for the words “Australian Federal Police” there were substituted the words “police force of Western Australia”.
- (4A) In subsection (2) of section 9 of the Commonwealth Act, for the words “of a participating State or of a” there were substituted the words “in force in a participating State or”.
5. In paragraph (d) and paragraph (e) of subsection (3A) and in paragraph (b) of subsection (7) of section 12 of the Commonwealth Act for the expression “Act 1980” there were substituted the passage “(Western Australia) Code”.
- 5A. In section 13 of the Commonwealth Act, for the words “relevant Act” (wherever occurring) there were substituted the words “relevant Code”.
6. For paragraph (a) of the definition of “relevant authority” in subsection (1) of section 15 of the Commonwealth Act 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 16 (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 16 (6) — the Minister; or
- ”.
7. In section 16 of the Commonwealth Act —

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- (a) in subsection (2), for the words “the Minister” (where twice occurring) there were substituted the words “the Commonwealth Minister”; and
  - (b) in subsections (4) and (6), for the words the Minister there were substituted the words “the Minister or the Commonwealth Minister”.
- 8. In subsections (6) and (8) of section 17 of the Commonwealth Act after the word “*Gazette*” there were inserted the words “and *Government Gazette*”.
- 9. In subsection (2) of section 19 of the Commonwealth Act for the passage “Part III of the *Crimes Act 1914*” there were substituted the passage “Chapter XVI of *The Criminal Code*”.
- 10. In section 20 of the Commonwealth Act for the passage “Part V of the *Evidence Ordinance 1971* of the Territory” there were substituted the passage “sections 89 to 96 of the *Evidence Act 1906*.”
- 11. In section 30 of the Commonwealth Act —
  - (a) in subsection (4) —
    - (i) at the end of paragraph (a), the word “and” were repealed; and
    - (ii) in paragraph (b), for the word “Commonwealth” there were substituted the following passage 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 Division that relates to an investigation the expenses of which are, under the Agreement, to be borne by the Commonwealth.

”; and

(b) in subsection (5), for the words “Ministerial Council or the Minister” (where three times occurring) there were substituted the passage “Ministerial Council, the Minister or the Commonwealth Minister”.

12. After subsection (9) of section 30 of the Commonwealth Act there were inserted the following subsection:

“

(10) Nothing in this section operates to diminish the protection afforded to witnesses by the *Evidence Act 1906*.

”.

12A. In section 36A (1) of the Commonwealth Act for the definition of “nominated exchange” there were substituted the following definition —

“

“nominated exchange” means the stock exchange whose name immediately before the relevant commencement was “The Stock Exchange of Perth Limited”;

”.

12B. For sections 36B, 36C, 36D and 36E of the Commonwealth Act there were substituted the following sections —

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“

**36C. Names of exchange and exchange subsidiaries**

- (1) The name 'Australian Stock Exchange Limited' shall be deemed to have been registered at the relevant commencement, in respect of the Exchange, under section 42 of the *Companies (Western Australia) Code*.
- (2) The nominated exchange shall be deemed to have changed its name, at the relevant commencement, pursuant to the *Companies (Western Australia) Code* to the name 'Australian Stock Exchange (Perth) Limited'.
- (3) The name 'Australian Stock Exchange (Perth) Limited' shall be deemed to have been registered at the relevant commencement, in respect of the nominated exchange, under subsection 43 (4) of the *Companies (Western Australia) Code*.
- (4) The registration of the name 'The Stock Exchange of Perth Limited' under Division 2 of Part III of the *Companies (Western Australia) Code* shall be deemed to have been cancelled at the relevant commencement under subsection 43 (4) of that Code.
- (5) The names —
  - (a) 'Australian Stock Exchange (Adelaide) Limited';
  - (b) 'Australian Stock Exchange (Brisbane) Limited';
  - (c) 'Australian Stock Exchange (Hobart) Limited';
  - (d) 'Australian Stock Exchange (Melbourne) Limited';
  - and
  - (e) 'Australian Stock Exchange (Sydney) Limited',shall be deemed to have been registered at the relevant commencement under section 45 of the *Companies (Western Australia) Code* in respect of —
  - (f) The Stock Exchange of Adelaide Limited;
  - (g) The Brisbane Stock Exchange Limited;

- (h) The Hobart Stock Exchange Limited;
- (i) The Stock Exchange of Melbourne Limited; and
- (j) The Sydney Stock Exchange Limited,

respectively.

- (6) The registration, under Division 2 of Part III of the Companies (Western Australia) Code of each of the names referred to in subsection (5) paragraphs (f) to (j), inclusive, shall be deemed to have been cancelled at the relevant commencement under that Division.
- (7) This section has effect notwithstanding anything in Division 2 of Part III of the Companies (Western Australia) Code, but nothing in this section prevents the cancellation, in accordance with that Division, of the registration of a name.

**36D. Functions and powers under laws of the State**

The Exchange shall perform the functions, and may exercise the powers, that are conferred, or expressed to be conferred, on it by or under an Act or by or under a regulation or other instrument made under, or by virtue of, an Act.

**36E. Listing rules and business rules of the Exchange**

For the purposes of a relevant Code, the listing rules, or the business rules, of the Exchange are the rules, regulations and by-laws that are the existing rules, or the business rules, as the case may be, of the Exchange for the purposes of the Securities Industry Act 1980 of the Commonwealth as amended and in force for the time being.

”.

12C. In section 36F(3) of the Commonwealth Act for the words “that Act” (where twice occurring) there were substituted the words “that Code”.

12D. In section 36G of the Commonwealth Act —

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- (a) in subsection (1), for the passage following but not including “nominated exchange” there were substituted the words “becomes at that commencement a member of the Exchange”;
  - (b) subsection (2) were repealed; and
  - (c) in subsection (3) the passage “or (2)” were repealed.
- 12E. In section 36H of the Commonwealth Act —
  - (a) subsection (4) were repealed; and
  - (b) in subsections (7), (8) and (10) for the words “that Act” (wherever occurring) there were substituted the words “that Code”.
- 12F. In section 36J of the Commonwealth act —
  - (a) in subsection (1) the definition of “corresponding provision” were repealed;
  - (b) in subsection (1), in paragraph (a) of the definition of “disciplinary proceeding” for the words “this Part” there were substituted the passage “the *Australian Stock Exchange and National Guarantee Fund Act 1987* of the Commonwealth”;
  - (c) in subsections (7) and (9) the words “within the meaning of this section or of a corresponding provision” were repealed;
  - (d) in subsection (12) —
    - (i) in paragraph (a), for the passage “an AASE exchange’s business rules as in force at any time before the relevant commencement” there were substituted the words “the former rules”; and
    - (ii) in subparagraph (i) of paragraph (a) for the passage “that AASE exchange” there were substituted the words “the nominated exchange”.
- 12G. Section 36K of the Commonwealth Act were repealed.
- 12H. In section 36P(1) of the Commonwealth Act there were inserted, after the designation “122BA (1)”, the passage “of the *Securities Industry Act 1980* of the Commonwealth as amended and in force for the time being”.

- 12I. Section 36T of the Commonwealth Act were repealed.
- 12J. After section 39 (6) of the Commonwealth Act there were inserted the following subsection —
- “
- (7) In this section, “securities exchange” does not include the Exchange.
- ”;
13. In subsection (1) of section 43, section 44, subsection (1) of section 45, and section 46 of the Commonwealth Act for the passage “After the expiration of 3 months after the date of commencement of this Act, a person”, there were substituted the words “A person”.
- 13AA. In section 47 (3) of the Commonwealth Act, after the passage “Act 1989” there were inserted “of the Commonwealth”.
- 13A. In paragraph (b) of section 48 of the Commonwealth Act, for the words “of a State or of another Territory” (where twice occurring) there were substituted the words “in force in another State or in a Territory”.
14. For subsection (10) of section 51 of the Commonwealth Act there were substituted the following subsection:
- “
- (10) In this section “local authority” means the Commissioner for Corporate Affairs for Western Australia.
- ”.
15. After subsection (6) of section 54 of the Commonwealth Act there were inserted the following subsection:

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“

- (7) The particulars that, immediately before the commencement of the *Securities Industry (Application of Laws) Act 1981*, were in, or were deemed to form part of, the register kept under section 41 of the *Securities Industry Act 1975* shall be deemed to form part of the Register of Licence Holders.

”.

16. For subsection (5) of section 60 of the Commonwealth Act there were substituted the following subsection:

“

- (5) A person disqualified or deemed to be disqualified, either permanently or for a period, from holding a licence —
- (a) under the corresponding law in force in another State or in a Territory by reason of an order of a court under that corresponding law or by reason of a provision of that corresponding law; or
  - (b) by reason of an order of a court under section 47 of the *Securities Industry Act 1975* or under a corresponding provision of a previous law or under a provision of a law, or a previous law of another State,
- shall, while he is so disqualified or deemed to be disqualified, be deemed to be disqualified from holding a licence under this Code.

”.

16AA. In section 62S of the Commonwealth Act, for subsection (1) there were substituted the following subsection —

“

(1) This section applies where, immediately before the commencement of section 52 of the *Co-operative Scheme Legislation Amendment Act 1989* of the Commonwealth, a person was disqualified, either permanently or for a period, from holding a licence because of —

- (a) an order that was made under subsection 60 (4) of this Code as in force before that commencement; or
- (b) an order that was made under section 47 of the *Securities Industry Act 1975* or under a corresponding provision of a previous law or under a provision of a law, or a previous law, of another State and the operation of subsection 60 (5) of this Code as in force before that commencement.

”.

16A. In section 70 (2) of the Commonwealth Act for the words “that Act” there were substituted the words “that Code”.

17. (1) In paragraph (e) of subsection (2) of section 75 of the Commonwealth Act, for the words “of a participating State or a” there were substituted the words “in force in a participating State or”.

(2) In paragraph (e) of subsection (3) of section 75 of the Commonwealth Act, for the passage “*Business Names Ordinance 1963*” there were substituted the passage “*Business Names Act 1962*”.

(3) In paragraph (f) of subsection (3) of section 75 of the Commonwealth Act, for the words “of a participating State or of a” there were substituted the words “in force in a participating State or”.

(4) In subsection (19) of section 75 of the Commonwealth Act, for the words “of a participating State or of a” there were substituted the words “in force in a participating State or”.

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(5) In subsection (20) of section 75 of the Commonwealth Act, for the words “of a participating State or of a” there were substituted the words “in force in a participating State or”

17AA. In subsection (10) of section 76 of the Commonwealth Act for the words “that Act” there were substituted the words “that Code.

17A. In paragraph (a) of subsection (2) of section 81 of the Commonwealth Act, for the words “of a participating State or of a” there were substituted the words “in force in a participating State or”.

17AB. In section 98 of the Commonwealth Act —

(a) for subsection (1) there were substituted the following subsection —

“

(1) A stock exchange shall establish and keep proper accounts of all deposits received by the stock exchange under this Part and shall, within one month after each quarter day, cause a balance sheet to be made out as at that quarter day.

”;

(b) after subsection (4) there were inserted the following subsection —

“

(5) In this section “stock exchange” does not include the Exchange.

”;

17B. In section 103A of the Commonwealth Act for the passage “Act 1986” there were substituted the passage “(Western Australia) Code”.

18. In section 107 of the Commonwealth Act —

(a) there were added, after subsection (1D), the following subsection:



“

- (1E) A reference in subsection (1) or (1D) to annual contributions includes a reference to annual contributions under Part IX of the *Securities Industry Act 1975* or under a corresponding previous enactment.

”; and

- (b) there were added, at the end thereof, the following subsections:

“

- (6) Subject to subsections (1A), (1B), (1C) and (1D) and subsection (4) the Governor —
- (a) may by Order in Council prescribe amounts for the purposes of those subsections; and
  - (b) may, by like Order, vary or revoke any Order made under this subsection.
- (7) The power of the Governor to make, vary or revoke an order under sub-section (6) shall be exercised only in accordance with advice that is consistent with resolutions of the Ministerial Council.
- (8) For the purposes of this section regulations made for the purposes of subsection (1) or sub-section (4) of section 93 of the *Securities Industry Act 1975*, and in force immediately prior to the commencement of the *Securities Industry (Application of Laws) Act 1981*—
- (a) shall with all necessary adaptations be given effect to as though the provisions hereof were contained in an Order in Council made under subsection (6); and

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- (b) shall continue to be given such effect until an Order in Council is made under that subsection.

”.

- 19. In paragraph (a) of subsection (2) of section 112 of the Commonwealth Act for the words “this Act” there were substituted the passage “Part VIII. of the *Securities Industry Act 1970*”.
- 20. In subsection (1) of section 114 of the Commonwealth Act —
  - (a) for the words “any State or other Territory” there were substituted the words “any State other than Western Australia or in any Territory”; and
  - (b) for the words “that State or other Territory” there were substituted the words “that other State or Territory”.
- 20AA. In section 122AA (1) of the Commonwealth Act —
  - (a) in paragraph (b) in the definition of “Fund provisions”, for the words “laws of” there were substituted the words “laws in force in”; and
  - (b) in the definition of “minimum amount”, after the designation “section 122DD”, there were inserted the passage “of the *Securities Industry Act 1980* of the Commonwealth as amended and in force for the time being”.
- 20AB. For sections 122BA, 122BB and 122BC of the Commonwealth Act there were substituted the following section —

“

**122BA. Functions and powers under this Part**

The Corporation shall perform the functions, and may exercise the powers, that are conferred, or expressed to be conferred, on it or under this Part.

”.

- 20AC. For section 122CA of the Commonwealth Act there were substituted the following section —

“

**122CA. Corporation to keep Fund**

- (1) The Corporation shall keep the Fund, which shall be administered by the Board on behalf of the Corporation.
- (2) The assets of the Fund are the property of the Corporation, but shall be kept separately from all other property and shall be held on trust for the purposes set out in the Fund provisions.

”

20AD. Sections 122DA and 122DD of the Commonwealth Act were repealed.

20AE. In section 122GE(1) of the Commonwealth Act, after the words “A participating exchange” there were inserted the passage “(other than the Exchange)”.

20AF. In section 122X(1) of the Commonwealth Act —

- (a) for the words “any State or other Territory” there were substituted the words “any other State or in a Territory”; and
- (b) for the words “that State or other Territory” there were substituted the words “that other State or that Territory”.

20AG. In section 122ZE of the Commonwealth Act in the definition of “nomination day”, there were inserted, after the designation “122BA (1)”, the passage “of the *Securities Industry Act 1980* of the Commonwealth as amended and in force for the time being”. ”.

20A. In section 141A of the Commonwealth Act —

- (a) in subsection (1) after the passage “Act 1983” there were inserted the words “of the Commonwealth”; and
- (b) in paragraph (b) of subsection (2) for the passage “Act 1980” there were substituted the words “(Western Australia) Code”;
- (c) in subsection (7) —
  - (i) for the words “provision of this Act” there were substituted the words “provision of this Code”; and

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- (ii) for the words “any other Act” there were substituted the words “any other Code or any Act”; and
- (d) for subsection (8) there were substituted the following subsection —

“

- (8) In this section —
  - “authority” includes a person;
  - “prescribed” means prescribed by the *Securities Industry (Application of Laws) Act 1981* or by the *Securities Industry (Western Australia) Regulations*.

”.

- 20B. In section 142 (7) of the Commonwealth Act, after the passage “*Act 1985*” there were inserted the words “of the Commonwealth”.
- 20C. In section 143 (1) of the Commonwealth Act, after the passage “*Act 1985*” there were inserted the words “of the Commonwealth”.
- 21. In section 145 of the Commonwealth Act for the words “a State or in another Territory” there were substituted the words a State other than Western Australia or in a Territory”.
- 22. Section 150 of the Commonwealth Act were repealed.
- 23. For section 151 of the Commonwealth Act there were substituted the following section:

“

- 151.** The judges of the Court may, subject to the *Supreme Court Act 1935*, make rules, not inconsistent with this Code, with respect to proceedings, and the practice and procedure, of the Court under this Code and, in particular, with respect to costs of, and incidental to, any such proceedings.

”.

24. After section 151 of the Commonwealth Act there were inserted the following section:

“

**151A. Dealers trust accounts**

- (1) The Governor —
- (a) may by Order in Council exempt a member of a stock exchange from compliance with all or any of the provisions of sections 73 and 74, subject to such terms and conditions as are specified in the Order; and
  - (b) may, by like Order, vary or revoke any Order made under this sub-section.
- (2) A reference in this Code, other than in sections 73 and 74, to a trust account shall, unless the contrary intention appears in an Order in Council made under subsection (1), be construed as extending to a trust account required to be maintained by the terms or conditions of such an Order.
- (3) A person who contravenes or fails to comply with a term or condition of an Order in Council made under subsection (1) that is applicable to him is guilty of an offence.  
Penalty: \$5,000 or imprisonment for 1 year, or both.
- (4) A person who, with intent to defraud, contravenes or fails to comply with a term or condition of an Order in Council made under subsection (1) that is applicable to him is guilty of an offence.  
Penalty: \$10,000 or imprisonment for 2 years, or both.
- (5) The power of the Governor to make, vary or revoke an Order in Council under sub-section (1) shall be exercised only in accordance with advice that is consistent with resolutions of the Ministerial Council.
- (6) For the purposes of this section any Order in Council made pursuant to sub-section (6) of section 133 of the *Securities Industry Act 1975*, and in force immediately before the

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commencement of the *Securities Industry (Application of Laws) Act 1981*, shall be deemed to have been made under subsection (1) and shall with all necessary adaptations apply accordingly.

”.

*[Schedule 1 amended by No. 10 of 1982 ss. 17, 18 and 19; No. 48 of 1988 s.22; Gazettes 25 September 1981 p.4081; 4 June 1982 p.1767; 30 December 1983 p.5027; (Corrigendum Gazette 27 November 1984 p.228); 25 May 1984 p.1374; 27 March 1986 p.1345; 5 September 1986 p.3270; 27 March 1987 p.1028; 26 June 1987 pp.2449-50; 6 October 1989 pp.3724-25; 27 April 1990 p.2061.]*

## 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 passage “*Securities Industry Act 1980*” (wherever occurring) there were substituted the passage “*Securities Industry (Western Australia) Code*”.
3. For the passage “*Companies Ordinance 1962*” (wherever occurring there were substituted the passage “*Companies Act 1961*”.
4. For the words “Supreme Court of the Australian Capital Territory” (wherever occurring) there were substituted the words “Supreme Court of Western Australia”.
5. For the words “the Territory” (wherever occurring) there were substituted the words “Western Australia”.
6. For the words “Securities Industry Regulations” (wherever occurring) there were substituted the passage “*Securities Industry (Western Australia) Regulations*”.
7. For the passage “*Companies Act 1981*” (wherever occurring) there were substituted the passage “*Companies (Western Australia) Code*”.

[Schedule 2 amended by No. 10 of 1982 s.22; amended by Gazette. 25 June 1982 p.2085.]

**Schedule 3**

[Section 8.]

The provisions of regulations in force for the time being under the *Securities Industry (Fees) Act 1980* of the Commonwealth apply as if in those regulations —

1. For the words “the Act” (wherever occurring) there were substituted the passage “the *Securities Industry (Western Australia) Code*”



**Schedule 4**

[Section 10.]

The following headings and sections shall be included in the publication of the provisions of the Commonwealth Act under section 10:

“

*SECURITIES INDUSTRY (WESTERN AUSTRALIA) CODE*

RELATING TO THE SECURITIES INDUSTRY IN  
WESTERN AUSTRALIA

PART I — PRELIMINARY

1. This Code may be cited as the *Securities Industry (Western Australia) Code*.
2. This Code comes into operation on the day on which *the Securities Industry (Application of Laws) Act 1981*, 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, and has effect subject to and in accordance with —
  - (a) the *Securities Industry (Application of Laws Act 1981)*; and
  - (b) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*.

”.

**Schedule 5**

[Section 11.]

The following headings 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:

“

*SECURITIES INDUSTRY (WESTERN AUSTRALIA)  
REGULATIONS*

1. (1) These Regulations may be cited as *the Securities Industry (Western Australia) Regulations*.
- (2) These Regulations shall come into operation on the day on which the *Securities Industry (Application of Laws) Act 1981* comes into operation.
- (3) These Regulations have effect subject to and in accordance with —
  - (a) the *Securities Industry (Application of Laws) Act 1981*; and
  - (b) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*.

”.

## Schedule 6

[Section 12.]

The following headings and provisions shall be included in the publication under section 12 of the Schedule to regulations in force for the time being prescribing fees under the *Securities Industry (Fees) Act 1980* of the Commonwealth:

“

*SECURITIES INDUSTRY (FEES) (WESTERN AUSTRALIA) REGULATIONS*

1. These Regulations may be cited as the *Securities Industry (Fees) (Western Australia) Regulations*.
2. These Regulations shall come into operation on the day on which the *Securities Industry (Applications of Laws) Act 1981* comes into operation.
3. These Regulations have effect subject to and in accordance with —
  - (a) the *Securities Industry (Application of Laws) Act 1981*; and
  - (b) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*.
4. The fees payable for the purposes of section 8 of the *Securities Industry (Application of Laws) Act 1981* are the fees specified in the Schedule in relation to the respective matters so specified.

SCHEDULE

FEES

”.

**Notes**

- <sup>1.</sup> This is a compilation of the *Securities Industry (Application of Laws) Act 1981* and includes all amendments effected by the other Acts referred to in Part I of the following Table and the Regulations in Council referred to in Part II of the following Table.

**Compilation table**

**PART I — ACTS**

<b>Short title</b>	<b>Number and Year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Miscellaneous</b>
<i>Securities Industry (Application of Laws) Act 1981</i>	31 of 1981	26 May 1981	1 July 1981 (see <i>Gazette</i> 29 June 1981 p.2437)	
	10 of 1982	14 May 1982	Section 18, 19, deemed operative 1 July 1981: Section 20 operative from 1 October 1981: balance operative 1 July 1982 (see section 2 (1))	
	48 of 1988	1 December 1988	Parts 1, 2, 3, 8, 9 and 10 proclaimed 9 December 1988 (see <i>Gazette</i> 9 December 1988 p.4817); balance proclaimed 1 February 1989 (see <i>Gazette</i> 27 January 1989 p.263)	
Statutes (Repeals and Minor Amendments) Act (No. 2) 1998, section 76	10 of 1998	30 April 1998	30 April 1998 (see section 2 (1))	
<i>Corporations (Ancillary Provisions) Act 2001 s. 27</i>	8 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)	

**PART II — REGULATIONS**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>	<b>Miscellaneous</b>
<i>Securities Industry (Application of Laws) Regulations 1981</i>	25 September 1981 pp.4085-1	1 October 1981	
<i>Securities Industry (Application of Laws) Regulations 1982</i>	4 June 1982 p.1767	4 June 1982	
<i>Securities Industry (Application of Laws — Regulations) Regulations 1982</i>	25 June 1982 p.2085	1 July 1982	
<i>Securities Industry (Application of Laws) Regulations 1983</i>	30 December 1983 p.5027	30 December 1983	
<i>Securities Industry (Application of Laws) Regulations 1984</i>	25 May 1984 p.1374	25 May 1984	
<i>Securities Industry (Application of Laws) Regulations 1986</i>	27 March 1986 p.1345	27 March 1986	
<i>Securities Industry (Application of Laws) (No. 2) Regulations 1986</i>	5 September 1986 p.3270	5 September 1986	
<i>Securities Industry (Application of Laws) Regulations 1987</i>	27 March 1987 p.1028	27 March 1987	
<i>Securities Industry (Application of Laws) Regulations (No. 2) 1987</i>	26 June 1987 pp.2449- 50	26 June 1987	
<i>Securities Industry (Application of Laws) (Amendment) Regulations 1989</i>	6 October 1989 pp.3724-5	1 November 1989 (see regulation 2)	
<i>Companies and Securities Industry (Retirement Villages) Regulations 1990</i>			

<sup>2</sup> Section 21 of Act No. 10 of 1982 read as follows —

“

**21. Exempt interests under s.76 (1) (g) of the *Companies Act 1961***

Where, immediately before the commencement of this section, an interest or right was an exempt interest for the purposes of paragraph (g) of subsection (1) of section 76 of the *Companies Act 1961*, that interest or right shall be deemed to have been an exempt interest for the purposes of paragraph (g) of the interpretation of “prescribed interest” in subsection (1) of section 4 of the *Securities Industry (Western Australia) Code* during the period during which it was an exempt interest for the purposes of paragraph (g) of subsection (1) of section 76 of the *Companies Act 1961*.

”.